

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.309/Kol/2024
Assessment Year: 2017-18

Ram Kumar Gupta.....Appellant
67/46, Posta Chowrasta,
Kolkata -700007.
[PAN: ADRPG8556B]

vs.

ACIT, Circle-43, Kolkata..... Respondent

Appearances by:

Shri Rajiva Kumar, AR, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT- DR on behalf of P. P. Barman, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 30, 2024

Date of pronouncing the order : August 09, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 07.12.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the confirmation of addition of Rs.1,10,46,000/- made by the Assessing Officer on account of cash deposits in the bank account of the assessee during demonetization period.

3. The brief facts of the case are that the assessee derives income from retail trading in the name of M/s R. Kumar and Co. The assessee filed his return of income on 28.07.2017 declaring a total income of Rs.8,19,420/-. The return was selected for scrutiny and notices u/s

143(2) and 142(1) were issued asking for necessary details. The Assessing Officer also found that the assessee had deposited cash of Rs.1,10,46,000/- in the bank account in Federal Bank of India during the demonetization period. This account had not been disclosed in the ITR filed by the assessee. Since the assessee did not provide any explanation regarding the cash deposits and because the bank account had not even been disclosed by the assessee in the ITR for A.Y 2017-18, this amount was added u/s 68 of the Act.

4. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the CIT(A) and made the following submissions:

"1.1 In this connection, it is submitted that the appellant is a proprietorship firm and is engaged in the business of trading of sugar in the name and style of M/s R. Kumar & Co. The assessee, during the demonetization period (i.e. 08.11.2016 to 30.12.2016) deposited cash amounting to Rs. 1,10,46,000/- in his bank account as detailed below:

(a) Name of Bank- Federal Bank Ltd., Account No.: 19380200001456

Date	Denomination (Rs.)	No. of Notes	Amount(Rs.)	Total (Rs.)
10.11.2016	1,000	300	3,00,000	
----Do----	500	1312	6,56,000	
----Do----	1,000	699	6,99,000	16,55,000
12.11.2016	500	40	20,000	20,000
13.11.2016	1,000	500	5,00,000	5,00,000
15.11.2016	1,000	832	8,32,000	8,32,000
19.11.2016	100	2400	2,40,000	
----Do----	50	1200	60,000	
----Do----	10	5000	50,000	
----Do----	100	1500	1,50,000	5,00,000
22.11.2016	2,000	200	4,00,000	4,00,000
08.12.2016	1,000	500	5,00,000	
----Do----	100	4600	4,60,000	
----Do----	20	100	2,000	
----Do----	10	600	6,000	9,68,000

12.12.2016	2,000	297	5,94,000	
----Do---	100	3200	3,20,000	
13.12.2016	2,000	600	6,00,000	9,20,000
17.12.2016	2,000	250	5,00,000	5,00,000
----Do---	100	35	70,000	
19.12.2016	2,000	500	50,000	1,20,000
----Do---	100	14	28,000	
20.12.2016	2,000	1500	1,50,000	1,78,000
----Do---	100	16	32,000	
----Do---	100	500	50,000	
----Do---	20	100	2,000	
----Do---	10	600	6,000	90,000
21.12.2016	100	500	50,000	50,000
26.12.2016	2,000	300	6,00,000	
----Do---	100	2000	2,00,000	
----Do---	50	500	25,000	
----Do---	10	1500	15,000	8,40,000
27.12.2016	2,000	135	2,70,000	
----Do---	100	900	90,000	
----Do---	50	500	25,000	
----Do---	20	100	2,000	
----Do---	10	800	8,000	3,95,000
28.12.2016	2,000	200	4,00,000	
----Do---	100	1000	1,00,000	5,00,000
29.12.2016	2,000	140	2,80,000	
----Do---	2,000	50	1,00,000	3,80,000
31.12.2016	2,000	175	3,50,000	3,50,000
			Total	91,98,000

(b) Name of Bank- Federal Bank Ltd., Account No.: 19380100000509

Date	Denomination (Rs.)	No. of Notes	Amount (Rs.)	Total (Rs.)
12.11.2016	1,000	1000	11,000	
----Do---	500	94	47,000	58,000
13.11.2016	1,000	100	1,00,000	1,00,000
23.11.2016	1,000	50	50,000	50,000
			Total	2,08,000

(c) Name of Bank- Federal Bank Ltd., Account No.: 19385600000081

Date	Denomination (Rs.)	No. of Notes	Amount(Rs.)	Total (Rs.)
23.11.2016	1000	600	6,00,000	
15.12.2016	2,000	200	4,00,000	
----Do---	100	100	10,000	10,10,000
			Total	10,10,000

Further, the summary of cash deposited along with denomination of the notes for the period from 08.11.2016 to 30.12.2016 is given as under:

Sl	Denomination (Rs.)	No of Notes	Total (Rs.)
1.	2,000	2012	40,24,000
2.	1,000	3592	35,92,000
3.	500	1446	7,23,000
4.	100	18700	18,70,000
5.	50	2200	1,10,000
6.	20	300	6,000
7.	10	9100	91,000
		Grand Total	1,04,16,000

1.2 It is further submitted that during the FY 2016-17, the total turnover of the assessee firm was Rs. 42,79,41,261/-. The total cash sales from 01.04.2016 to 07.11.2016 was Rs. 6,26,74,252/- and cash sales during the period from 08.11.2016 to 30.12.2016 was Rs.1,01,88,109/-. As detailed hereinabove, the assessee deposited a sum of Rs.1,04,06,000/- in his bank accounts during the demonetization period out of which a sum of Rs.43,15,000/- (3592 notes of Rs.1,000/- & 1446 notes of Rs.500/-) only was deposited in demonetized currency notes and a sum of Rs. 61,01,000/- was deposited in other currency notes. The AO wrongly noted that the assessee deposited Rs. 1,10,46,000/- in cash in his bank accounts during the demonization period.

1.3 It is further submitted that the cash of Rs.1,04,06,000/- was deposited out of the sales of sugar. Such sales were duly recorded in the books of account of the assessee. The books of accounts of the assessee were audited under the provisions of section 44AB of the Income Tax Act, 1961 wherein no irregularity was reported by the auditors. Copy of sales register for the F.Y. 2016-17 is attached herewith & marked Annexure-A. A separate chart of cash sales of Rs.6,26,74,252/- during the period ranging from 01.04.2016 to 07.11.2016 and Rs.1,01,88,109/- from 08.11.2016 to 30.12.2016 is also attached & marked Annexure-B. Copy of cash deposited slips and bank statements are attached and marked Annexure-C. The assessee has no other business.

1.4 It is further submitted that the accountant of the assessee, while filing the return for the year, missed to disclose the bank accounts maintained with the federal bank in which the transactions were made. The two bank accounts mentioned in the return of income for the year had no transactions. Apparently, the mistake is inadvertent.

1.5 It is further submitted that the tax consultant of the assessee was unwell from September, 2019 and after prolonged illness, expired in July, 2020. Hence, no compliance could be made at the assessment stage.

1.6 It is further submitted that the assessee filed VAT/GST Returns in connection with the purchases and sales of sugar. It is apparent from the financial statements and the VAT/GST Returns that the addition of the cash deposits made by the AO is nothing but the sales made by the assessee during the year.

1.7 It is further submitted that when a receipt is accounted for as income, no separate addition of the same amount can be made under any other section of the Act as it would be a double addition. For this, reliance is placed on the order of the jurisdictional ITAT in *New Pooja Jewellers vs. ITO* (ITA No. 1329/Kol/2018)

1.8 It is reiterated that the amount deposited in the bank account forms part of the sale proceeds credited in the profit & loss account hence the

addition thereof amounts to double taxation of same income which is not permissible under the law. In *Dewas Soya Ltd. vs. ITO* (ITA No. 336/Ind/2012), the Indore Bench of the ITAT held that the addition resulted into double taxation of the same income in the same year once as sales credited to profit and loss account and secondly as unexplained cash credit u/s 68 of the Act.

1.9 In *Shree Sanand Textiles Industries Ltd. vs. DCIT* (ITA No. 1166/Ahd/2014), it was held that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts as income at the time of sale only. It was also accepted that there is no adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above the order of CIT(A) was set aside and Assessing Officer was directed to delete the additions.

1.10 In *CIT Vs Vishal Exports Overseas Ltd* [IT Appeal No. 2471 of 2009], the Gujarat High Court upheld the order of the tribunal deleting the addition of Rs.70 lakhs observing that when the assessee had already offered sales realization, the addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.

1.11 In *CIT Vs Kailash Jewellery House* [IT Appeal No. 613 of 2010], the Delhi High Court observed that the appellant had furnished the complete set of books of accounts and the cash books and no discrepancy had been pointed out. The AO had doubted the aforesaid sales as bogus and had made the aforesaid addition. However, the CIT(A) as well as the ITAT returned findings of fact to the contrary. The Tribunal noted that the departmental representative could not challenge the factual finding recorded by the CIT(A) nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return, it is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The findings of the CIT(A) and the Tribunal do not require any interference.

1.12 In *ACIT Vs Hirapanna Jewellers* [2021] 189 ITD 608, it was held that since the assessee explained the source of the cash deposits made in its bank account post demonetization as sales of jewellery, produced sale bills, admitted the same as revenue receipt, offered it to tax and the outgo of stocks was matching with sales, impugned addition was to be deleted. The relevant Para of the order is extracted as under:

"9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra). Hence, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld."

1.13 In *PCIT Vs Agson Global (P) Ltd [2022] 134 taxmann.com 256 (Delhi)*, the Delhi High Court held that in a case where the AO made addition under section 68 on account of cash deposit made by assessee post demonetization, since assessee placed material on record to prove that cash deposits made with banks were in correspondence with cash sales and growth in sales compared to earlier two years showed similar trend, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted.

1.14 In *Lakshmi Rice Mills Vs CIT [1947] 97 ITR 258 (Pat)*, the Patna High Court held that "it is a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetized and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law. What has to be disclosed and established is the source of the income of the receipt of money not the source of the receipt of the high denomination notes which were legal tender at the relevant time. Thus, the so-called findings of fact by the Tribunal were based upon placing a wrong onus of proof and applying not the correct principles of law governing such cases. On the facts, no tangible material had been brought on the record to take the shape of any legal evidence for the purpose of recording a finding that the assessee's explanation was not worthy of acceptance.

1.15 It is further submitted that "the difference between an assessment u/s. 143(3) and an assessment u/s.144 is that the Act contemplates a more summary method when the AO is acting under this section by reason of deliberate default by the assessee" - [*Gunda Subbayya Vs. CIT(1939) 7 ITR 21(FB)*, *Dhanalakshmi Pictures Vs. CIT (1983)144 ITR 452*, *CIT Vs. Messers Ein Shin (1947)15 ITR 290*, *Singh Engineering*

Works Vs. CIT (1953)24 ITR 93]. "Although the assessment proceeding under this section is not a judicial proceeding in the strict sense, the AO must be guided by the judicial considerations and by the rule of justice, equity and good conscience" [Abdul Kayam Vs. GIT (1933) 1 ITR 375, Kunwarji Ananda Vs. CIT (1931) 5 ITC 417, GIT Vs. Ranicherra Tea (1994) 207 ITR 979}.

1.16 In case of a best judgment assessment "the AO should not be influenced by a desire to punish the assessee for default which attracts the operation of this section, however culpable such default might be" [Jot Ram Sher Singh Vs CIT (1934) 2 ITR 129]. Further, "an assessment framed under this section does not mean that the A.O can make the assessment capriciously or without regard to any available material at all." [State of Orissa Vs Maharaja B. P. Singh Deo (1970) 76 ITR 690 (SC)].

1.17 It is further submitted that in the instant case, the addition of the sale proceeds deposited in the bank account as undisclosed income is unjustified. There is no material to hold that the cash deposited was not part of the sales and the same was assessee's undisclosed income. It is further submitted that any addition, based on a pure guess and without reference to any evidence or any material, is unjustified. For this, reliance is placed on the orders in the cases of Dhakeswari Cotton Mills Ltd. Vs CIT (1954) 26 ITR 775 (SC); Raj Mohan Saha Vs CIT (1964) 54 ITR 231 (Assam), CIT Vs Gokaldas Hukumchand (1943) 11 ITR 462 (Bom), Narayan Chandra Baidya Vs CIT (1951) 20 ITR 287 (Cal), Gopi Nath Agarwala Vs CIT (1955) 28 ITR 753 (All), United Patel Construction Co. Vs CIT (1966) 59 ITR 424 (M.P), CIT Vs R.Y. Durlabhji (1995) 211 ITR 178 (Raj).

1.18 In other words, the assessment must be baser) not on mere suspicion or bare guess, but on legitimate material from which a reasonable inference of income having been earned during the accounting year could be drawn and that the initial burden of finding such material, however slight, is on the Income-tax authorities not on the assessee - Banshidhar Onkarmall Vs CIT (1953) 23 ITR 353 (Ori). "It is certainly not a leap in the dark. The Assessing Officer is not entitled to make a guess without evidence" CIT Vs Kameshwar Singh, (1933) 1 ITR 94 (PC); Seth Nathuram Munnalal Vs CIT (1954) 25 ITR 216 (Nag).

1.19 Further, an assessment based on mere conjecture, surmise' or suspicion or irrelevant and inadmissible evidence and material is invalid and unsustainable in law. Reliance, for this proposition, is placed on the orders in the cases of Dhirajlal Giridharilal Vs CIT (1954) 26 ITR 736 (SC); Lalchand Bhagat Ambica Ram Vs CIT (1959) 37 ITR 288 (SC); Umacharan Shaw & Bros Vs.,CIT (1959) 37 ITR 271 (SC); Omar Salay Mohamad Sait Vs CIT (1959) 37 ITR 151 (SC).

1.20 In view of the facts of the case and the case laws discussed in the preceding paragraphs, it is submitted that the addition of the sale proceeds deposited in the bank account as undisclosed income is unjustified. There is no material to hold that the cash deposited was not part of the sales and the same was assessee's undisclosed income.

1.21 Hence, it is prayed that the addition of Rs. 1,10,46,000/- in bank account during the demonetization period may kindly be deleted.”

4.1 However, the Id. CIT(A) dismissed the appeal of the assessee observing that the necessary details and submissions that were filed before the CIT(A) have not been filed before the Assessing Officer.

5. Being aggrieved by the said order of the CIT(A), the assessee has come in appeal before us.

6. We have heard the rival contentions and gone through the record. The Id. Counsel for the assessee has demonstrated that the assessee is engaged in the business of trading of sugar and that during the financial year relevant to assessment year under consideration, the total turnover of the assessee was Rs.42.79 crores, the total cash sales for the period 01.04.2016 to 07.11.2016 i.e. before the demonetization period were at Rs.6.26 crores and further the sales of the assessee during the demonetization period from 08.11.2016 to 30.12.2016 was at Rs.1,01,88,109/-. It has been explained that the assessee had deposited a sum of Rs.1,10,46,000/- in his bank account out of the sales made. Further, it has also been explained that total demonetization currency deposits by the assessee during the demonetization period were Rs.43,15,000/- only. Further, it has also been explained that the said sales were recorded in the books of account of the assessee. Further, the books of account of the assessee were duly audited and no irregularities were recorded by the auditor. Copy of sales register for financial year 2016-17 was also furnished before the CIT(A). Apart from that the assessee had also relied upon the

copy of cash deposit slips and bank statement. So far as the non-compliance before the Assessing Officer is concerned, it was duly explained before the Id. CIT(A) as well as before us that the concerned AR of the assessee was ailing at that time and thereafter also expired in the year 2020, however, all the necessary details were duly furnished before the Id. CIT(A). So far as the non-disclosure of bank account is concerned, it has been duly explained that the concerned auditor had, inadvertently, declared the two idle accounts of the assessee instead of accounts, where, the sale proceeds were deposited. That the assessee had filed its VAT/GST returns in connection with purchases and sales of sugar. That from the financial statements and VAT/GST returns, the cash sales made by the assessee were duly established. It has also been submitted that the two bank accounts disclosed by the auditor did not have any transaction and it was apparent that the transactions in the bank accounts were from the sales receipts of the assessee. The Id. DR could not rebut the aforesaid submissions corroborated with documentary evidence placed on file. In view of this, the impugned additions made by the Assessing Officer, in our view, are not sustainable and the same are accordingly ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 9th August, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 09.08.2024.

RS

Copy of the order forwarded to:

1. Ram Kumar Gupta
2. ACIT, Circle-43, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches