

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:324/CHNY/2024  
निर्धारण वर्ष/Assessment Year: 2017-18

**M/s. Cottage Arts Emporium**  
No.36, North Chitrai Street,  
Madurai – 625 001.

**The ACIT,**  
Vs. Non-Corporate Circle -2,  
Madurai.

**PAN: AABFC 1255E**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri T. Vasudevan, Advocate  
: Smt. M.S. Deeptha, JCIT

सुनवाई की तारीख/Date of Hearing : 08.08.2024  
घोषणा की तारीख/Date of Pronouncement : 14.08.2024

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, in ITBA/NFAC/S/250/2023-24/1060079543(1) dated 24.01.2024. The assessment was framed by the Assistant Commissioner of Income Tax, Non-Corporate Circle 2, Madurai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 25.12.2019.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of Rs.21,49,500/- being cash deposit made during demonetization period in specified bank notes out of cash sales claimed by assessee, which was disbelieved by the authorities below. For this, assessee has raised various grounds which are argumentative, exhaustive and factual and hence, need not be reproduced.

3. Brief facts are that the AO during the course of assessment proceedings noticed that the assessee firm has made cash of Rs.28,49,500/- during demonetization period and when the AO required the assessee to explain the cash deposits made, the assessee explained vide letter dated 11.11.2019 that the assessee is forced to make cash sales on 08.11.2016 as soon after the demonetization was announced by the Prime Minister of India as assessee's all customers are foreign nationals and guided by tourist guide and other brokers for purchase of items. The assessee has produced complete sales bills and paid VAT also and accordingly, cash sales were made. The AO analyzed cash deposit made in four branches i.e., for the financial years 2015-16, 2016-17 & 2017-18 and noted that before demonetization except only in one branch and that only once, the assessee has deposited cash rather all sales are through cheque or credit cards. Hence, it is no humanly possible that assessee has made cash sales and hence, he disbelieved cash deposits. We noted that the assessee has produced all the sales bills and explanation regarding cash sales was that the same was done after 8'o clock on 08.11.2016 after the announcement of demonetization due to which, under trade compulsion from brokers and tourist guides, cash sales was made. The AO disbelieved the

story despite the fact that the auditor has given complete details of cash sales uploaded with the VAT Department with the Tamil Nadu and uploaded VAT returns to substantiate the tax sales. The auditor has completely given the details of cash deposits and cash sales and the certification issued by him and the relevant certificates are as under:-

**SRIDHAR & SURI**  
Chartered Accountants

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Certificate  
TO WHOMSOEVER IT MAY CONCERN

This is to certify that the undersigned audited the regular books of accounts maintained by the assessee M/s Cottage Art Emporium ( PAN :- AABFC1255E) for Assessment Year 2017-18 and filed tax audit report under section 44AB. The undersigned also represented the assessee in the scrutiny assessment proceedings for Assessment Year 2017-18 and produced the books of accounts for verification by the assessing officer.

As per the books of accounts, the cash balance as on 08-11-2016 before effecting sales on the night of 08-11-2016 was Rs 3,41,690/-

The branch wise cash balance details are as follows :-

| Branch          | Opening Cash Balance ( in Rs.) |
|-----------------|--------------------------------|
| Madurai (H.O)   | 49000                          |
| Chennai (B.O)   | 124000                         |
| Thanjavur (B.O) | 87190                          |
| Kochi ( B.O)    | 81500                          |
| Total           | 341690                         |

It is further certified that the assessee made cash sales on the night of 08-11-2016 to foreigners at Rs 14,45,810/- and the branch wise details of sales made are as follows :-

| Branch          | Cash sales ( in Rs.) |
|-----------------|----------------------|
| Madurai (H.O)   | 378000               |
| Chennai (B.O)   | 750000               |
| Thanjavur (B.O) | 218310               |
| Kochi ( B.O)    | 99500                |
| Total           | 1445810              |



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Chartered Accountants

Thus the cash balance as on 08-11-2016 was Rs 17,87,500/-.

The assessee gave salary advance to its employees in Chennai branch as per the details shown below :-

| Date       | Name of employee | Cheque No. | Amount   |
|------------|------------------|------------|----------|
| 04.11.2016 | P.HARI           | 026311     | 300000/- |
| 04.11.2016 | P.ANANDAKRISHNAN | 026310     | 200000/- |
| 04.11.2016 | M.SURESH         | 026313     | 200000/- |

This was debited in the Assessee's bank account on the same day (copy of the bank statement attached)

Subsequently the employees returned the salary advance on 8<sup>th</sup> November 2016 as they had withdrawn the money and could not use demonetised notes. So the cash balance as on 8<sup>th</sup> November was Rs 24,87,500 (Rs 17,87,500 plus salary advance returned Rs 7,00,000)

This amount (Rs 24,87,500) was deposited in the bank accounts of the assessee as per the branchwise details given as under :-

| Branch          | Cash Deposit at bank ( in Rs.) |
|-----------------|--------------------------------|
| Madurai (H.O)   | 427000                         |
| Chennai (B.O)   | 1574000                        |
| Thanjavur (B.O) | 305500                         |
| Kochi ( B.O)    | 181000                         |
| Total           | 2487500                        |

We make this statement believing the same to be true to the best of our knowledge and belief.

For SRIDHAR AND SURI  
Chartered Accountants  
FRN 03991S



RENGASAMY SRIDHARAN FCA  
Partner  
(M No 21768)  
Date: 3<sup>rd</sup> March, 2021



UDIN: 21021768AAAAAS9333

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From the above certificates, it is clear that the cash deposit as noted by AO at Rs.28,49,500/- actually it is Rs.24,87,500/- and this

includes claimed to have been returned by the employees of Rs.7,00,000/-. The AO has not believed the cash sales and after disbelieving the sales, disallowed the cash sales and added to the returned income of the assessee amounting to Rs.21,49,500/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO vide para 7.2.2 which reads as under:-

*7.2.2 The appellant in his submissions before this office claimed that AO has done factual mistake by mentioning Rs. 28,49,600- as cash deposit whereas the actual figure Rs. 24,87,500/-. The appellant further said once all the sales are recorded in books of accounts then making addition on account of bogus sales is unwarranted, The appellant further said that the AO did not point out any defect in the books of accounts. I have gone through the order of the AO and submissions of the appellant and noticed that this is the only and first time when the appellant deposited cash in the bank account. The same was not done before and after the demonetization period. It is clear at the appellant was having unaccounted cash and tried to justify the same by showing it as the proceeds of cash sale which was otherwise unusual. It was the common practice during the demonetization period that the unaccounted cash was routed through sales. The explanation given by the appellant is after thought and holds no ground. This event of deposit cash and showing bogus sales is a defect in the books of account though the Ld. AO has not mentioned the same. Now the books of the appellant are rejected u/s 145 of the Act, 1961. The appellant cannot take benefit of furnishing bogus sales and bogus books of accounts which has nothing to do with real business of him. Although the appellant disputes the figure of cash deposit but fails to enclose any document to substantiate his claim. He should have furnished the copies of all banks accounts. Hence this contention is rejected. The addition made by on this issue is confirmed and the ground is dismissed.*

Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the actual cash deposit to the tune of Rs.24,87,500/- which is supported by the statement of bank account. Admittedly, the assessee is having cash balance available with the various branches (as per certificate of auditor) amounting to Rs.3,41,690/- and the assessee has made cash sales after 8'o clock on 08.11.2016 for an amount of Rs.14,45,800/- which is supported by sales bills. Admittedly, this amount is Rs.17,87,500/- and not Rs.21,49,500/- as disallowed by the AO, We believe that the cash sales is clearly supported by sales bills, cash book and ledger as well as the VAT returns filed by the assessee before AO and CIT(A) and even now. There is no reason to disbelieve the cash sales and hence, we accept the explanation of assessee, which is also certified by the auditor of the assessee and hence, we accept the explanation and admit that the cash sales is to the tune of Rs.14,45,810/- and there is opening cash balance available with the assessee on 08.11.2016 at Rs.3,41,690/- that means total cash deposit of Rs.17,81,500/- is explained and no addition on this count is warranted. Accordingly, the addition made by the AO of Rs.21,49,500/- is deleted.

6. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of unexplained cash deposit of Rs.7,00,000/- u/s.68 of the Act. For this, assessee has raised various grounds which are argumentative, exhaustive and factual and hence, need not be reproduced.

7. The brief facts are that the assessee deposited cash of Rs.24,87,500/- after demonetization out of Rs.17,87,500/- pertains

to earlier amount which we have adjudicated and deleted the addition. The remaining cash of Rs.7,00,000/-, the assessee claimed before AO that it has given advance salary to its employees in Chennai branch as detailed out in the auditor certificate and for the sake of clarity the same is being reproduced :-

| <i>Date</i> | <i>Name of Employee</i> | <i>Cheque No.</i> | <i>Amount</i> |
|-------------|-------------------------|-------------------|---------------|
| 04.11.2016  | P. Hari                 | 026311            | 300000/-      |
| 04.11.2016  | P. Anandakrishnan       | 026310            | 200000/-      |
| 04.11.2016  | M. Suresh               | 026313            | 200000/-      |

Admittedly, this amount is paid by account payee cheques on 04.11.2016 and the same was debited in assessee's bank account on the same as per assessee's bank account produced before the AO and CIT(A) and even now before us. The AO has not believed the story and stated that the explanation of the assessee that the employee has received the advance back as employees had withdrawn and gave back to employer and asking to pay again is too much even for imagination. Hence, he added the same u/s.68 of the Act as unexplained cash deposit and charged to tax as per the provisions of section 115BBE of the Act. The CIT(A) also confirmed the action of the AO.

8. On query from the Bench, the Id.counsel for the assessee could not produce any evidence that these three employees namely Shri P. Hari, Shri P. Anandakrishnan and Shri M. Suresh have withdrawn their amounts from respective bank accounts on the same day or before 8<sup>th</sup> and handed over to the assessee. Since there is no evidence available before us, we cannot believe that these

employees have returned the amount back. To that extent, this amount of Rs.7,00,000/- added by the AO and confirmed by the CIT(A), is confirmed. This issue of assessee's appeal is dismissed.

9. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 14<sup>th</sup> August, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

**(S.R. RAGHUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 14<sup>th</sup> August, 2024

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.