

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1358/Mum./2024
(Assessment Year : 2017-18)

ITO-23(3)(6)

Room No.610, Piramal
Chambers, Lalgabh,
Mumbai-400012

..... Appellant

v/s

V. P Bullion

12/A, Gurukul Chambers
No. 187, Mumba Devi Road
Dagina Bazar, Mumbai-400002
PAN- AALFV4883F.

..... Respondent

Assessee by : Shri Satyaprakash Singh
Revenue by : Shri Surendra Meena, Sr. DR

Date of Hearing – 11/06/2024

Date of Order – 20/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 24/01/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In this appeal, the Revenue has raised the following grounds: -

"1, 'Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 70,91,351/- on account of unexplained cash credit u/s 68 without appreciating the fact that the assessee was unable to prove the delivery of Gold to Mr. Dhanraj G. Parmar ?'

2, 'Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 70,91,351/- on account of unexplained cash credit u/s 68 whereas the AO has established that the assessee had used Gold purchaser Mr. Dhanraj G. Parmar as conduct of unaccounted money bring into Bank account as Mr. Dhanraj G. Parmar never deal with trading in gold in his life time before demonetization?.'

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 48,98,152/- made by the AO u/s 68 of the Act despite the fact that the assessee was unable to prove the cash deposits with corresponding documentary evidence as pointed out by the AO in the order? "

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred allowing the appeal of the assessee by accepting the case sales declared by him which eve unverifiable independently?"

5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT[A] has erred in accepting the submission of the assessee and allowing his appeal when the preponderance of probability was against the assessee."

2. The first issue, which arises for our consideration, pertains to the deletion of the addition on account of unexplained cash credit under section 68 of the Act.

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the main business of the assessee is to buy and sell gold bullion. For the year under consideration, the assessee filed its return of income on 27/10/2017 declaring a total income of Rs. 5,72,390. The return filed by the assessee was selected for complete scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were

issued and served on the assessee. During the assessment proceedings, information was received from the DDIT (Investigation), Unit-5(1), Mumbai in relation to the transaction with one Mr. Dhanraj G Parmar. In the said information it was mentioned that Mr. Dhanraj G Parmar has bought gold from M/s Tulsi Darshan Gold, M/s V.P. Bullion, M/s S.P.N. Gold Pvt. Ltd., and M/s Jai Vaishnav Bullion, and sold the gold to the customers who wish to convert the cash available with them during the demonetisation period. Accordingly, summons under section 131 of the Act were issued to the aforesaid entities, including the assessee. In response thereto, copies of purchases and sales bills, stock statements, bank statements, ITR and audit reports were furnished by the assessee. During the assessment proceedings, upon perusal of the copies of sales bills certain defects were noted, as mentioned in ages 2-3 of the assessment order. Accordingly, the Assessing Officer ("AO") vide order dated 26/12/2019 passed under section 143(3) of the Act held that it is clear that the assessee has utilised the services of Mr. Dhanraj G Parmar to convert the unaccounted income available with them during the demonetisation period. The AO further held that the assessee has acted either as an entry provider or beneficiary for converting old currency notes/specified bank notes during the demonetisation period. Accordingly, the AO treated the amount of Rs. 70,91,351 received from Mr. Dhanraj G Parmar through RTGS as unexplained cash credit under section 68 of the Act and added the same to the total income of the assessee.

4. The learned CIT(A), vide impugned order, noted that during the year under consideration, Mr. Dhanraj G Parmar purchased gold on three dates, and

payments for the same were made through banking channels only. The learned CIT(A) further noted that the sales made to Mr. Dhanraj G Parmar have been accepted by the AO and the books of accounts of the assessee have not been doubted. Further, the learned CIT(A) took into consideration the fact that the VAT return filed by the assessee has been accepted by the concerned department without any modification. Since the sales made to Mr. Dhanraj G Parmar were declared as revenue receipts by the assessee, the learned CIT(A) deleted the addition made under section 68 of the Act.

5. During the hearing, the learned AR submitted that the sales made to Mr. Dhanraj G Parmar have been recorded by the assessee in its profit and loss account and due tax thereon has been paid by the assessee. From the perusal of the record, we find that the AO accepted the fact that payments of Rs. 20,93,388 were received on 22/11/2016, Rs. 29,49,980 were received on 24/11/2016, and Rs. 20,47,983 received by the assessee on 29/11/2016 through banking channel from Mr. Dhanraj G Parmar. Further, the learned CIT(A) noted that the aforesaid payments were in respect of the gold purchased by Mr. Dhanraj G Parmar on 22/11/2016, 24/11/2016 and 01/12/2016. Thus, apart from the first two payments which were made on the same date as the said transaction, the third payment was received by the assessee in advance. In the present case, the Revenue has only raised doubts about the sales bills and did not dispute the aforesaid receipt of money through the banking channel. Further, even though stock statements were also furnished by the assessee, in response to notice

issued under section 131 of the Act, there is no dispute or doubt on the same by the Revenue. Such being the facts, when the sale transaction has been declared as revenue receipt by the assessee, we find no infirmity in the impugned order in deleting the addition made under section 68 of the Act. As a result, the impugned order on this issue is upheld and grounds no. 1 and 2 raised in Revenue's appeal are dismissed.

6. The next issue, which arises for our consideration, pertains to the deletion of the addition of Rs. 48,98,152 on account of cash deposit.

7. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, it was observed that there was a cash deposit of Rs. 48,90,152 on 08/11/2016. Accordingly, the assessee was asked to show cause as to why out of 365 days in a year, cash sales to 140 parties were made on a single day, i.e. on 08/11/2016. In response, the assessee submitted that since on 08/11/2016 demonetisation of the old currency was announced, therefore gold was purchased by various parties as it is a very safe investment. The AO vide assessment order did not agree with the contention of the assessee and held that the assessee has failed to reply to the query as to why out of 365 days only on a single particular day there is a cash sale of Rs. 48,98,152. The AO further held that the assessee has not submitted cash memos/invoices for verification of cash sales. Thus, the AO held that the cash sales of Rs. 48,98,152 remain unexplained by the assessee.

8. The learned CIT(A), vide impugned order, deleted the addition made by the AO on this issue by observing as follows: -

"4.3.1 As regards to cash deposited of Rs. 48,98,153/- by the appellant on 08.11.2016 and treating the same as unexplained cash credit u/s. 68 of the Act by the AO, it is claimed by the appellant that the said amount represents sales made which has duly been reflected in Trading Account submitted along with ITR.

4.3.2. Further, the appellant has submitted the copy of Sales Register, Purchase register, Stock Statement, copy of Cash Book, copy of Bank Book & Bank statements. All such details were submitted before the AO at the time of assessment proceedings. However, the AO has not pointed out any mistake in purchases made during the year, availability of stock as on 08.11.2016, sales made during the year etc. Because of which the AO has not rejected the book result by applying the provision of sec. 145(3) of the Act. Unless the book result is rejected the AO can't claim that the cash deposits in question were made out of undisclosed income. VAT authorities have also accepted the sales/purchase declared by the appellant without any modification. Only reason cited by the AO while making the addition u/s. 68 of the Act that why in 365 days only in a single particular day there is cash sales of Rs. 48,98,152/-. This has been explained by the appellant by saying that it was an exceptional day in view of demonetisation of old notes. Therefore, public were in fanatic move and were anxious to convert the SBN into some other form and felt wiser to make investment in jewellery and gold as an alternative for exchange of currency. The Appellant being one of the reputed jeweler having long present in the market, the customer stepped in his shop in large number with the old currency and hence therefore there is a cash sale during the year under consideration.

4.3.3. It is a fact that the demonetisation was taken place on 08/11/2016 and because of which public was very anxious to convert the SBN into other form. Purchasing of Gold or jewellery was considered as very good option as can be referred for that days headline of several New Channels & News Articles. Further, all the details called for has been produced/submitted before the AO. However, he could not pointed out any mistake in purchases made, availability of stock, sales etc. and accordingly the AO has accepted the book result by not rejecting the same u/s. 145(3) of the Act. If purchase/sales/stock details are in order, then addition u/s. 68 on account of cash deposits of Rs.48,98,152/- is not sustainable.

9. In the present case, it is undisputed that the assessee has submitted a copy of the sales register, purchase register, stock statement, cash book, bank book and bank statements. However, there is no material available on record to show that the AO has pointed out any mistake in the availability of stock as of 08/11/2016. Just because only on the one-day out of 365 days in a year, the assessee has shown cash sales of Rs. 48,90,152, the AO proceeded to make the addition under section 68 of the Act, without appreciating the fact that on the date, i.e. 08/11/2016, the Government had announced demonetisation of old notes and it was an exceptional day and various people anxiously converted the old currency notes into other form and some purchased gold or other jewellery. In the absence of any material to doubt the availability of stock of gold with the assessee, we are of the considered view that the learned CIT(A) has rightly deleted the addition made by the AO on account of cash deposits of Rs. 48,98,152. Accordingly, on this issue also the impugned order is upheld. As a result, ground no. 3 raised in Revenue's appeal is dismissed.

10. In view of our aforesaid findings, groundsno. 4 and 5 raised in Revenue's appeal need no separate adjudication, and therefore the same are also dismissed.

11. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open court on 20/08/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/08/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT, Mumbai City concerned;*
- (4) *The DR, ITAT, Mumbai;*
- (5) *Guard file.*

Shubham P. Lohar

By Order

Assistant Registrar
ITAT, Mumbai