

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER AND
SH. VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 797/Del/2021
(Assessment Year : 2017-18)

Kapoor Motor Stores Nainital Road, Civil Lines, Rampur, UP-244 001 PAN No. AAGFK 1375 A (APPELLANT)	Vs.	ACIT Circle – 1, New Delhi (RESPONDENT)
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Assessee by	Shri Ashok Kumar Jain, C.A.
Revenue by	Shri Sandip Kumar Mishra, Sr. D.R.

Date of hearing:	22.05.2024
Date of Pronouncement:	20.08.2024

ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER :

1. This appeal in ITA No.797/Del/2021 for A.Y. 2017-18 arises out of the order by National Faceless Appeal Centre (NFAC), Delhi in appeal No. ITBA/NFAC/S/250/2020-21/1031731029(1) dated 24.03.2021 (hereinafter referred to as Id CIT(A) in short) against the order of assessment passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 22.11.2019 by the Assessing Officer (hereinafter referred to as Id. AO).

2. At the outset, there is a delay of 32 days in filing of appeal by the assessee before us. We find that the appeal has been filed

during the Covid-19 pandemic period and in view of the relaxation granted by the Hon'ble Supreme Court, the delay in filing of appeal of 32 days is hereby condoned and appeal of the assessee is admitted for adjudication.

3. Ground Nos. 1 & 8 raised by the assessee are general in nature and does not require any specific adjudication.

4. Ground Nos. 2, 4 & 6 raised by the assessee are challenging the addition of Rs.24,83,861/- made by the learned AO under Section 68 of the Act on account of cash sales made by the assessee.

5. We have heard the rival submissions and perused the material available on record. The assessee is a retail outlet of Bharat Petroleum Corporation Ltd. (B.P.C.L.) operating under the authorization of Public sector oil Marketing Company B.P.C.L. and engaged in retailing in Petroleum products. In the said business, receipt of cash sales in the mode of cash is a normal Industry Practice. Pursuant to the announcement of demonetization by the Govt. of India, retail outlets of petrol pumps were authorized to collect cash in demonetized currency from 09.11.2016 to 02.12.2016. The learned AO had observed that on 16.11.2016, there was a negative cash balance of Rs.24,83,861/-, which was sought to be adjusted by the assessee by way of cash sales of the Diesel, Petrol, HSD etc. Accordingly, he proceeded to make an addition of Rs.24,83,861/- as

unexplained cash credit under section 68 r.w.s 115BBE of the Act in the assessment, which stood confirmed by the learned CIT(A). At the outset, we find that the assessee had duly furnished the cash book for the relevant period wherein there was absolutely no negative cash balance at all on 16.11.2016. Hence, we hold that the observation made by the learned AO is factually incorrect. Further, the learned AO had not even brought on record the basis as to how the deficit figure of Rs.24,83,861/- was even arrived by him by calling it as negative cash balance. The assessee had furnished the cash book before the learned AO, wherein there was no negative cash balance. The assessee had furnished the stock register before the learned AO. The assessee had shown sales of the Diesel, Petrol, HSD etc. in cash as well as in other modes. The sales made thereon are duly reflected in the profit and loss account of the assessee which was accepted by the learned AO. The books of accounts produced before the learned AO were not rejected by the learned AO. The stock register produced before the learned AO were not rejected by the learned AO. The Quantitative tally of opening stock, purchases, sales and closing stock stood duly verified and reported in Tax audit report. Hence, we have no hesitation to hold that there was no excess sales as pointed out by the learned AO. In any case, the assessee had already disclosed the sales in its books of accounts and it suffered taxes thereon. Hence, making an addition on account of negative cash balance by doubting the sales would only result in double addition. There is no unusual trend of sales and cash sales during the year. Hence, we hold that the lower authorities grossly

erred in making addition of Rs.24,83,861/- towards negative cash balance which was factually incorrect. Accordingly, the ground Nos.2, 4 & 6 raised by the assessee are allowed.

6. Ground Nos. 3 & 5 raised by the assessee are challenging the adhoc disallowance of expenditure on vehicle maintenance.

7. We have heard the rival submissions and perused the material available on record. Both the lower authorities observed that the assessee had shown job work receipts which are in cash. Further, it was observed that the assessee also owns two tankers in addition to the petrol pump. The maintenance of the tankers are incurred in cash and the assessee had not produced any bills and vouchers for the same. Accordingly, the learned AO proceeded to make an adhoc disallowance of Rs.1,00,000/- on account of vehicle maintenance which stood confirmed by the learned CIT(A). At the outset, the entire books of accounts are duly vouched by the Tax Auditor under section 44AB of the Act. The same were duly furnished before the learned AO. No defects whatsoever are pointed out by the learned AO in the said books of accounts. The assessee had furnished the entire ledger account for the whole year towards vehicle running expenses totaling to Rs.1,61,884/- which are enclosed at page nos. 84 to 86 of the paper book. The corresponding figure in the immediate preceding year was Rs.1,75,340/-. Hence, the figure for the year stood duly comparable with the immediately preceding previous year. Further, we find that out of the total expenditure incurred of

Rs.1,61,884/-, a sum of Rs. 58,492/- was incurred by the assessee by cheque and remaining sum of Rs.1,03,392/- was incurred in cash on various dates throughout the year. On an average, the assessee has not spent more than Rs.3,000/- in cash during the year on any single occasion. Once books are not rejected, there is no case for the Revenue to make any adhoc disallowances. Hence the adhoc disallowance of vehicle running expenses in the sum of Rs.1,00,000 is hereby directed to be deleted. Accordingly, the ground nos. 3 and 5 raised by the assessee are allowed.

8. Ground no. 7 raised by the assessee is challenging the initiation of penalty proceedings under Section 271AAC(1) of the Act. Since the addition made under Section 68 r.w.s 115BBE of the Act is already directed to be deleted hereinabove, the initiation of penalty under section 271AAC(1) of the Act would have no legs to stand. Hence, the ground no.7 is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20.08.2024

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Date:- 20.08.2024

Priti Yadav, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI