

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 637/Ahd/2023
Assessment Year 2017-18**

The ACIT, Circle-2(1)(1), Ahmedabad (Appellant)	Vs	Kunal Balmukund Agarwal, Plot No. 128-132, Gulab Nagar, OppL Gujarat Farm, Suex Farm Road, Behrampura, Gujarat-380002 PAN: BAQPA6164H (Respondent)
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Assessee Represented: None
Revenue Represented: Shri Alpesh Parmar, Sr.D.R.

Date of hearing : 22-08-2024
Date of pronouncement : 28-08-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the appellate order dated 21.06.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. Today is the 9th time of hearing of this appeal, None appeared on behalf of the assessee in spite of service of notices. In the previous hearing namely on 08.04.2024, hearing notice was directed to be served through Department and adjourned to 25.04.2024. The same was served by the Department and proof of service was also filed by the Ld. D.R., however none appeared on behalf of the assessee. Hence we proceed with the appeal with the assistance of Ld. D.R.

3. The brief facts of the case is that assessee is an individual engaged in the business of trading in textiles, handlooms, and power looms under the proprietary concern M/s. Kanha Exim, assessee filed his Return of Income on 30.10.2017 for the Asst. Year 2017-18 declaring an income of Rs.4,70,07,080/-

3.1. The Return was selected for scrutiny assessment. The assessee contended that the source of cash deposits during the demonetization period was from the sales receipts of his business. The assessee furnished detailed explanations and documents to support his claim, including month-wise purchase and sale details, stock registers, and evidence of cash deposits by debtors directly into his bank accounts. Despite these submissions, the AO rejected the assessee's books of accounts u/s 145 of the Act but added the cash deposits as unexplained income u/s 68 of the Act by passing the assessment order u/s 143(3) determining the income at Rs.5,68,58,605/- by making an addition of Rs.98,51,525/- u/s. 68 of the Act on account of cash deposits during the demonetization period.

4. Aggrieved against the assessment order the assessee filed an appeal before Ld. Commissioner of Income Tax Appeals). The Ld. CIT(A) deleted the addition made by the AO by observing that the AO had not pointed out any specific defects in the books of accounts that were duly audited. The CIT(A) noted that the assessee had provided substantial evidence to support the genuineness of the cash deposits, and the increase in sales and gross profit margins during the relevant period was consistent with the business trends and thereby deleted the addition u/s. 68 of the Act.

5. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

1. Ground No. 1: "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition u/s 68 of the Act amounting to Rs.98,51,525/-, on account of cash deposits during the demonetization period, without appreciating the fact that the assessee himself failed to substantiate cash sales corresponding to the cash deposits."

2. Ground No. 2: "The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary."

3. Ground No. 3: "It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."

6. We have heard Ld. D.R. and perused the material on record. The solitary issue before us is whether the cash deposits made during the demonetization period can be treated as unexplained cash credits u/s 68 of the Act. The Ld. D.R. could not place on record any contrary evidence before us to substantiate its Grounds of Appeal.

6.1. Upon examination of the facts, it is evident that the assessee had provided detailed explanations, supported by documentary evidence, to substantiate the cash deposits. The AO's rejection of the books of accounts was primarily based on presumptions and not on concrete evidence. It is a settled position of law that when the books of accounts are audited and no specific defects are pointed out by the AO, he cannot summarily reject the same. Analysis of Judicial Precedents are as follows:

A. Prasant Oil Mills vs. ITO [72 [taxmann.com](#) 136 (Gujarat)]:

In this case, the Gujarat High Court held that the AO, after rejecting the books of accounts, should not rely on the same for making additions u/s 68. The court emphasized that once the books are rejected, the AO should conduct a best judgment assessment rather than rely on the rejected books for additions. This principle is crucial as it underscores the need for the AO to provide specific reasons for rejecting the books and to rely on reasonable estimates and evidence for assessments.

B. Agson Global Pvt. Ltd. vs. ACIT [115 [taxmann.com](#) 342 (Delhi ITAT)]:

The ITAT dealt with a situation where cash deposits were made during the demonetization period. The tribunal observed that the assessee had shown a consistent pattern of cash sales and deposits, and the AO's rejection of the books without pointing out specific defects was unjustified. The tribunal held that if the sales and cash deposits are part of the regular books, the AO cannot disregard them without concrete evidence. This case reinforces the principle that the AO must have substantial reasons to reject the books and make additions.

C. CIT vs. Gian Chand Labour Contractors [316 ITR 127 (Punjab and Haryana High Court)]:

The court emphasized that once the AO rejects the books of accounts, the only recourse is to conduct a best judgment assessment. The court held that the AO cannot make additions based on the same rejected books. This decision is important as it clarifies that the AO's approach

must be based on fresh estimates and not on the rejected books, ensuring a fair assessment process.

D. Banwarilal Bansidhar vs. CIT [229 ITR 229 (All.)]:

The Allahabad High Court ruled that once the AO rejects the books of accounts, they cannot rely on the same for making additions under different sections of the Act. The AO must base their assessment on reasonable estimates and evidence rather than the rejected books. This precedent highlights the necessity for the AO to provide clear and concrete reasons for making additions, especially when the books are rejected.

6.2. The Ld. CIT(A) analyzed the judicial precedents and concluded that the AO's action of rejecting the books of accounts and making additions u/s 68 was not justified. The Ld. CIT(A) observed that the AO failed to pinpoint any specific defects in the audited books of accounts and relied on presumptions rather than concrete evidence. The Ld. CIT(A) emphasized that the assessee had provided substantial evidence to support the cash deposits, including detailed explanations and documentation.

6.3. Further the Ld. CIT(A) also noted that the assessee's increase in sales and gross profit margins during the relevant period was consistent with the business trends, and there was no abnormal increase in sales that would warrant the AO's suspicions. Therefore the Ld. CIT(A) concluded that the AO should have conducted a best judgment assessment rather than relying on the rejected books for making additions u/s. 68 of the Act.

6.4. Based on these findings and the analysis of judicial precedents, the CIT(A) deleted the addition of Rs. 98,51,525/- made by the AO u/s 68, thereby allowing the assessee's appeal. We do not find any infirmity in the order passed by the Ld. CIT(A). Thus

the order passed by the Ld. CIT(A) does not require any interference. Thus the ground raised by the Revenue is devoid of merits and the same is hereby dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28-08-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 28/08/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद