

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.359/Asr/2024
Assessment Year: 2017-18**

Firdous Ahmad Shah General Bus Stand Anantnag, Jammu & Kashmir. [PAN:DIZPS1599Q] (Appellant)	Vs.	ITO, Ward (1), Srinagar. (Respondent)
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Appellant by	Sh. Bashir Ahmad Lone, CA
Respondent by	Sh. Himanshu, Sr. DR

Date of Hearing	22.08.2024
Date of Pronouncement	28.08.2024

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Ld. CIT (A) NFAC dated 18/04/2024 which has emanated from the order of the AO ward – Anantnag, passed u/s 144 dated 25/12/2019.

2. The grounds of appeal taken by the assessee in the memorandum of appeal are as follows;

- “1. The Ld. CIT(A) erred in both facts & laws by assessing the Income of assessee at Rs 62,34,668.00 u/s 69A of the Act by adding entire bank credits purely on presumptions with blind eyes & without application of mind, totally ignoring the debit side of the bank statement.
2. The Ld. CIT(A) erred in both facts & laws by assessing the income of assessee at Rs 62,34,668.00 u/s 69A of the Act by adding entire bank credits, when the bank credits represent sales made in ordinary course of business & duly accounted in the books of accounts and simultaneously withdrawn for making purchases and other expenses.
3. The Ld. CIT(A) erred in both facts & laws by assessing the Income of assessee at Rs 62,34,668.00 u/s 69A of the Act on account of entire bank credits, when bank credits represent sales duly accounted in the books of accounts.
4. The Ld. CIT(A) erred in both facts & laws by confirming addition of Rs 19,72,330.00 u/s 69A of the Act in an arbitrary manner, when the same represent sales & collection from debtors in ordinary course of business & duly accounted in the books of accounts.
5. That the assessment is based on mere presumptions and conjectures.
6. Assessee craves right to add, alter or modify any grounds of appeal before or at the time of hearing of the appeal.”

3. The brief facts are that the assessee is an individual engaged in the business under the trade name of “*Dada Handloom*” at Anantnag, J & K. No return of income has been filed by the assessee neither in normal course, nor in response to notice u/s 142(1). In the absence of any compliances to notices issued by the AO in course of assessment proceedings, assessment has been completed by the AO exparte u/s 144 on the basis of bank statements obtained from the banks u/s 133(6). There was cash deposit in banks by the assessee during the FY 2016-17 , which the AO considered as business receipts , and completed the assessment by estimating the business profits @ 8% on total bank deposits for the year (excluding the deposits during demonetization period) , and in absence of any explanation or response from the assessee the cash deposited in bank during the demonetization period has been considered as income under the deeming provisions of section 69A of the Act 61, and charged to tax at special rates u/s 115BBE .

4. The matter was carried in first appeal, and again there has not been any compliance and no submissions has been filed explaining the case. It is seen from the appellate order that an adjournment has been sought on the first date of hearing and thereafter there has not been any compliance, even after notices from the office of the Ld. CIT(A) has been issued in the email id provided in Form 35 and also in the email as available in latest return filed by assessee. It is also seen that the Ld.

CIT (A) in his appellate order (paragraph – 6) has looked into whatever materials that was available on record and has taken a decision on merits, and has sustained the addition.

5. Now the assessee is before the tribunal, against the order of the first appellate authority, on the grounds contained in the memorandum of appeal.

6. The assessee has an application under Rule 29 of ITAT Rules '63 with a prayer for admission of fresh evidences, and has filed a paper book containing bank statements (current A/c and savings), sales ledger, purchase ledger, cash book for the FY 2016-17, and a certificate from the Manager PNB, certifying that SBN deposits during the demo period was Rs.10,42,500/- out of a total deposit of Rs.19.72 lakhs during the period. The assessee has further filed copy of GST registration (obtained in the year 2018, GST being effective from July 2017 and not related to this period) and trade license under Shops and Establishment Act 1966, as documentary evidence of handloom business.

7. The Ld. AR in course of hearing , has filed also filed a short written submission , stating that when the assessment proceedings were ongoing before the AO during the period 2019, there was total unrest in the Kashmir valley , and specifically this shop location is located in Nambal Mattan , Anantnag , which , as stated by the Ld. AR lies to the south of the valley, where the disturbance and

unrest was at its maximum , and all internet access was shut down , and no notices has been received by the assessee at the said location and it was practically not possible to comply with assessment proceedings.

8. In respect of proceedings before first appellate authority , it was submitted that notice was sent on the mail id of the tax consultant who prayed for an adjournment , but subsequently he did not follow up the proceedings and has not even intimated the assessee , resulting in non-compliance before the first appellate authority, and since no materials such as cash book, purchase and sales ledgers , bank certificates , bills and vouchers , were not available with the Ld. CIT(A) , proper justice could not rendered in this case by the first appellate authority.

8.1 He prays that for the sake of rendering justice, the fresh documents contained in the paper book, relating to the merits of the case, which is being filed for the first time, may please be accepted and for the sake of verification and examination of the fresh materials, the matter may please be set aside to the AO for rendering justice, without which proper income cannot be determined.

9. The Ld. DR, relied on the order of the Ld. CIT (A) and argued that in the instant case the order has been passed on merits based on bank statements, being the only material available on record, and he prayed that the appellate order may please be sustained.

10. We have heard the rival submissions and considered the materials on record, including the paper book containing the cash book print out, bank statements of PNB A/c XXXXXX 007691 , where cash (SBN) has been deposited during demonetization period , the sources of which can only be explained by cash book entries in collaboration with the purchase and sales invoices and the availability of cash on the date of demonetization , arising out of regular business transaction in normal course of business and taking into account the bank managers certificate of SBN deposits.

11. All the above documents submitted before us are fresh documents, relating to the business of the assessee but has never been produced and examined at any stage of the proceedings. As such we are of the opinion that to render substantial justice in the matter the same is remanded back to the files of the assessing officer , for *denovo* fresh assessment , and the AO is directed to pass a fresh assessment order, after calling for and examining of all books of accounts, including cash book and ledger, supported by proper and authentic purchase and sales bills, including VAT records, all bank statements, bank certificate, vis a vis cash deposits in bank during demonetization period and all other necessary documents as per provisions of law.

12. Needless to say that the assessee will be allowed proper opportunity to explain his case with all documentary evidences including books of accounts.

13. In the result, the appeal of the assessee bearing **ITA No. 359/Asr/2024** is allowed for statistical purposes.

Order pronounced in the open court on 28.08.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

