

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 3004/DEL/2023

[Assessment Year: 2017-18

Anil Kumar Ahuja, Anil Kumar Ahuja Prop. M/s Harsh Agencies, Nai Basti, Rewari-123401. PAN- ACRPA 6649 L	<u>Vs</u>	Income-tax Officer, Ward-2, Rewari.
APPELLANT		RESPONDENT
Appellant by	Shri M.R. Sahu, CA	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	22.08.2024	
Date of pronouncement	29.08.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)m National Faceless Appeal Centre (NFAC), Delhi, dated 05.09.2023, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. That on the facts, and in the circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.10,00,000/- u/s.69A being cash deposited in the bank account during the demonetisation period without considering the fact that books of accounts of the was audited and same was duly accepted by the AO, accordingly it is objected that addition

of Rs.10,00,000/-u/s.69A is without authority of law, thus deserves to be deleted in full.

2. That on the facts, and in the circumstances of the case and in law, the CIT(A), NFAC, Delhi [here in after referred as CIT(A)] erred in confirming the addition of Rs.10,00,000/- being cash deposited in the bank account during the demonetisation period without appreciating the fact that cash deposited in the bank account were out of sale proceeds of EVD [Electronic Voucher Distribution] made to local shop keepers, thus assessee prays for deletion of Rs.10,00,000/- in full.

3. Without prejudice to the contention raised above in the grounds of appeal no.2, that on the facts, and in the circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.10,00,000/- being cash deposited in the bank account during the demonetisation period without considering the fact that the assessee is operating in retail sector of selling EVD [Electronic Voucher Distribution) on cash basis and cash transactions are happening in earlier years as well as for pre and post demonetisation period, accordingly assessee prays for deletion of Rs.10,00,000/- in full.

4. Without prejudice to the contention raised above in the grounds of appeal no.2&3, that on the facts, and in the circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.10,00,000/- being cash deposited in the bank account during the demonetisation period without appreciating the fact that cash deposited in the bank account were out of sale proceeds of EVD [Electronic Voucher Distribution] made to local shop keepers and the same has been accounted as sales which was accepted, thus addition of cash receipts from the local shop keepers on sale of EVD shall result double addition which is not permissible under the I.T Act, 1961, thus assessee prays for deletion of Rs.10,00,000/-in full.

5. That on the facts, and in the circumstances of the case and in law, the AO and CIT(A) erred in applying rate of tax 60% u/s.115BBE including surcharge and cess as applicable on addition of Rs.10,00,000/- u/s.69A without considering the fact that the assessee is not having several income bearing activities and cash was received from the sale of EVD which is a business receipt, accordingly assessee prays for applying normal rate of tax as applicable to the appellant.

6. The Appellant craves leave to add, amend, delete, alter, replace any or all of the above grounds of appeal with the permission of the Tribunal.”

2. The assessee has also taken following additional ground of appeal:

“1. That on the facts, and in the circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.10,00,000/- u/s.69A being cash deposited in the bank account during the demonetisation period without considering the fact that books of accounts of the was audited and same was duly accepted by the AO, accordingly it is objected that addition of Rs.10,00,000/- u/s.69A is without authority of law, thus deserves to be deleted in full.

(B). Additional grounds raised above by the assessee are purely legal in nature goes to the root of the matter and are emanating out of the facts appearing in the impugned assessment order passed by the AO and confirmed by the CIT(A). The legal grounds do not require any Investigation and all materials are already on record before the Tribunal.

.It is humbly prayed before your honour to admit and adjudicate the legal additional grounds raised above. Reliance in this regard is placed in the decisions in the cases of "National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC)", "VMT Spinning Co. Ltd Vs. CIT (2016) 389 ITR 326 (P&H)", "Siksa O Anusadhan Vs. CIT (2011) 336 ITR 112) [Orissa HC)".

3. Facts, in brief, are that for A.Y. 2017-18 the assessee filed his return of income on 30.10.2017 declaring total income at Rs. 3,92,844/-. Thereafter the AO on the basis of information regarding cash deposit of Rs. 12,00,000/- in bank account the case was reopened to verify the source of cash deposit. The AO completed the assessment u/s 147 read with section 144B of the Income-tax Act, 1961 (the “Act”) at Rs. 12,92,840/- by adding Rs. 12,00,000/- as unexplained money u/s 69A of the Act. Aggrieved against this assessee preferred appeal before learned CIT(Appeals) who partly allowed the appeal. Thereby he gave benefit of

the cash deposit in old currency. Still feeling aggrieved the assessee is in appeal before this Tribunal.

4. Learned counsel for the assessee submitted that the lower authorities failed to appreciate the fact that the assessee was having cash sales and the cash collected from the customers was deposited in the bank account and was transferred to the dealer of EVD. He submitted that the assessee is engaged in the purchase and sale of Electronic Voucher Distribution (EVD) for Tata Sky TV Setup Box Recharge. He contended that the authorities below have not doubted the sales. He contended that the cash deposits were out of the cash receipts. He further reiterated the submissions as made in the written submissions. For the sake of clarity the written submissions of the assessee are reproduced as under:

“MAY YOUR HONOUR PLEASE BE' consider the following in supplement to the oral presentation before the open Court:

1. Nature of Business:

The assessee is engaged in the business of purchasing and selling of EVD [Electronic Voucher Distribution] for Tata Sky TV Setup Box Recharge. During the financial year 2016-17 relevant to assessment year 2017-18, the assessee used to purchase EVD [Electronic Voucher Distribution] from the local dealer of "Tata Sky-DTH-M/s.Ashok Enterprises" and sold the same to local shop keepers mostly on cash basis and the shop keepers sold the same to the ultimate end users. [PB.Pg.No.2]

2.Business Model Operated by the Assessee:

The business model operated by the assessee, the assessee has been regularly making major cash sales and very minor credit sales of 'EVD' to these local shop keepers [customers). The business model operated by the

assessee mandates receipt of cash from its customers towards sales and the cash collected from the customers is being deposited in the bank account and transferred to the dealer of 'EVD' in the same day. This is the regular pattern followed by the assessee during the year and also in the earlier years.

It is not in dispute that the assessee is maintaining regular books of account which is duly subjected to tax audit under section 44AB [PB.Pg.No. 5 to 14] and the audited financials for the financial years 2016-17 to 2014-15 are enclosed. [PB.Pg.No.20 to 28]. No discrepancy was found by the AO relating to books of account.

Cash deposited in the bank account and transfer of the same to the dealer of 'EVD' during the current financial year 2016-17 and immediate earlier financial years 2015-16, 2014-15 are filed electronically before the AO and the CIT(A) along with the bank statements. [PB Pg.Nos. 15 to 19,29 to 64 and 65 to 67A] are as under:

<i>Particulars</i>	<i>F.Y.2016-17</i>	<i>F.Y.2015-16</i>	<i>F.Y.2014-15</i>
<i>Cash Collected from the Customers</i>	<i>1,18,84,000/-</i>	<i>1,30,00,500/-</i>	<i>1,43,38,600/-</i>
<i>Cash deposited in the bank account</i>	<i>1,18,84,000/-</i>	<i>1,30,00,500/-</i>	<i>1,43,38,600/-</i>
<i>Amount transferred to the dealer</i>	<i>1,17,24,925/-</i>	<i>1,10,00,000/-</i>	<i>1,43,00,000/-</i>
<i>% of amount collected and transferred</i>	<i>99%</i>	<i>85%</i>	<i>99%</i>

During the current financial year cash sales to local shop keepers was Rs.1,18,84,000/- which worked out 96% of the total sales of Rs. 1,23,71,925/- (PB.Pg.No.21). For the immediately two preceding financial years 2015-16 and 2014-15, total sales of Rs.90,44,758/- [PB.Pg. No.24] and Rs.1,42,41,918/-[PB.Pg. No.27] respectively was cash sales.

3. Cash deposited during the demonetisation period:

During the demonetisation period cash amounting Rs.12,00,000/- was deposited in the bank account and the same was added by the AO u/s.69A and CIT(A) vide order dated 05/09/2023 allowed Rs.2,00,000/- and confirmed addition of Rs. 10,00,000/-

Cash deposited in the bank account in the current financial year 2016-17 during the demonetization period [Nov & Dec 16] and the pre and post demonetization period are as under:

<i>Particulars</i>	<i>Amount</i>
<i>Cash deposited during the demonetization period</i>	<i>12,00,000/-</i>
<i>Cash deposited during the pre and post demonetization period</i>	<i>1,06,84,000/-</i>
<i>Total cash deposited</i>	<i>1,18,84,000/-</i>
<i>Cash deposited during the demonetization period out of the Total cash deposited[%]</i>	<i>10%</i>
<i>Cash deposited during the pre and post demonetization period</i>	<i>90%</i>

Denomination wise cash deposited in the bank account of Rs. 10,00,000/- during the demonetization period was as under:

<i>Denomination</i>	<i>Amount</i>
<i>SBN [Rs.500/- and Rs.1,000/-].</i>	<i>Rs.2,50,000/-</i>
<i>Normal Currency [Other than SBN's]</i>	<i>Rs.7,50,000/-</i>
<i>Total</i>	<i>Rs.10,00,000/-</i>
<i>SBN [Rs.500/- and Rs.1,000/-].</i>	<i>25%</i>
<i>Normal Currency [Other than SBN's]</i>	<i>75%</i>

The business model of the assessee acts as a clinching evidence in favour of the assessee, that it mandates receipt of cash from his customers \ local shopkeepers) and this practice is being followed by the assessee regularly for the current as well as immediately last financial years.

AO accepted 90% of the cash receipts during the pre and post demonetization period from the customers as genuine being business receipts and held 10% of the cash deposited during the demonetization period as non genuine without appreciating the fact that same was generated from the business and deserved to be held as business receipts.

4.Judicial precedents in favour of assessee:

ACIT Vs. Hirapanna Jewellers. [2021] 189 ITD 608 (Visakhapatnam.Trib):

In this case the observations of the Tribunal was as under:

"9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) and the same is upheld.

10. The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed.

11. In the result, appeal of the revenue as well as the cross objection of the assessee are dismissed." [PB.Pg.No.85 to 88].

Anantpur Kalpana Vs. ITO. [2022] 194 ITD 702 (Bang.Trib):

In this case the Tribunal held as under:

Where Assessing Officer made addition under section 68 on account of cash deposited by assessee in its two bank account post demonetization, since said cash deposit was towards assessee's sale proceeds which was already offered to tax by assessee and admitted by revenue as revenue receipt, impugned addition made under section 68, resulting in double taxation, were liable to be deleted.

[PB.Pg.Nos. 89 to 91].

CIT Vs. Vishal Exports Overseas Ltd. Tax Appeal No.2471 of 2009, dated 03/07/2012 [Guj.HC]:

The Hon'ble Gujarat High Court while confirming the finding of the Tribunal held as under:

"Assessee has already offered sales realisation and such income is accepted by the Assessing Officer to be income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income", [PB.Pg.Nos. 92 to 96].

K.S.Kannan Kunhi Vs. CIT [1969] 72 ITR 757 (Kerala.HC):

The question raised by the assessee in the case before us is not whether the Income-tax Officer is entitled to draw the inference that the receipts are income of the year in which they were found with the assessee on his failure to explain their source, but whether there is material to reject the assessee's explanation and draw such an inference on the facts of this case. Now, as stated in the passage quoted above, the question whether a receipt is to be treated as income or not must depend very largely on the facts and circumstances of each case. It is not the law that, when once the explanation is rejected, it automatically follows that the receipts are income. Whether an explanation is acceptable, and if not, whether it should be inferred that the receipts constitute income, are different aspects of the same question. Both these aspects are interrelated, and the question whether such receipts constitute income or not has to be decided on a consideration of all the relevant facts and circumstances of the case. It is quite legitimate in the case of an assessee who is known to be carrying on several activities of an income-earning character or who can reasonably be found to be involved in such activities, to draw the inference that the amounts found with him constitute income from undisclosed sources, in the absence of satisfactory explanation regarding their source. Such an inference should not be readily made in the case of a person, who has no known business or other source of income, or who cannot even be reasonably suspected as engaged in any income-earning activities. In the latter case, there must be more substantial reasons to reject the assessee's explanation, and draw the inference that the amounts found with him constitute income." [PB.Pg.Nos. 97 to 98]."

5. On the contrary, learned DR supported the orders of authorities below. He contended that the assessee failed to offer any explanation about the source of cash deposits. It was incumbent upon the assessee to prove the cash sales.

6. I have heard rival contentions and perused the material available on record. The case of the assessee is that he is engaged in the business of purchase and sale of Electronic Voucher Distribution (EVD) for Tata Sky TV Setup Box Recharge and has been making cash sales. This fact is not rebutted by the Revenue that the cash receipts had also made cash sales. From the record it is transpired that the lower authorities have proceeded on the basis of mere suspicion which should not be the basis for addition in dispute. It is also pointed out that no discrepancy was found by the AO related to books of account. Under these facts the impugned addition cannot be sustained. I hold accordingly. The AO is directed to delete the addition. Grounds of appeal are allowed.

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

Order pronounced in open court on 29th August, 2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI