

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4862/MUM/2023  
Assessment Year: 2017-18**

Hari Om Traders, G-4, Sai Sadvihar Cabin Road, Bhayander East, Thane, Maharashtra - 400105  (PAN : AADFH3131N)	Vs.	Income Tax Officer, Ward-2(3) Thane
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Rakesh Sirsalewala, CA  
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 02.09.2024  
Date of Pronouncement : 03.09.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1057628865(1), dated 01.11.2023 passed against the assessment order by the Income Tax Officer, Ward 2(3), Thane, u/s. 144 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 16.12.2019 for AY 2017-18.

2. Grounds taken by the assessee are reproduced as under:

"1. Ground No. 1 - Addition u/s 68 of the Income tax R Act, 1961 for Old currency notes deposited during ar demonetization period

*On the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) has erred in upholding the addition of Rs. 46.93 lakhs being old currency notes deposited during demonetization period without appreciating the facts and evidences brought on record. Your appellant in distributor of Amul and Kellogs India Pvt and collection from the retailers is majority in cash. During the year relevant to assessment year 2017-18, your appellant had deposited Rs. 7.06 crores in cash including Rs. 46.93 lakhs specified notes deposited during demonetization period.*

*The Appellant therefore, prays that the addition of Rs. 46.93 lakhs be deleted.*

2. Ground No. 2 - Addition u/s 68 of the Income tax Re Act, 1961 for deposit of legal tender currency ( In other than specified notes) during demonetization period

*On the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) has erred in upholding the addition of Rs. 54,53,500/- (50% of Rs. 1,09,07,000/-) being old currency notes deposited during demonetisation period without appreciating the facts and evidences brought on record. Your appellant in distributor of Amul and Kellogs India Pvt and collection from the retailers is majority in cash. During the year relevant to assessment year 2017-18, your appellant had deposited Rs. 7.06 crores in cash including amount deposited during demonetization period of Rs. 1.56 crores consisting of Rs. 46.93 lakhs specified notes and 1.09 crores legal tender notes.*

*The Appellant therefore, prays that the addition of Rs. 54,53,700/- be deleted.*

3. Brief facts of the case are that the assessee is a Wholesaler and Distributor of Amul and Kelloggs India Pvt Ltd since 1994. The major customer of assessee are retailers and collection from these retailers is majorly in cash. The assessee filed its return of income on 03.11.2017, reporting a total income of Rs. 1,88,410.00/-. Ld. Assessing Officer issued the first notice, u/s. 142(1), dated 15.07.2019 which was received by the Assessee on 18.07.2019. The Chartered Accountant of the assessee who handles the case of the assessee suffered a paralysis stroke. The second and fresh notice was issued by the ld. Assessing Officer on 09.10.2019 which was received by the assessee on 15.10.2019. Assessee after receiving physical notice, visited the

department on 26.10.2019 for guidance and information and as per the requirements of the ld. Assessing Officer, gathered information to the extent possible and submitted physical document on 13.11.2019, for which it failed to take acknowledgement from the Department. The assessee could not file any documents online, since, it was ignorant and the consultant had not recovered.

3.1. A show cause notice was issued by ld. Assessing Officer, dated 06.12.2019. Ld. Assessing Officer passed an assessment order, dated 16.12.2019 by treating Rs. 1,34,80,250/- as unexplained Cash Credits and added it to the total income of the assessee.

4. Aggrieved, assessee went in appeal before the Ld. CIT(A).

5. Before him also, none attended on any of the hearings fixed for appellate proceedings. The assessee furnished a written submission without any copies of bank accounts for verification before the ld. CIT(A). The total cash deposit of the assessee during the year under consideration is approx. Rs.7.06 Crore, out of which approx. Rs.1.56 Crores was deposited during the demonetization period and out of the same Rs.46.93 Lakhs were specific currency notes. Assessee failed to give the reason for depositing of specific currency notes after the given timeline, i.e., 08.11.2016. Assessee also did not explain the reason for excess sale alongwith matching stock of goods in respect to balance cash deposits. However, ld. CIT(A) partly allowed the appeal of the assessee by allowing a relief of 50% of Rs.1,09,07,000/-(deposits in legal tender during demonetization period) and upheld the remaining additions made by the Ld. Assessing Officer for want of evidence and verification. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee pleaded to provide one opportunity to make all the required submissions and explanations by remitting the matter. He gave an assurance to the Bench that if the matter is so remitted, all the efforts shall be made to comply with the notices of the hearing as and when fixed.

7. Per contra, Ld. Sr. DR though objecting on the plea of the Ld. Counsel fairly submitted that since nothing has been furnished at the stage of assessment as well as first appeal, the matter may be remitted back to the file of the Ld. Assessing Officer which would avoid multiplicity of proceedings before the Ld. CIT(A) of calling remand report.

8. Having heard both the parties, we, by taking into consideration the support given by the Ld. Sr. DR to the plea made by the Ld. Counsel, find it appropriate to remit the matter back to the file of the Ld. Assessing Officer for denovo meritorious adjudication. By taking note of the conduct of the assessee at all the stages of the proceedings before the authorities below, we are compelled to direct the assessee to be diligent and cooperative in attending the hearings and make submissions for expeditious and effective disposal. The assessee should not seek adjournments unless warranted by compelling reasons.

9. Since the matter is restored to the file of Ld. Assessing Officer for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. Assessing Officer. The observations herein made by us in remanding the matter back to the file of Ld. Assessing Officer will not

impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 03 September, 2024

Sd/-  
(Anikesh Banerjee)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 03 September, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai