

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 593/Chny/2024**

निर्धारणवर्ष / Assessment Year: 2017-18

Assistant Commissioner of
Income Tax,
Circle -1,
Puducherry.

(अपीलार्थी/Appellant)

Muthu Gold House,
v. 222, Jawaharlal Nehru Street,
Puducherry – 605 001.

[PAN: AAAFM-8022-M]

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. N. Arjunraj, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri. R. Vikneswaran, JCIT

सुनवाई की तारीख/Date of Hearing : 05.06.2024

घोषणा की तारीख/Date of Pronouncement : 04.09.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal instituted by the revenue is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 16.01.2024.

2. The sole ground before us is, the Id.CIT(A) has erred in deleting the addition of Rs.4,68,78,024/- u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the AO in the assessment order. For this, assessee has raised various

grounds which are exhaustive, argumentative and hence, need not be reproduced.

3. The brief facts are that, the assessee is a partnership firm engaged in the business of manufacture and sale of gold jewellery, silver articles, diamond studded jewellery, gift articles and other allied products. The assessee filed its return of income for the assessment year 2017-18 on 31.10.2017, admitting an income of Rs.93,80,450/-. The case was selected for scrutiny under CASS. Accordingly, notices u/s. 143(2) and 142(1) of the Act was issued to the assessee calling for details of cash deposits during demonetization period. In response to notices, the assessee submitted bill wise details of sales, to prove the source of cash deposited. However, the Id.AO was not satisfied with the details furnished by the assessee and held that there was no customer details available for the sales amounting to Rs.4,68,78,024/- out of the total sales of Rs.5,14,45,463/- from 01.11.2016 to 08.11.2016 and treated the same as unexplained cash credit in the books of account u/s. 68 of the Act. As the sale to the tune of Rs.4,68,78,024/- out of total sales of the assessee for the year of Rs.116,17,12,741/- is treated as unexplained cash credit, the

assessee is eligible for reduction in gross profit declared on such amount and reworked the excess gross profit and the same has been reduced by Rs.32,62,728/- (Rs.8,09,06,276/- minus Rs.7,76,43,548/-). Accordingly, the value of closing stock was enhanced and completed the assessment u/s. 143(3) of the Act by passing an order dated 28.12.2019.

4. Aggrieved by the impugned order of the AO, the assessee preferred an appeal before the Id.CIT(A). During the appellate proceedings the assessee filed detailed written submissions along with paper book and relied on various case laws in support of its submissions and pleaded to delete the addition made by the AO. The Id.CIT(A), after considering the submissions made by the assessee and case laws relied upon by the assessee, held that the order of the Assessing Officer are not supported by any reliable evidence. Unique circumstance of announcement of demonetization of higher denominated notes on 8th November, 2016, consequent to huge cash sales and deposit of that cash is satisfactorily explained by the assessee and hence, the addition made by the Assessing Officer is deleted. With regard to the amount of Rs.32,62,728/- reduced from income on account of reduction in profit on bogus sales,

the Id.CIT(A) held that it is not required to be reduced as entire sales are considered as genuine and partly allowed the appeal of the assessee.

"8.3 It is observed that the appellant maintained the proper books of account in regular course of business which was duly audited by the independent Chartered Accountant under section 44AB of the Act. All the sales, purchases and stocks are recorded in the books of account which has not been doubted by the AO. The sales shown by the appellant had been accepted by Sales Tax/NAT Department. The Assessing Officer has not disputed the books of accounts not pointed out any discrepancy in the sales register, stock at any time of the year, including the on the opening day of 8th November 2016 or in the cash books where from the cash was deposited in the bank account. To hold that the sales were not made on 08/11/2016, one has to prove that the assessee did not have sufficient stocks on that day. Alternatively, one has to point out defects in the stock registers/stocks maintained based on other information, if any. I am of the opinion that if there are no defects in the purchases and sales and the same are matching with inflow and the outflow of Stock, there is no reason to disbelieve the sales. The cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted by the AO. If the reduction of stock position is matching with the sales, it proves that the cash received/deposited represents the sales, The AO has not rejected the books of accounts.

8.4 It is an accepted fact that no businessmen can refuse to make sales to any customer when stock is available and if it is within the four corners of law, especially when price of the gold was high and there is demand for gold at that time of the day. There is also no rule that sales cannot be made late in the evening or in the night. If minimum details of the customers are taken on sale bills as required under a VAT Act that sales cannot be doubted, particularly in the rush of the hour. If the AO alleges that the appellant has brought the unaccounted money generated in to the books on that day, then the onus is on the AO to bring on record evidence to demonstrate that such purchases and sales were made by the appellant out of books or that the appellant had other source of income which is not disclosed. In the absence of any evidence, blind allegation cannot be accepted under the law.

8.5 After careful examination of the facts of the case, arguments of the Assessing Officer particularly the allegation that the appellant brought its unaccounted income into the books as cash sales and the counter submissions of the appellant replying to each and every point raised by the AO, I find that the arguments of the appellant are more convincing and supported by evidence in the form of books of accounts which are neither disputed nor rejected. The AO has not pointed out single defect in the books of account and also not rejected the books of accounts.

8.6 Human probability test cannot be applied on this case, because it was the known fact that there was huge rush in jewellery shops and hence, huge cash sales of the appellant made on 08.11.2016 cannot be doubted comparing with the normal day sales. Further, the appellant has also brought on record increased sales on some days like Navratri, Diwali and Akshaya Tritiya, same way increased sales could happen on demonetization as it was unique situation and there was a demand. There was no whisper in the entire impugned Assessment Order pointing out any such discrepancy in stock and cash book. The appellant's books show sales with the bills and outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. The contention of the appellant that due to demonetization, the public became panic and made the investment in jewelry thereby thronged the jewelry shops appear to be acceptable in view of the news items and news paper articles.

8.7. Appellant relied on number of case laws in support its submissions, which are not discussed here for brevity. Appellant has also relied on orders of CiIT(A) in case of ANS Jewelry ,DIN and order no ITBA/NFAC/S/250/2022-23/1 049241212(1) dated 30.01.2023 and AVR Kumbakonam Silver Shop Jewellers DIN and order no ITBA/NFAC/S/250/2022-23/1048629214(1) dated 11.01.2023. In the case of ACIT Central Circle - Visakhapatnam vs. HeeraPanna Jewelers decided by Hon'ble ITAT, Visakhapatnam Bench it is held.

"..... that assessee had explained source of said amount in question as sales, produced sale bills and admitted same as revenue receipt as well as offered it to-There was no defect in purchases and sales and same were matching within flow and out flow of stock-Audit report under section 44AB and financial statements clearly showed reduction of stock position matching with sales which clearly showed that cash generated represented sales-Assessee officer accepted sales

and stocks - He had not disturbed closing stock which had direct nexus with sales - Both Assessing Officer and DDIT(Inv.) did not find any defects in books of account, trading account, P&L account and financial statements of assessee- Whether, on facts, impugned addition made under section 68 was to be deleted-Held, yes "

The AO concluded that the assessee deposited cash in the bank accounts during the period of Demonetization, but the sources were neither explained nor such money offered for taxation. This finding of the AO is incorrect in view of the fact that the appellant has explained the source of cash deposited in the bank account is out of the receipts from the cash sales. In support of the same the appellant produced sale bills and books of accounts containing stock register, sales register and cashbook. Further, the sales have been part of sale for the year and stand offered to tax as against the observation of the AO. Reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT Vs Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC) where in it is held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

8.8 In view of the above discussion, I am of the considered opinion that the arguments of the AO are not supported by any reliable evidence. Unique circumstance of announcement of demonetization of higher denominated notes on 8th November, 2016, consequent huge cash sales made by the appellant on 8th November 2016 and deposit of that cash in bank is satisfactorily explained by the appellant and there is no abnormality in the same. Therefore, the addition made is hereby deleted. The appellant gets the relief. The grounds of appeal 2 to 6 are allowed. The amount of Rs.32,62,728/- reduced from income on account of reduction in profit on bogus sales is not required to be reduced as entire sales are considered genuine."

Aggrieved by the order of the Id.CIT(A), the revenue is in appeal before us.

5. The Id.DR argued that the Id.CIT(A) erred in deleting the addition made u/s. 68 of the Act, even though the assessee has declared the huge sales of Rs.5,14,45,463/- on 08.11.2016 which is impracticable and still considered the said sales as genuine. The Id.DR further contended that the Id.CIT(A) has erred in arriving the conclusion of considering the impugned additions as genuine though the assessee has not furnished comparables of gross sales, cash sales and cash deposits of a particular day with corresponding previous year statistics. Therefore, prayed for setting aside the order of the Id.CIT(A) by upholding the addition made by the AO.

6. Per contra, the Id.Counsel for the assessee, on the other hand relied on the actions of the Id. CIT(A), and argued that after considering and satisfied with the submissions of relevant documents and details to prove the genuineness of the source of cash in the form of sales made on 08/11/2016, the Ld.CIT(A) has rightly deleted the addition of cash deposits of Rs.4,68,78,024/- u/s. 68 of the Act.

7. In this regard, the Ld.AR further submitted that the said cash deposits were admittedly made with the opening balance

of cash available as on 08/11/2016 and further submits that the cash in hand is supported by cash sales declared prior to the date of demonetization.

8. The Ld. AR submitted that the Ld.CIT(A), after considering relevant facts has rightly deleted the additions made by the AO towards cash deposits U/s.69A r.w.s. 115BBE of the Act. In support of the CIT(A) order the Id.AR relied on the following decisions of the Chennai Tribunal and prayed for upholding the order of the CIT(A) by dismissing the appeal of the Revenue.

S.No	Date	Particulars
1	20.12.2023	ITO, Coimbatore v Sahana Jewellery Exports Private Limited
2	21.03.2024	DCIT v M/s DAR Paradise Pvt Ltd- Chennai ITAT- ITA No.
3	03.04.2024	DCIT v ANS Jewellery- Chennai ITAT - ITA No.
4	05.04.2024	ITO v Surabi Gold - Chenai ITAT - ITA No.
5	05.04.2024	DCIT v Navaratna Maaligai - Chennai ITAT- ITA No.
6	05.04.2024	JCIT v Tara Jewellery - Chennai ITAT- ITA No.
7	10.04.2024	DCIT v D Gem Mount- Chennai ITAT - ITA No.
8	25.04.2024	Smt. Durga Devi Mundhra vs Ito – ITA No.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that the assessee has unexplained cash credit of Rs.4,68,78,024/-. It is admitted from the records that the assessee is engaged in

trading business of gold bullion and jewellery. The case was selected for scrutiny to verify the sales and called for certain details. The assessee sales of Rs.5,14,45,463/- was made on 08.11.2016, on the day of announcement of demonetization of Rs.500/- and Rs.1,000/- denominations by Government of India. The assessee deposited cash out of sale proceeds of gold jewellery collected from its customers which was less than Rs.2 lakhs per person and there was no requirement on the part of the assessee to obtain details like name, address and PAN of the buyers. In response to notice u/s. 142(1) of the Act, the assessee had furnished bill wise details of sales for the relevant period.

10. On perusal of the records and facts and circumstances of the case, we are of the considered opinion that when the sales has been reflected in the books of accounts and offered to tax, adding the same again would amount to double taxation, which is impermissible in law. The cash sales made by the assessee have been credited in the books of accounts and the same form part of the assessee's cash book. On these facts, it could be very well said that the assessee's claim was backed up by relevant evidences. Thus, the assessee has discharged

the burden of proving the source of the cash/SBN deposited in the bank and the Assessing Officer failed to rebut the same. The allegations/statistics relied upon by Assessing Officer to take an adverse view is not backed up by relevant evidence/material and therefore the action of AO could not be countenanced and hence, the Id.CIT(A) has rightly deleted. Moreover, since cash generated out of sales has been credited in the books of accounts, the provisions of section 69A could not be invoked in the present case. The assessee's reliance on the coordinate bench decision in the case of Smt. Durga Devi Mundhra vs. ITO in ITA No.1228/Chny/2023, dated 25.04.2024 is applicable to the present case on hand, wherein the Tribunal held as under:

"6. We are of the considered opinion that when the sale has been reflected in the books of accounts and offered to tax, adding the same again would amount to double taxation which is impermissible in law. The cash sales proceeds have been credited in the books of accounts and the same form part of assessee's cash book. On these facts, it could very well be said that the assessee's claim was backed up by sufficient documentary evidences. The allegation of Ld. AO is that such abnormal sales could not be achieved by the assessee immediately upon announcement of demonetization by the Government. However, such allegations are bereft of any concrete evidence on record. It is trite law that no addition could be made merely on the basis of suspicion, conjectures and surmises. In the present case, the assessee has duly discharged the burden of establishing the source of cash deposit and the onus was on Ld. AO to disprove the same. However, except for mere allegation and few statistics, there is nothing on record to support the conclusions drawn by Ld. AO

that the cash deposited by the assessee was her unaccounted money. There is no finding by Ld. AO that any particular sales affected by the assessee exceeded threshold limit which cast an additional obligation on the assessee to obtain requisite particulars from the customers. Since cash generated out of sales has been credited in the books of accounts, the provisions of Sec.69A could not be invoked in the present case. Therefore, on the given facts, the impugned additions are not sustainable. By deleting the same, we allow corresponding grounds raised by the assessee."

11. Therefore, on the given facts and respectfully following the decisions of the Tribunal (supra), the grounds raised by the revenue are not sustainable in the eyes of law and hence, the action of the Id.CIT(A) is confirmed by dismissing the appeal for the revenue.

12. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 04th September, 2024 at Chennai.

Sd/-

(एबी टी वर्की)

(ABY T VARKEY)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(एस.आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 04th September, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF