

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 782/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Guru Nanak Steel Traders C/o Shri Tejmohan Singh, Advocate # 527, Sector 10D, Chandigarh- 160011	बनाम	The ITO Ward-5, Yamunanagar, Haryana
स्थायी लेखा सं. / PAN NO: AAAFG5710D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से / Revenue by : Smt. Amanpreet Kaur, Sr. DR
सुनवाई की तारीख / Date of Hearing : 12/06/2024
उद्घोषणा की तारीख / Date of Pronouncement : 09/09/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 23/10/2023 pertaining to Assessment Year 2017-18.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

"1. That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs. 36,42,000/- being 50% of total addition of Rs.72,84,000/- made on account of alleged unexplained cash deposit of specified bank notes in the bank account which is arbitrary and unjustified.

2. That the provisions of Section 69A are not attracted in as much as the entire business receipts including cash deposits of Rs 72,84,000/- already stands declared in the books on which taxes as applicable have been paid and as such treating Rs.36,42,000/- to be unexplained is illegal arbitrary and unjustified.

3. That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the charging of tax at 60% applying the provisions of Section 115 BBE which are not applicable in the instant case.

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

5. That the order of Ld. Commissioner of Income Tax (Appeals) Officer is arbitrary, opposed to the facts of the case and thus untenable."

3. Briefly, the facts of the case are that the assessee filed its return of income on 18/12/2017 declaring total income of Rs. 2,67,090/-. The return of income was selected for complete scrutiny through CASS to verify abnormal increase in cash deposit during the demonetization period as compared to pre-demonetization period. Thereafter, notice under section 143(2) and 142(1) were issued calling for the necessary information/documentation from the assessee and information was also sought from the bank under section 133(6) of the Act. Thereafter, a show-cause dt. 30/11/2019 was issued wherein the AO stated that cash of Rs. 72,84,000/- was deposited during the period 09/11/2016 to 31/12/2016 as compare to NIL cash deposited during the preceding period and thus, there was an abnormal increase in cash deposit as compare to corresponding period in the preceding financial year and the assessee was directed to show cause as to why the cash deposited amounting to Rs. 72,84,000/- during the period of demonetization may not be treated as unexplained cash deposit and added to the income under Section 68 of the Act. In response to the show-cause, the assessee filed necessary submission and documentation and it was submitted that the cash has been deposited from the disclosed sources as per the cash book of the assessee. The submissions so filed were considered but not found acceptable to the AO. The AO referring to the provisions of Section 69A of the Act stated that all the three limbs of Section 69A are satisfied in the instant case as the assessee has been found to be the owner of money, such money was not recorded in the books of account and its nature and source not identifiable and given that, it was held by the AO that the assessee has failed to give plausible explanation about the nature and source of cash deposit and the amount of Rs. 72,84,000/- was brought to tax as unexplained money under section 69A of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) wherein the necessary submissions/documentation were filed. The Ld. CIT(A) referring to the cash book and other details so submitted by the assessee noted that there was no cash deposited during the F.Y. 2015-16 and there was abnormal and sudden increase in cash deposit during the F.Y. 2016-17 during the demonetization period and in case, the cash was available with the assessee at the time of commencement of the demonetization period i.e; 08/11/2016, the appellant would have made the deposit immediately but the appellant waited up to 16/11/2016 almost one week to deposit the

available cash in specified bank notes. Regarding submissions of the assessee that the part of the cash deposit during the demonetization period relates to receipt/ realization from the debtors, the Id. CIT(A) referred to the return of income filed for the preceding A.Y. 2016-17 and noted that the closing balance of debtor was Rs. 60,65,893/- and also look at the return of income for the impugned A.Y. 2017-18 wherein the assessee has shown NIL balance against the sundry creditors and referring to the submission of the assessee wherein he has stated that amount of Rs. 46,80,106/- has been received from the debtors, the Ld. CIT(A) observed that if the said submissions is taken into account, the closing balance of debtors should have been Rs. 13,85,787/- as against NIL outstanding balance in the return of income filed for the impugned assessment year. The Id. CIT(A) finally held that the assessee did not give proper explanation regarding accumulation of large funds for the period from 01/04/2016 to 08/11/2016 without depositing the same in the bank account. The Ld. CIT(A) further held that the element of cash sales cannot be ruled out and also held that the appellant shows closing debtors balance of Rs. 60,65,893/- for the preceding assessment year 2016-17 out of which there is a possibility of realization of debtors in the form of cash. Therefore keeping in view, the submission made by the assessee alongwith supporting documentation submitted by the assessee, the Id CIT(A) held that the restriction of addition of Rs. 72,84,000/- made by the AO towards unexplained cash deposit during the demonetization period to Rs. 36,42,000/- which is 50% of the addition will meet the ends of justice and accordingly the assessee was granted relief of Rs. 36,42,000/- and the AO was directed accordingly.

5. Against the addition of Rs. 36,42,000/- sustained by the Ld. CIT(A), the assessee is in further appeal before us.

6. During the course of hearing, the Ld. AR submitted that the assessee has been regularly filing its return of income and assessed to tax since last several years, for the year under consideration, the assessee has filed his return of income under section 44AD of the Act disclosing gross receipt of Rs. 33,38,669/- and taxable income of Rs. 2,67,094/- which was duly processed under section 143(1) of the Act and thereafter, accepted by the AO except for the addition of Rs. 72,84,000/- on account of unexplained cash deposit under section 69A of the Act. It was submitted that the assessee during the relevant F.Y. was

dealing in iron scrap, ferrous and non ferrous metals and during the course of assessment proceedings, has placed on record, copy of the cash sales account as well as copy of the account of the sundry debtors as well as regular associates in support of cash deposit in the bank account. It was further submitted that copy of sale register and details of cash deposit, cash sale, purchase stock and month wise sales and cash depositing for the year under consideration as well as the corresponding period in the previous year in the desired format were also submitted before the AO. It was submitted that it was duly explained to the AO that the source of cash deposit is out of regular business receipt as well as recovery from the debtors made by the assessee during the Financial Year. It was submitted that inspite of the necessary explanation and documentation in support thereof submitted during the course of assessment proceedings, the AO went ahead and made the addition of Rs. 72,84,000/- on account of cash deposit in the bank account of the assessee. It was submitted that the source of the cash deposit is explained by the business receipt as well as recovery from the debtors made by the assessee during the financial year. It was further submitted that once the cash receipt is included in the receipt declared during the year under consideration, then taxing said cash deposit generated from cash received will amount the double taxation. It was further submitted that in case of cash sales, the assessee was not bound to keep records of the name and address of the buyers and in any case, the assessee has during the year under consideration given copy of the account of the persons who had made cash payment against the realization of the old debts. It was submitted that the assessee was maintaining proper books of account and even copy of the VAT returns were filed before the AO and there is no adverse finding regarding the same. It was submitted that the sales are duly recorded in the books of account of the assessee and the income has been offered to tax and therefore in such circumstances, the realization of the sale proceeds where already offered to tax, cannot be brought to tax again in the hands of the assessee. It was further submitted that merely the fact that the sales have been made in the cash cannot be the basis for disputing the sale when the same is proper corroborated from the books of account as well as the VAT return filed by the assessee. Further reliance was placed on the Coordinate Benches decision in case of Agson Global(P.) Ltd. Vs. ACIT in ITA No. 5264/Del/2019 which has subsequently been upheld by the Hon'ble Delhi High Court as

reported in 441 ITR 550, M/s Hirapanna Jewelers in ITA No. 253/Viz/2020, Smt. Charu Aggarwal and M/s Kalaneedhi Jewellers LLP in ITA 310 and 311/Chd/2021.

7. It was further submitted that the submissions so made by the assessee were reiterated before the Ld. CIT(A) and were duly acknowledged as apparent from the order of the Ld. CIT(A), however, without recording any adverse findings, the addition has been restricted to the extent of 50%. It was submitted that there is no basis for sustaining the balance addition of 50% as so done by the Ld. CIT(A) as the same is clearly arbitrary in nature. It was submitted that where the Ld. CIT(A) has accepted the fact that the cash sales have been made during the year and which also form part of the gross receipt duly offered to tax in the return of income, then the cash sales amounting to Rs. 33,38,669/- cannot be doubted. Regarding the realization from debtors, it was submitted that the amount of Rs. 46,80,106/- has been realized before the announcement of demonetization and the remaining amount has been subsequently realized during the Financial Year relevant to impugned Assessment Year and that is why there is no closing balance of the sundry debtors as on the closing of the financial year. It was accordingly submitted that the addition so sustained by the Ld. CIT(A) be directed to be deleted.

8. Per contra, the Ld. DR has relied on the orders of the lower authorities. It was submitted that the fact of the present case clearly shows that there is an abnormal increase in cash deposit during the demonetization period as compare to the previous financial year and given that the assessee has failed to explain the source of the cash deposit, the AO has rightly made the addition under section 69A of the Act as unexplained cash deposit. It was further submitted that the Ld. CIT(A) has already allowed relief to the extent of Rs. 36,42,000/- which is more than justifiable and considering the facts and circumstances of the present case, no further relief needs to be provided to the assessee. It was accordingly submitted that the grounds so taken by the assessee be dismissed and the order of the Ld. CIT(A) be sustained.

9. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to nature and source of cash deposits during the period of demonetization and whether the explanation so furnished by the assessee can be held to be reasonable in the facts and circumstances of the present case. The

assessee has explained before the lower authorities that the cash so deposited is out of realisation of sale proceeds during the year amounting to Rs 33,38,669/- as well as realisation of old debtors outstanding at the beginning of the financial year amounting to Rs 46,80,106/-.

10. From the perusal of return of income available as part of assessee's paper book, it is noted that the assessee has shown gross receipts/turnover of his business at Rs. 33,38,669/- and has determined deemed profit @ 8% u/s 44AD at Rs 2,67,094/- which has been offered to tax under the head "Profit and Gains from Business /Profession". The disclosure made in the said return of income has been accepted by the Assessing officer and at the same time, addition has been made by the AO in terms of unexplained cash deposits made in the bank account maintained by the assessee. The fact that the disclosure made in the return of income has been accepted by the AO without any adverse findings, it shows that the assessee's assertion that he is engaged in eligible business as so defined u/s 44AD and the turnover so disclosed is from his eligible business has been accepted. In the said background, if we look at the explanation furnished by the assessee that the receipts so deposited in the bank account to the tune of Rs 33,38,669/- are out of his business receipts realized in cash and such explanation is corroborated by sales register, cash book and VAT returns, we find that the said explanation to be reasonable as the assessee has established the necessary nexus/linkage between the deposits and the sales so reported as part of gross receipts. The Id CIT(A) has also not disputed the fact that the cash sales have been undertaken by the assessee. Therefore, where all requisite details are available on record, the explanation so furnished by the assessee regarding the nature and source of cash deposits to the tune of Rs 33,38,669/- deserve to be accepted in totality and there cannot be a question of accepting the said explanation partly and sustaining the addition to the extent of 50% as so done by the Id CIT(A) in absence of pointing out specific instances/transactions where the explanation so furnished by the assessee cannot be accepted as the same would be arbitrary in nature which cannot be sustained.

11. Now, coming to the explanation regarding realization from old debtors outstanding at the beginning of the financial year amounting to Rs 46,80,106/-. In this regard, it is an

admitted and undisputed position that at the beginning of the year, there were outstanding debtors to the tune of Rs. 60,65,893/- and the same has been verified by the Id. CIT(A) wherein he has referred to the return of income filed by the assessee for the preceding A.Y. 2016-17 and noted that the closing balance of debtor was Rs. 60,65,893/-. The assessee has explained that out of outstanding debtors, amount of Rs. 46,80,106/- has been realized before the announcement of demonetization and the remaining amount has been subsequently realized during the financial Year relevant to impugned Assessment Year resulting in nil closing balance at the end of the year and copies of debtors accounts have been placed on record. The Id CIT(A) has also not disputed the fact that realization from debtors have been done in cash by the assessee during the year. Therefore, where all requisite details are available on record, the explanation so furnished by the assessee deserve to be accepted in totality and there cannot be a question of accepting the said explanation partly and sustaining the addition to the extent of 50% as so done by the Id CIT(A) in absence of pointing out specific instances/transactions where the explanation so furnished by the assessee cannot be accepted as the same would be arbitrary in nature which cannot be sustained.

12. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the addition of Rs 36,42,000/- is hereby directed to be deleted.

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

Order pronounced in the open Court on 09/09/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)

न्यायिक सदस्य / JUDICIAL MEMBER
AG

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)

लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar