

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 340/Bang/2024
Assessment year : 2017-18

Nitin Kumar Bohra, No.161, OPH Road, A M Road, Shivajinagar, Bengaluru – 560 051. PAN : AMDPN 7591A	Vs.	The Income Tax Officer, Ward 1(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, Advocate
Respondent by	:	Shri S.T. Seshadri, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	29.08.2024
Date of Pronouncement	:	24.09.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 29.12.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 on the following grounds:-

- “1. The order passed by the learned Commissioner of Income Tax, NFAC, under section 250 of the Act is so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself to be assessed at Rs.58,47,140/- as against the income of Rs. 6,51,400/- returned for the assessment year 2017-18 on the facts and circumstances of the case.
3. **Rejection of books of accounts:**
 - a) The learned CIT(A) was not justified in rejecting the books of account of the appellant and confirming the addition of Rs. 51,95,740/-, on the facts and circumstances of the case.
 - b) The learned CIT(A) was not justified in confirming the additions, being the deposits for a part of the year, while adopting the returned income, on the facts and circumstances of the case.
 - c) The learned CIT(A) failed to appreciate that, once the books of account were rejected, the income had to be estimated on a best judgement method and a reasonable percentage of income alone, as prevailing in the industry, had to be considered as income, on the facts and circumstances of the case.
 - d) Without prejudice and not conceding that the rejection of the books of the appellant were bad in law, the learned CIT(A) has not provided an opportunity of hearing before rejecting the books of account, on the facts and circumstances of the case.
4. The learned CIT(A) was not justified in confirming the addition of Rs. 51,95,740/- as income of the appellant, without appreciating that the appellant has offered the entire sale as part of turnover, on the facts and circumstances of the case.
5. The learned CIT(A) failed to appreciate that the deposits were made out of known sources and accordingly, the entire addition ought to have been deleted on the facts and circumstances of the case.
6. The authorities below failed to appreciate that neither of the provisions of section 69 of the act, are applicable, since already accounted in the books of the appellant and thus no addition ought to have been made, on the facts and circumstances of the case.

7. The invocation of section 115BBE of the Act is also bad in law, since there was no instance of unexplained income, on the facts and circumstances of the case.
 8. The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernible from the order and hence deserves to be cancelled on the facts and circumstances of the case.
 9. The appellant craves to add, alter, amend, substitute, change and delete any of the grounds of appeal.
 10. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered and the appellant shall be awarded cost in prosecuting the appeal and also order for the refund of institution fees as part of the cost.”
2. Briefly stated the facts of the case are that the assessee filed return of income on 30.03.2018 showing total income of Rs.6,51,400 after claiming deduction under Chapter VIA of Rs.1,30,291. The assessee is a jeweller and running business in the proprietorship named as M/s. Anup Jewellers. The case was selected for scrutiny and on the reason of abnormal increase in cash deposit during demonetisation period as compared to average rate of cash deposit during pre-demonetisation. The assessee did not submit information as required by the AO, accordingly he issued notice u/s. 133(6) of the Act calling bank statements which were supplied. From the bank statement it was noticed that the assessee deposited cash in three bank accounts of Rs.51,95,740 which is as under:-

Sl.No.	Bank	A/c No.	Cash Deposited
1	Union Bank of India	457702010056159	Rs. 4,00,940/-
2	Union Bank of India	589201010050123	Rs. 39,60,500/-
3	South Indian Bank	9053000018362	Rs. 8,29,300/-
		Total	Rs. 51,95,740/-

3. The assessee submitted details in response to notice issued by the AO and copy of sales register showed that business was started in the month of Oct. 2016 and the total turnover is Rs.78,71,394. The AO noted that sales have ben done in cash and there is no name, address or contact details of the customers in most of the cases. Hence cash deposits in the assessee's bank account was treated as unexplained cash u/s. 69A of the Act and amount of Rs.51,95,740 was added to total income of the assessee. Accordingly the assessed income was determined at Rs.58,47,140 including the taxable income declared in the return of income and tax rate u/s. 115BBE was applied on Rs.51,95,740. The assessment was completed on 21.12.2019. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

4. Subsequent appeal was migrated to NFAC as per Notification No.76/2020 dated 25.09.2020 issued by the CBDT. During the course of appellate proceedings, the assessee has filed detailed written

submissions which is incorporated by the CIT(Appeals) in his order. The Id. FAA noted some deficiencies for proving the sales declared by the assessee and he invoked section 145(5) and rejected the books of accounts. The Id. FAA rebutted the pointwise to the submissions made by the assessee and confirmed the addition of Rs.51,95,740 as income u/s. 69A of the Act and tax rate was applied u/s. 115BBE of the Act. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated the submissions made before the FAA and submitted that the AO has not considered the nature of business carried out by the assessee for the source of cash receipt which were entirely from the sale of jewellery. The appellant is a registered retailer in jewellery business and is carrying on business since October, 2016. The primary source of receipts are from business and loans taken. Sales are made to customers against money which is general and normal practice in the retail industry. Therefore it is hardly necessary for the seller to bother about the name and address of the purchaser. In this regard, he relied on the judgment of R.B. Jessaram Fatehch and (Sugar Deptt) VS. CIT (1970) 75 ITR 33 (Bom). He further submitted that each customer makes cash purchases and lifts the goods. There is no duty cast upon the seller to insist for address of the purchaser. Therefore treating the cash sales as bogus sales is not justified. In support of he relied on the judgment in the case of Kishore Jeram Bhai Khaniya, Prop. M/s Poonam Enterprises vs. ITO - ITA No. 1220/Del/2011 dt. 13.5.2014. The main composition of the customers of the assessee are primarily being household wife belong to small or

middle class people, usually low income profiled and generally not assessed to income tax. These people make purchases from their cash savings and buy jewellery as an alternate form of savings/investments. This mode of accepting cash as form of payment is prevalent in the entire retail industry. He further submitted that there is no rule prescribing requirement of obtaining information such as name of customer, address, etc. as mentioned by the AO in the assessment order apart from Rule 114B which provide obligation on the person raising bills beyond prescribed threshold to seek PAN from the purchaser. Accordingly the revenue cannot reject the submissions of the assessee regarding the cash sales. Once the amounts have been credited in the sales account and have duly been included while computing the profit, the same cannot be added u/s. 68 of the Act. In support of, he relied on the following judgments:-

- CIT v. Kailash Jewellery House (ITA No.613/2010) Delhi HC.
- CIT v. Vishal Exports Overseas Ltd. (ITA No.2471 of 2009 Gujarat HC)
- New Pooja Jewellers v. ITO [ITA No.1329/Kol/2018
- CIT v. Jaora Flour and Foods (P) Ltd. [2012] 344 ITR 294
- Anantapur Kalpana v. ITO (ITA No.541/Bang/2021)
- CIT v. Associated Transport P. Ltd., 84 Taxman 146
- ACIT v. Hirapanna Jewelers in ITA No.253/Viz/2020
- ITO v. Tatiparti Satyanarayan [ITA No.76/Viz/2021]

6. The ld. AR further submitted that the turnover of the assessee is below the threshold limit for compulsory tax audit of books of accounts and he has filed return of income under presumptive basis and rate of net profit is 9.92% on its turnover. Section 44AD also does not specify maintenance of books of accounts. Therefore the lower

authorities are not justified in asking books of accounts. The Id. CIT(Appeals) has wrongly rejected the books of accounts of the assessee since the assessee was not required to maintain books of accounts under the special provision for computing profits & gains of business on presumptive basis u/s. 44AD and assessee is eligible assessee.

7. The Id. DR relied on the order of the lower authorities and submitted that the cash deposited during the demonetisation period is very high compared to the other period and assessee has not furnished the complete details as required by both the authorities below. The Id. CIT(A) has rightly invoked section 145(3) and rejected the books of accounts. It was the duty of the assessee to substantiate the source of cash deposits with cogent material. The assessee has issued sale bills, but there is no name and address or contact no., PAN of the prospective buyers. Therefore the sales shown by the assessee are doubtful and the Id. FAA has also doubted the purchases of the assessee. The business of the assessee started in the month of October, 2016, but there is a bill for prior period which also creates doubt that the purchase is bogus. He requested that the order of lower authorities should be upheld.

8. In the rejoinder, the Id. AR again reiterated the detailed written submissions supported by case law. He submitted that the assessee started business in the month of Oct. 2016 and previously it was carried out by his family members in the same name & style. Once the

CIT(Appeals) has rejected the books of accounts, then income has to be estimated on the reasonable percentage of income along as prevailing in the industry as business income and income should be considered under Chapter IXD – profits & gains of business or profession. He further submitted that the turnover of the assessee has been accepted partially and treating the cash deposits in the bank account as unexplained money is not justified. He further submitted that the assessee has got VAT registration and filed return of income which is accepted by the Govt. The cash deposits were from known sources and therefore addition made by the AO u/s. 69A on initial turnover declared by the assessee is not correct.

9. Considering the rival submissions, we note that the assessee has started his business in the month of Oct. 2016 and is registered under VAT and filed VAT return too. The AO noted that a sum of Rs.51,95,740 has been deposited by the assessee in his bank account noted supra and there is huge variation in the cash deposit during the demonetisation period and pre-demonetisation. The assessee produced sales register and sale bills and it was noticed that sale bills are incomplete in the opinion of authorities below and the entire sales were through cash. The Id. CIT(A) rejected the books of accounts invoking coterminous power of the AO u/s. 145(3) and confirmed the addition made by the AO. From the financial statements it was noticed that the turnover of that assessee is Rs.78,71,394 and the Net Profit is 9.92%. The assessee has taken loan (secured/unsecured) from South India Bank Ltd. and outstanding balance is as under:

Details of Secured Loan

The South Indian Bank Ltd.	Rs.616,179
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Details of Unsecured Loan

Darshan Bohra	901,500
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Deepa	70,000
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Lalith	14,000
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Sangeetha Bohra	604,533
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Smt Sharada Bai	1,580,300
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Details of Sundry Creditors

Anup Jewellers	3,839,027
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Swarna Abhushan	2,833,046
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Details of Salary Paid

N. Muniraju	70,000
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Mohan Kumar	60,000
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Suvarna	50,500
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10. The assessee has declared Net Profit as per P&L account of Rs.7,81,110 and bank interest of Rs.581, deduction claimed under Chapter VIA is Rs.1,30,291, resultantly the taxable income is Rs.6,51,400 and tax is paid thereon.

11. Considering the entire submissions, we note that AO/CIT(A) has accepted the turnover declared by the assessee of Rs.78,71,394 on which the assessee has declared Net Profit as noted above. Here the

dispute is only with regard to cash deposits in the three bank accounts noted above. We note from the submissions of the assessee before the CIT(Appeals) that the cash deposits are out of sale proceeds and unsecured loans. Therefore it is evident that the assessee has deposited cash in the bank account from his business turnover on which assessee had declared business profit. Both the authorities below have not reduced the profit element involved in the business turnover and corresponding expenditure. Both the authorities have considered the income twice i.e., under the profits & gains of business or profession under Chapter IVD on the turnover and income from other sources u/s. 69A. Resultantly there is double taxation on the same income which is not permitted. Once the cash deposit out of the turnover is treated as unexplained investment u/s. 69A, the actual turnover which is not part of the bank deposits has to be calculated. It is also interesting to note that partial cash transaction on the same modus operandi followed by the assessee has been accepted which is not subject matter of the appeal. We also note that the assessee has filed VAT return disclosing the entire turnover shown in the financial statements. Therefore, both the authorities are not justified in making addition u/s. 69A of the Act.

12. We further note that once the books of accounts are rejected by the Id. FAA, he should have applied income u/s. 144 of the Act, however he has accepted income disclosed by the assessee. It is also noted that the assessee is an eligible assessee u/s. 44AD and he has disclosed income @ 9.92% u/s. 44AD. The amount deposited in the bank account is less than the turnover declared by the assessee. Both

the authorities below are unable to substantiate the bank deposits are over and above the turnover declared by the assessee. Considering the totality of the facts, we hold that the cash deposits in the above three bank accounts were treated income u/s. 69A is not correct. Therefore income declared by the assessee under the head profits & gains of business or profession has to be accepted. Ground Nos.1 to 6 are allowed.

13. Ground No.7 : Since we have held that addition made by the AO and confirmed by the CIT(A) is not justified, therefore there is no question of applicability u/s. 115BBE of the Act.

14. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 24th day of September, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th September, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.