

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 586/KOL/2024
Assessment Year: 2017-2018**

***Maa Sharada Enterprise,.....Appellant
Talbabnda Jugberia, Gholia,
North 24-Parganas, PIN Code No.700110,
West Bengal
[PAN:AATFM5656M]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-50(1), Kolkata,
Income Tax Office, Manicktala,
Civil Centre, Uttarapan Complex-DS-IV,
Kolkata-700067***

Appearances by:

*Shri Giridhar Dhelia, Advocate, appeared on behalf of the
assessee*

*Shri Kapil Mondal, Addl. CIT (DR), appeared on behalf
of the Revenue*

Date of concluding the hearing: September 09, 2024

Date of pronouncing the order: October 07, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 26th January, 2024 passed for Assessment Year 2017-18.

2. The assessee has pleaded four grounds of appeal at Serial No. 10 of Form 36. Out of these four grounds of appeal, Grounds No. 1 & 4 are general grounds, which do not call for recording of any specific finding.

3. In Ground No. 2, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the addition of Rs.1,29,23,200/- under section 69A of the Income Tax Act, 1961, which was added by the ld. Assessing Officer as unexplained money.

4. Brief facts of the case are that the assessee has filed its return for A.Y. 2017-18 on 13.11.2017 declaring total income of Rs.23,83,240/-. According to the ld. Assessing Officer, the case of the assessee was selected for scrutiny under CASS and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that during demonetization period between 8th November to 31st December, 2016, the assessee has deposited a sum of Rs.1,29,23,200/- in two Bank accounts, namely (i) Axis Bank, New Barrackpore Branch Current Account Rs.1,19,30,000/- and (ii) HDFC Bank, Madhyamgram Branch Current Account Rs.9,93,200/-. The ld. Assessing Officer has directed the assessee to explain the source of such deposits and as to how it should not be treated as unexplained money under section 69A of the Income

Tax Act. The assessee has submitted requisite details, but ld. Assessing Officer did not discuss them. He made the addition of the above amount by recording following finding:-

“In this regard, notice u/s 142(1) was sent to the assessee on different dates and was served upon the assessee via e mail and speed post and he was requested to explain the source of the above money but the assessee submitted some documents in favour of his financial results but he did not specifically mention the nature and source of the amount of Rs. 129232007- that has been deposited in demonetized currency after 08/11/2016 in his bank accounts. However, in the replies filed the assessee claimed that the cash deposits in the bank accounts were from his sale proceeds.

Having said that, the assessee did not file his books of accounts as well the names of the persons from whom such amount has been received. As such he was requested to show cause vide notice dated 16/12/2019 as to why the amount of Rs. 12923200/- would not be added back to his income as unexplained money u/s 69A of the Income tax act, 1961 and taxed u/s 115BBE since the source and nature of acquisition of the money remains unexplained. He was requested to substantiate the deposits by production of appropriate documentary evidence.

In response to the said notice, the assessee only said via the e proceeding module that all the deposits were from sales turnover. The assessee did not mention as to whether the sales was effected before or after 08/11/2016. Because after 08/11/2016, when the legal tender of currency notes of denominations Rs. 500 and Rs. 1000/- was withdrawn, it is illogical that anybody will accept a “piece of paper” in return of goods sold. Also, the assessee could not furnish his books of accounts to show that the said amount was recorded in his books of account maintained for the FY 2016 -17 and also failed to substantiate how the amount accumulated in his hands.

To explain the source of a deposit in bank accounts, the assessee had to furnish its books of accounts to prove whether actually the deposits were from sale proceeds of the business. Before claiming that the deposits were from sale proceeds, the assessee should have furnished the sale register to show the recording of the amount as sales, stock register to show the movement of stock, Purchase register to show that the stock that is claimed to have been sold was

actually received from the purchaser and also the details of transportation of stock from the purchasers godown to the assessee's place of business. The assessee could not furnish anything as said above. It is not out of place to mention that the assessee while filing response in the cash transaction module with regard to the deposits in demonetised currency stated that the said deposits were from his cash balance held on 08/11/2016. But during the proceedings, the assessee could not furnish the cash book to show that the cash was actually held as balance as on 08/11/2016. Also it is strange that the assessee has given different explanations in different times regarding the source of deposits in specified bank notes.

So, it is quite clear that the assessee did not record the deposits made in demonetized currency notes during the specified period in his books of account and the amount of Rs. 12923200/- is unaccounted for. That is the reason of the assessee's constant reluctance to furnish the books of account and furnishing contradicting explanations despite being given a no. of opportunities to do the same. Thus, the assessee failed to prove the nature and source of acquisition of the money in its possession amounting to Rs.12923200/-

Hence, the amount of Rs.1,29,23,200/- is considered as unexplained money u/s 69A of the Act in the hands of the assessee and added back to his income and to be taxed u/s 115BBE of the Act. Penalty u/s 271AAC of the Act is initiated against the assessee separately”.

5. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

6. Before us, ld. Counsel for the assessee filed a written note. He submitted that the assessee has been dealing in pulses, wheat gram, flour and related products. It has achieved total sales of Rs.48,79,27,027/- during the year. It has made purchases of Rs.47,24,59,237/-. Its accounts are audited, as per section 44AB of the Income Tax Act, the audit report was duly submitted to the revenue. The ld. Counsel for the assessee thereafter tabulated certain details exhibiting total money deposited in cash during the

year as well as deposited during demonetization period. It has also been demonstrated that similar deposits in the earlier assessment year, i.e. F.Y. 2015-16 (A.Y. 2016-17) were made, wherein no demonetization has taken place. The Id. Counsel for the assessee has appraised us both these details and submitted that if figures of both the years are being compared during the period of 8th November to 31st December of earlier year as well as accounting year relevant to this A.Y. 2017-18, the deposit in terms of percentage is lesser by 11.76%. The Id. Assessing Officer has not analyzed the nature of the business of assessee, vis-à-vis compulsion for accepting the cash. He thereafter put reliance upon the following decisions:-

(i) Kanpur Steel Co. Ltd. -vs.- CIT [1957] 32 ITR 56 (All.), approved in Lalchand Bhagat Ambica Ram - vs.- CIT [1959] 37 ITR 288 (SC);

(ii) Asstt. CIT -vs.- Dr. Anil Kumar Verma [IT Appeal No. 274 (Agra) of 2013 dated 04.09.2019];

(iii) See Salem Sree Ramavilas Chit Co. (P) Ltd. - vs.- DCIT [2020] 114 taxmann.com 492 (Mad.).

7. The Id. Counsel for the assessee further contended that the additions have been made by the Id. Assessing Officer under section 69A by treating such deposits as unexplained money. He drew our attention towards section 69A and submitted that perusal of this section would reveal that it contemplates three conditions:-

(a) assessee is found to be the owner of any money, bullion, jewellery, etc.;

(b) such money is not recorded in the books of account, if any, maintained by him for any source of income; and

(c) assessee offers no explanation or explanation is found not satisfactory by the ld. Assessing Officer.

Ld. Counsel for the assessee emphasized that conditions no. (a) & (b) are cumulative. In the present case, the money has already been recorded in the books. The source has been accepted from the sales of the business. Therefore, ld. Assessing Officer has erred in invoking section 69A and making the additions.

8. The ld. D.R., on the other hand, relied upon the orders of revenue authorities. He submitted that the assessee could not give plausible explanation to the ld. Assessing Officer at the time of assessment proceeding. Therefore, ld. Assessing Officer has rightly treated such deposit as unexplained money of the assessee, which deserves to be assessed under section 69A of the Income Tax Act.

9. We have duly considered the rival contentions and gone through the record carefully. There is no dispute with regard to the fact that total sales of the assessee during the year was of Rs.48,79,27,027/-. It has made purchases of Rs.47,24,59,237/-. The analysis made by the assessee in a tabular form in the submission of the ld. Counsel for the assessee is worth to note here, which reads as under:-

A.Y. 2017-18

Name of Bank	Branch Address	Account No.	Amount of cash deposit(Rs.) during 8 th Nov. to 31 st December, 2016	Amount of cash deposit (Rs.) Rest of the period during FY 2016-17	Total
HDFC Bank	Madhyamgram	00232000011323	9,90,000	97,95,000/-	107,85,000/-
Axis Bank	New Barrackpore	913020041902854	203,10,000/-	12,89,38,090/-	14,92,48,090/-
Total			2,13,00,000/-	13,87,33,090/-	16,00,33,090/-

A.Y. 2016-17

Name of Bank	Branch Address	Account No.	Amount of cash deposit(Rs.) during 8 th Nov. to 31 st December, 2015	Amount of cash deposit (Rs.) Rest of the period during FY 2015-16	Total
HDFC Bank	Madhyamgram	00232000011323	66,37,025/-	271,54,486/-	337,91,511/-
Axis Bank	New Barrackpore	913020041902854	251,48,960/-	12,24,20,305/-	14,75,69,265/-
Total			3,17,85,985/-	14,95,74,791/-	18,13,60,776/-

10. A perusal of the above figure would indicate that the assessee has deposited Rs.13,87,33,090/- during the accounting period of this A.Y. except the period of 8th November to 31st December, the Id. Assessing Officer has not doubted about these deposits. Their sources are identical. He even did not deem it necessary to examine the source of that money His only doubt is *qua* the source of Rs.2,13,00,000/-, out of which he has made addition of Rs.1,29,00,000/- roughly. In the assessee's line of business, cash is being generated regularly which depicts in the earlier year where assessee has deposited Rs.3.17 crores during the period from 8th November to 31st December, 2015. This was not a demonetization period but no doubt was expressed by the revenue on this deposit.

The total deposit in the year was Rs.18.13 crores including the period of 8th November to 31st December, 2015. In the A.Y. 2017-18, i.e. involved in the present appeal, total deposit in cash was of Rs.16,00,33,090/-. The ld. Assessing Officer has accepted the majority of the cash deposits.

11. We have reproduced the assessment order but no specific reason is discernable from the finding of the ld. Assessing Officer for disbelieving cash deposits during demonetization period. To our mind, it is an arbitrarily exercise of powers at the end of the revenue. There is no logic or reasoning given for not accepting these cash deposits. The assessee was in such a line of business, where it has to sale pulses, wheat gram, flour and related products in cash. The other argument given by the ld. Counsel for the assessee that cash was recorded and, therefore, section 69A cannot be invoked. For buttressing this proposition, he relied upon the judgment of ITAT, Chandigarh Bench in the case of DCIT -vs.-Roop Fashion reported in [2022] 145 taxman.com 216. In that case also, on identical circumstances the Revenue disbelieved the cash sales. The Tribunal has examined this issue in detail and then, compared the total sales of A.Ys. 2015-16, 2016-17, 2017-18 and deleted the addition. The cash was recorded in the books hence it cannot be termed as unexplained cash. Only thing which was required to be explained was the source of such deposits, which assessee has explained i.e. out of sale proceeds, deposits have been made.

12. On due consideration of the above facts and circumstances, we are of the view that addition made by the ld. Assessing Officer and confirmed by the ld. CIT(Appeals) is not sustainable. Accordingly, we allow this ground of appeal and delete the addition of Rs.1,29,23,200/-

13. In the next ground of appeal, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the addition of Rs.1,04,060/-.

14. Brief facts of the case, according to the ld. Assessing Officer, are that the assessee has shown TDS payable to the tune of Rs.1,04,060/-, but it failed to furnish the evidence about actual payment of this TDS. The assessee has contended that actually it has paid the TDS vide Challan No. 281 BSR Code 0510308 dated 30.05.2017, but ld. Assessing Officer disbelieved this version of the assessee on the ground that it failed to furnish copy of the Challan. Hence, he made the addition.

15. On appeal, ld. CIT(Appeals) did not give any relief to the assessee.

16. On due consideration of the above facts and circumstances, we are of the view that once assessee has explained the BSR Code, details of payments, ld. Assessing Officer should have verified. Now the assessee has placed copy of the Challan on page no. 87 of the paper book whereby a sum of Rs.1,05,620/- stands deposited. Considering the above details, we delete this addition.

17. Apart from the above, the assessee has filed an application for permission to raise additional ground of appeal, whereby it has been pleaded that statutory notice under section 143(2) was issued by ITO, Ward-10(1), Kolkata, who does not have jurisdiction of the case and thereafter assessment was completed by ITO, Ward-50(2), Kolkata. We find that neither the objection was taken before the Id. Assessing Officer nor it was pleaded as a ground before the Id. CIT(Appeals). It will require discovery of new facts for which we have to call for a remand report. In view of our finding whereby we have deleted the addition on merit, we do not deem it necessary to devote much energy on this aspect because complete facts for adjudicating this ground is not available on the record. We do not admit this additional ground of appeal for adjudication.

18. With the above remarks, the appeal of the assessee is allowed.

Order pronounced in the open Court on 07/10/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 7th day of October, 2024

*Copies to :(1) Maa Sharada Enterprise,
Talbabnda Jugberia, Gholia,
North 24-Parganas, PIN Code No.700110,
West Bengal*

*(2) Income Tax Officer,
Ward-50(1), Kolkata,
Income Tax Office, Manicktala,
Civil Centre, Uttarapan Complex-DS-IV,
Kolkata-700067*

(3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) *CIT - , Kolkata;*

(5) *The Departmental Representative;*

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.