

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.392/Ind/2024  
(Assessment Year: 2011-12)**

Acme Furniture Private Limited, 102, Dilpasand Residency, 4/1 Manoramaganj, Indore	Vs.	ITO 1(1), Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AAICA1324L</b>		
Assessee by	S/Shri Apurva Mehta & Rajesh Mehta, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	01.10.2024	
Date of Pronouncement	07.10.2024	

**ORDER**

This appeal by the assessee is directed against the order dated 26.02.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi for A.Y.2011-12.

2. Assessee has raised following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ('the Ld. CIT(A), NFAC") has erred in confirming the addition to the extent of Rs. 9,16,000/- made by the Ld. Income Tax Officer 1(1), Indore ('the Ld. AO') which is wrong and contrary to the facts of the case and provisions of the Act. Thus, the addition of Rs. 9,16,000/- is liable to be deleted.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC and the Ld. AO have erred in not appreciating that the cash deposited in the bank account has been made out of previous cash withdrawals and out of available cash in hand and thus, the addition of Rs. 9,16,000/- is liable to be deleted.*

3. *On the facts and in the circumstances of the case and in law and without prejudice to the above, the Ld. CIT(A), NFAC has erred in not allowing set-off of assessed business loss of Rs. 23,37,438/- from addition of Rs. 15,16,000/- made u/s, 68 under the head Income from Other Sources, which is not in accordance the provisions of Section 71 of the Act. Thus, the addition of Rs. 15,16,000/- is liable to be deleted.*

4. *On the facts and in the circumstances of the case and in law and without prejudice to the above, the Ld. CIT(A), NFAC has erred in not allowing set-off of business loss of Rs. 23,37,438/- from addition made u/s. 68 of the Act under the head Income from Other Sources by referring to CBDT Circular No. 11/2019 dated 19.06.2019 without appreciating that as per the said CBDT Circular, the assessee company is entitled to set-off income from other sources from business loss. Thus, the addition of Rs. 15,16,000/- is liable to be deleted.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in not appreciating that the reassessment proceedings initiated by the Ld. AO is wrong and contrary to the provisions of Section 147, Section 148, Section 149 and Section 151 of the Act. Thus, the reassessment proceedings are liable to be quashed.*

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in not appreciating that the reassessment proceedings initiated by the Ld. AO upon the assessee company, which has been struck-off by RoC is not in existence and the reassessment proceedings cannot be initiated upon a non-existent person. Thus, the reassessment proceedings are liable to be quashed.*

*The appellant company craves leave to add, alter, amend or withdraw any of the grounds of appeal."*

3. The Ld. AR of the assessee has submitted that the A.O in the assessment order passed u/s 143(3) r.w.s. 147 of the Act has made an addition of Rs.15,16,000/- on account of unexplained cash

deposit in the bank account. On appeal the CIT(A) has restricted the addition to the extent of Rs.9,16,000/- and given the benefit of Rs.6,00,000/- as peak credit. The Ld. AR has further submitted that the assessee has explained the source of deposit in the bank account as prior withdrawal from the bank account which was more than sufficient for deposits from 27.09.2010 to 01.12.2010 which was not considered by the A.O while making the addition. He has referred to the details of cash deposit as well as withdrawal from the bank account and submitted that the assessee was having sufficient withdrawals prior to the deposits in the bank account thus, he has contended that the addition sustained by the CIT(A) is arbitrary and unjustified, the same may be deleted.

4. On the other than Ld. Departmental Representative submitted that the CIT(A) has duly considered the withdrawals as well as deposits made by the assessee during the relevant period and then allowed the credit of Rs.6,00,000/- by taking the peak credit into consideration. He has relied upon the impugned order of CIT(A).

5. I have considered the rival submissions and perused the details of deposits as well as withdrawals in the bank account of the assessee with the ICICI Bank. The summary of the deposits and withdrawals are as under:

Deposits:

Sr.No.	Date	Amount (in Rs.)
1	27.09.2010	12,00,000
2	27.09.2010	1,00,000
3	28.10.2010	40,000
4	04.11.2010	1,40,000
5	18.11.2010	24,000
6	30.11.2010	10,000
7	01.12.2010	2,100
Total		15,16,100

Withdrawals:

Sr.No.	Date	Amount (in Rs.)
1	01.01.2010	1,00,000 (Share capital)
2	27.08.2010	2,00,000
3	01.09.2010	8,75,000
4	09.09.2010	2,00,000
5	12.10.2010	10,000

6	18.11.2010	22,500
7	25.11.2010	3,00,000
Total		17,07,500

5.1 From the details it is clear that for the deposits of Rs.13,00,000/- on 27.09.2010 the assessee was having cash of Rs.13,75,000/- on account of withdrawals plus share capital issued on 01.10.2010. Therefore, for the said cash deposit of Rs.13,00,000/- the assessee was having Rs.13,75,000/- as source of cash from withdrawals and share capital. The next deposit of Rs.2,16,100/- is also claimed from the withdrawal from the bank account on 12.10.2010, 18.11.2010 and 25.11.2010 which is more than the deposit made during this period. The CIT(A) has considered this issue as under:-

*"IV. SUMMARY OF DISCUSSION*

*The taxpayer has both withdrawals and cash deposits during the year. The source cited by the taxpayer for cash deposits is share capital money, sale of furniture ultimately he has sufficient cash in hand. Kindly see Table 2. The opening cash balance is not there in the Table for considering cash in hand. In the absence of the same, both deposits and withdrawals are taken into account and going by the Peak Credit Theory where there is deposits and withdrawals the peak credit has to be taken, Rs 600000 is given credit (strictly speaking this is not the peak credit, it is a kind of average of the peak credit). The remaining amount of Rs 916000 is treated as unexplained. The addition u/s 68 at Rs 916000 is upheld since the taxpayer failed to satisfactorily explain before the assessing authority the nature and source of cash deposits.*

*Now coming to the question of set off of this income against business loss, it is not permissible. Section 68 additions cannot be set off against any other heads of income. Please refer to CBDT circular no 11/2019 dated 19/6/2019.*

*Prior to Ay 2017-18, there cannot be set off of any deduction in respect of any expenditure or allowance or set off of any losses shall be allowed to the assessee. Considering the Circular cited above the addition made by the assessing authority u/s 68 is upheld to the extent of Rs 916000 and not set off of loss against business income is allowed".*

6. Thus, it is clear that all these details of cash deposits and withdrawals from the bank account were available with the CIT(A) however, Ld. CIT(A) has deleted the addition of Rs.6,00,000/- on the basis of peak credits which is also taken as average of peak credits. Once the assessee has produced the details of withdrawal and deposits which were factually correct as reflected from the bank account statement of the assessee then the question of peak credit does not arise. The peak credit is taken only when the amount of withdrawal is not sufficient for the subsequent deposits and therefore, only to the extent of peak credit the addition can be made. Accordingly in the facts and circumstances of the case the addition confirmed by the CIT(A) is not justified and the same is deleted.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 07.10.2024.

**Sd/-**

**(VIJAY PAL RAO)  
JUDICIAL MEMBER**

**Indore,\_07.10.2024**

**Dev/Sr. PS**

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*