

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA , JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 1805/DEL/2024
Assessment Year: 2017-18**

Nitin Agarwal, B-157, 4 th Floor, Ashok Vihar, Phase-1, New Delhi-110052.	<u>Vs</u>	Income Tax Officer, Ward-51(5), Delhi.
PAN: AABPA 7616 F		
APPELLANT		RESPONDENT
Assessee represented by	Sh. Amit Kumar Gupta, Adv.	
Department represented by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	14.10.2024	
Date of pronouncement	23.10.2024	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 29.02.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. CIT(A), Delhi/-17/10573/2019-20, for the assessment year 2017-18, arising out of the order dated 25.12.2019 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income-tax Officer, Ward-51(5), Delhi (hereinafter referred in short as “Ld. AO”).

2. On hearing both the sides it comes up before us that the only controversy is with regard to addition of Rs. 19,50,000/- made by the AO on account of alleged unexplained cash deposit in the bank account of the assessee. The assessee's case was selected for scrutiny to examine the issue of cash deposit during demonetization period and the AO had raised a questionnaire calling for various information and documents and after examining the same the AO concluded as follows:

“6. (i) The details / documents furnished by the assessee have been examined and the assessee submitted that due to seasons of marriage or decrease in gold rates may the reasons for increase in sales during the October, 2016. The submission made by the assessee has been examined but it is noticed that the sale pattern has not be shown in the preceding year or subsequent year.

(ii) From the above chart of the cash sale, it can be easily observed that the assessee made unusual cash sale in month of Oct, 2016 only and no major cash sales have been made during the previous year and subsequent year also.

(iii) It has been further observed that in month of Oct, 2016, the assessee the assessee recorded cash sales through 28 cash invoices whereas only three cash sale/ invoices were recorded before and after that period.

(iv) The reply filed by the assessee has been examined but the reason furnished by the assessee with regard to the unusual increase in sale is found not tenable as discussed above. In view of the above discussion, the undersigned is not satisfied with the entries made in the books of account to the extent of cash sales made just before demonetization period i.e. from 01.10.2016 to 08.11.2016 and is of the view that cash sales shown just before demonetization period are bogus/non- genuine cash sales and were used as a device to introduce unaccounted money lying with the assessee before demonetization in his books of account.

(v) As per details submitted the assessee with regard to cash in hand, the cash in hand of Rs.5,63,753/- was available with the assessee at the end of month of Sept, 2016. Considering the fact of this case, the cash in available with the assessee as on 30.09.2016 is being considered as cash in hand available with the assessee as on 09.11.2016 which is rounded off to Rs. 5,50,000/-, the demonetized currency available with the assessee on 09.11.2016.

(vi) on the perusal of the online response filed by the assessee it has been gathered that assessee reported that total cash of Rs. 35,00,000/- have been deposited and out of the same Rs. 19,04,131/- were received from identifiable persons without PAN and Rs. 15,95,869/- were received from un-identifiable persons against the cash sales. Considering the submissions, facts and circumstance, cash sales of Rs. 10,00,000/- is estimated to be made by the assessee in the month of Oct, 2016.

(vii) Under the provisions of section 68, where any sum is found credited in the books of an assessee, maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

(viii) Hence, the cash deposits aggregating to Rs. 19,50,000/- [Rs. 35,00,000 Rs. 15,50,000 (Rs. 5,50,000/- + Rs. 10,00,000/- as discussed above paras)] during the demonetisation period in the A.Y. 2017-18 remained unexplained under the provisions of Section 68 of the Income Tax Act, 1961 and the same is hereby treated as assessee's unexplained cash credits / income for the year under consideration and added to the income of the Assessee. Tax on the income shall be computed as per the provisions of section 115BBE of the IT Act. Penalty proceedings u/s 271AAC of the Income Tax Act is being initiated separately since income of the assessee determined includes addition made u/s 68 of the of the IT Act.

(Addition: Rs. 19,50,000/-)”

2.1. In appeal the NFAC has sustained the same for which assessee has come up in appeal before this Tribunal.

3. Learned AR has submitted that the cash sales of Rs. 19,50,000/- were already accounted as sales in the regular books of account and without rejecting the books of account and without disputing the purchases and stock, the sales have been alleged to be bogus. It was submitted that learned CIT(A) has only sustained the addition relying on the allegation of AO that there was sudden increase in cash sales in the month of October 2016 and that cash sales in the month of October 2015 were Nil. Learned AR submitted that due to Diwali and other festivals the cash sales were increased.

4. Learned DR, on the other hand, relied on the orders of tax authorities below.

5. After taking into consideration the submissions and fact, we find substance in the contention of learned AR that without pointing out any discrepancy in the book of accounts as maintained by the assessee, the VAT returns, cash book, ledger, stock register, purchase register, sales register, sundry creditors and debtors, which were duly audited, the disallowance has been made. We are of the considered view that abnormal growth in the cash sales and that certain parties were not identified to whom the cash sales were made, are vague grounds, to make addition when assessee has demonstrated that there was direct co-relation cash outflow and from the books of account the cash deposits in the bank account were made. We find outflow of stock against sales has been clearly reflected and was not inquired into or otherwise disturbed by the AO. We are of the considered view

that once AO has accepted the sales and assessee had substantially established on the basis of financials that there is a direct nexus of the cash sales with the closing stock, then addition u/s 68 of the Act is not justified. During demonetization period it was quite possible that the cash sales would increase for the reason also that customers holding the demonetized currency wanted to use the same for making cash investment in gold. Learned CIT(A) has fallen in error to sustain the addition merely on the basis of suspicion as mentioned in para 4.2.

5. Consequently the Grounds raised are sustained. Appeal of assessee is allowed.

Order pronounced in open court on 23.10.2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI