

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

	ITA NO. 2902/Del/2022	
	A.YR. : 2017-18	
Jewelxchang Private Limited, 2145-47, Gurudwara Road, Karol Bagh, New Delhi – 110 005 (PAN: AACCCJ4418N)	VS.	DCIT, CIRCLE 13(1), New Delhi C.R. Building, I.P. Estate, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by : S/Shri Rajeev Saxena, & Shyam
Sunder, Advocates.
Respondent by : Sh. Om Parkash, Sr. DR.
Date of hearing : 30.10.2024
Date of pronouncement : 06.11.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 25.8.2022, relating to assessment year 2017-18 on the following grounds:-

1. The learned National Faceless Appeal Centre (NFAC), Delhi has grossly erred both in law as well as on facts in sustaining the addition made by the learned assessing officer of Rs. 74,00,000/- as against the income returned of Rs 4,61,060/-.
2. That the Learned NFAC has failed to appreciate the fact that the cash Rs.74,00,000/- was deposited during demonetization period i.e. 09.11.2016 to 30.12.2016 out of sale proceeds which was duly credited in the profit and loss account and hence once such sum is duly credited in

the profit and loss account, said sum cannot be taxed again under section 68 of the Act.

3. That the Learned NFAC has failed to appreciate that once the turnover of the appellant has been accepted and income accruing to the appellant in respect of the business turnover has been offered as taxable income, then the addition made in respect of cash deposit out of the sale proceeds is wholly unsustainable in law.

4. That learned NFAC has grossly erred in failing to appreciate that the impugned addition was made u/s 68 r.w.s 115BBE of the Act which is legally unsustainable, since such sum had already been credited in the profit and loss account, as such, addition of the said sum again would tantamount to taxing the same income twice which is impermissible in law.

5. The finding in the order of assessment that assessee has failed to file the documentary evidence to substantiate its sales i.e. the name, address and contact no. of the persons whom sale was made is wholly arbitrary and has been recorded overlooking the fact that there is no requirement in law to maintain such particulars in respect of the sales made by the appellant.

6. That Ld. NFAC has grossly erred in passing the impugned order without providing any proper and meaningful opportunity of being heard and hence the impugned order passed against the principles of natural justice is vitiated in law.

2. The brief facts of the case are that the assessee is a company engaged in trading and manufacturing of gold, silver and diamond items. The assessee filed the return of income on 29/10/2017 for the AY 2017-18, declaring a total income of Rs.4,61,060/- The case of the assessee was selected for limited scrutiny to examine the cash deposits made during Demonetization period. The assessee submitted that the cash deposits were out of cash sales made during the year. Not satisfied with the explanation offered by the assessee, the AO made addition of Rs.74,00,000/- u/s 68 of the Income Tax Act.

3. Against the aforesaid action of the AO, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 25.08.2022 confirmed the action of the AO.

4. We have both the parties and perused the records. Ld. counsel for the assessee submitted the following submissions:-

“Assessee is a company incorporated on 23-09-2010 and is engaged in the business of trading and manufacturing activities of gold, silver and diamond items. Assessee has been regularly filing its income tax return and paying taxes thereon to which no question ever arose. During the year, assessee made sales of Rs.73,61,539/- as against purchases of Rs.49,99,950/- and declared GP @ 33.14% as the sales were made to the sundry clients and each and every tax invoice charging VAT was placed, enclosed herewith at PB 113-160 and VAT returns at PB 161-168.

It may be appreciated that the Ld.AO proceeded to make assessment where genuineness of books of accounts have not been questioned by the revenue officer. The regular books of accounts were maintained in the normal course of business in which no flaw, fallacy or deficiency was pointed out by the Assessing Officer. In response to the notices sent by AO, assessee furnished the ITR, Balance Sheet and P&L A/c, bank statement of HDFC Bank, details of expenses and monthly sales and purchase register for FY 2016-17 PB 1 - 66, copy of bank book of HDFC, cash book, stock summary and audit report were submitted PB 67 - 108, copy of tax invoices for purchase and sale and quarterly VAT returns at PB Pg 109 - 168, purchase

register, invoice and ledger accounts, sales register etc. at PB Pg 177—183.

It is submitted that jurisdictional High Court in the case of CIT vs Kailash Jewelry House held that the amount credited in the sales account and had been duly included in the profit disclosed by the assessee in return, the cash sales could not be treated as the undisclosed income and no addition could be made once again. Copy of decision is enclosed. In the similar circumstances recent decisions delivered in 2022 and 2023, various Hon'ble ITAT held (PB 1-163 of PB of judgement) that once sales have been made out of the stock and books of accounts have been accepted, the cash deposited out of sales cannot be doubted specifically when AO has not brought anything contrary on record.”

5. Per contra, Ld. DR relied upon the orders of the authorities below.
6. Upon careful consideration, we note that the Ld. Counsel for the assessee has pleaded that the impugned amount was sales of the assessee with no shortcoming leading to the rejection of the books has been found by the income tax authorities. Hence, he submitted that the amount is part of sales and cannot be treated as unexplained credit u/s. 68 of the I.T. Act. We further note that AO proceeded to make assessment where genuineness of books of accounts have not been questioned by the revenue officer. The regular books of accounts were maintained in the normal course of business in which no deficiency was pointed out by the Assessing Officer. We further note that in response to the notices sent by AO, assessee furnished the ITR, Balance Sheet and P&L A/c, bank statement of HDFC Bank, details of expenses and monthly sales and purchase register for FY 2016-17, copy of bank book of HDFC, cash book,

stock summary and audit report were submitted, copy of tax invoices for purchase and sale and quarterly VAT returns, purchase register, invoice and ledger accounts, sales register etc. We find considerable cogency in the above submission by the assessee's counsel that income tax authorities have not rejected the books of accounts. In these circumstances without rejecting the books, a part of sales cannot be treated as unexplained credit. The decision of the Hon'ble Delhi High Court in the case of CIT vs. Kailash Jewelry House is also germane, wherein it has been held *that the amount credited in the sales account and had been duly included in the profit disclosed by the assessee in return, the cash sales could not be treated as the undisclosed income and no addition could be made once again*, hence, this decision supports the case of the assessee. Accordingly, in the background of the aforesaid discussions and respectfully following the above precedent, we set aside the orders of the authorities below and delete the addition.

7. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced on 06/11/2024.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

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

Assistant Registrar