

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.543/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

H. Tamboli and Sons, H. No.37, Rajaspura Peth, Satara- 415001. PAN : AADFH3058A	Vs.	ITO, Ward-2, Satara.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Ramnath P. Murkude
Date of hearing : 03.09.2024
Date of pronouncement : 19.11.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 08.02.2024 passed by LD. CIT(A)-11, Pune ['Ld. CIT(A)'] for the assessment year 2017-18.

2. The appellant has raised the following grounds of appeal :-

- "1. On the facts and the circumstances of the case and in law, Learned Assessing Officer erred in making an addition of Rs.46,50,000 u/s 69A unexplained income by disregarding the submission of the appellant that entire cash is accounted in the books of account maintained by the appellant, as turnover and forming part of the cash balance before demonetization date*

and therefore such an addition is unwarranted. Your appellant prays for delete of entire addition.

Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.

3. The facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of trading and manufacturing of tobacco. The return of income was furnished on 01.11.2017 declaring total income of Rs.4,40,760/-. The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued along with questionnaire. The case was selected for scrutiny on the basis of larger cash deposits during demonetization period. The assessee firm has deposited Rs.70,00,000/- during demonetization period i.e. between 08.11.2016 to 30.12.2016. Out of total deposit of Rs.70,00,000/-, Rs.46,50,000/- was deposited in SBN (i.e. Specified Bank Note) of Rs.1,000/- and Rs.5,00/-. The Assessing Officer issued show-cause notice requesting the assessee to clarify as to why the addition on account of cash deposit of Rs.46,50,000/- in SBN should not be made to the total income of the assessee u/s 69A of the IT Act. The assessee in its reply submitted that there was opening cash balance of Rs.53,03,376/- as

on 08.11.2016 and out of this amount Rs.46,50,000/- was deposited in bank account. Along with this reply other details such as comparison chart etc. were also furnished before the Assessing Officer. Being unsatisfied with the reply of the assessee, the Assessing Officer completed the assessment by making addition of Rs.46,50,000/- as undisclosed income u/s 69A r.w.s. 115BBE of the IT Act and determined the total taxable income at Rs.50,90,760/- as against the income returned by the assessee at Rs.4,40,760/-.

4. In first appeal, Ld. CIT(A) after considering the reply of the assessee dismissed the appeal vide order dated 08.02.2024 and confirmed the order passed by the Assessing Officer. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR appearing for the assessee submitted before us that the order passed by Ld. CIT(A) is not correct. It was submitted that during the course of hearing before the Assessing Officer audited books of accounts, cash book, comparison chart with regard to the preceding years monthly sales, preceding years cash sales and preceding years cash deposit in bank was produced before the Assessing Officer as well as before Ld. CIT(A) but

without considering these details, Ld. CIT(A) merely on the basis of assumption and presumption treated the cash deposit during the demonetization period as out of unexplained income and accordingly erred in confirming the order passed by the Assessing Officer. It was submitted that the assessee is also registered under M-VAT and duly furnished his monthly VAT returns online, copies of the same were also produced before the Assessing Officer as well as before Ld. CIT(A). Ld. Counsel of the assessee submitted that a chart showing month-wise summary of sales with breakup of cash sales and credit sales and cash deposited in bank account for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 was furnished before the Assessing Officer as well as before Ld. CIT(A). Ld. Counsel of the assessee placed reliance on the judgement of the Hon'ble Delhi High Court in the case of PCIT vs. Agson Global Pvt. Ltd. (2022) 136 taxmann.com 256 (Delhi) order dated 19.01.2022. Accordingly, it was requested by Ld. Counsel of the assessee to set-aside the order passed by Ld. CIT(A) and further requested to delete the addition of Rs.46,50,000/- made by the Assessing Officer.

6. Ld. DR appearing for the Revenue placed heavy reliance on the order passed by Ld. CIT(A) and requested to confirm the same. It was submitted by Ld. DR that the assessee is said to have installed a machinery costing Rs.13,74,000/- only and with the help of this machine started manufacturing of scented tobacco. It was contended that after installation of this machine in the month of November, 2016 the sales of the assessee have drastically increased and the assessee has achieved sales of Rs.6,07,63,321/- in the month of December 2016, sales of Rs.4,48,24,853/- in the month of January 2017, sales of Rs.4,64,50,356/- in the month of February 2017 & sales of Rs.4,88,88,577/- in the month of March, 2017, which looks exorbitantly high. It was also pointed out that sales from April, 2016 to November, 2016 was only Rs.2,70,43,150/- and out of above most of the sales were reported to be in cash. It was submitted that after demonetization a sudden increase suggests some manipulation in the books of accounts. It was also pointed out that most of the sales after demonetization was made in credit. It was also submitted that as per page no.154 of the paper book submitted by the assessee during April, 2016 to October, 2016 total cash of Rs.1,65,00,000/- was deposited in bank

account and even after depositing such a huge cash in the bank accounts, the assessee was again having opening cash balance of Rs.53,03,376/- as on 08.11.2016 which is not justified and accordingly it was submitted before the Bench that the huge cash balance and sudden increase in credit sales suggests some manipulation in the books of accounts and, therefore, it was requested before the Bench to confirm the order passed by Ld. CIT(A).

7. We have heard the ld. Counsels from both the sides and perused the material available on record including the case laws relied on by both the parties. We find the AO in the instant case made addition of Rs.46,50,000/- u/s.69A on the ground that assessee could not explain properly the source of such huge cash deposits made in the bank account during the demonetization period. It is the case of the assessee that the same was deposited out of sales made which are duly recorded in the books of account. We find the AO disbelieved the submissions made by the assessee on the ground that assessee has manipulated the sales for the month of October, 2016 for artificially inflating the Cash in hand in order to cover up the cash deposits made in the month of

November, 2016. It is the submission of the Ld. Counsel for the assessee that it had paid VAT @20% on Sales and no one will pay such a substantial amount of VAT on artificially enhanced sales. It is also the argument of the ld. counsel for the assessee that the AO has not rejected the books of account. Further, the cash deposited in the bank account has already been recorded in the books of account and therefore no addition is called for u/s.69A of the I.T. Act.

8. We find the assessee in the instant case has installed a machinery costing Rs.13,74,0000/- and started manufacturing scented Tobacco. After installing the machine in the month of November, 2016, the assessee is said to have made a turnover of Rs.6,07,63,321/- in the month of December, 2016, Rs.4,48,24,853/- in the month of January,2017 Rs.4,64,50,365/- in the month of February, 2017 and Rs.4,88,88,577/- in the month of March, 2017. If the assessee has made such huge turnover in the months succeeding the demonetization period, then the onus is on the assessee to substantiate with evidence to the satisfaction of the AO regarding the corresponding purchases made for such Sales by producing cogent evidence to the satisfaction of the AO. The

assessee has to prove from where he has purchased the raw material, the way bills, how it has come to its premises, the manner of payment etc., to prove such huge production and subsequent sale. He has also to prove the sales by giving details of the parties to whom it has sold the goods and the manner of payments received. After the month of March, 2017, it is also not known whether such trend has continued in the subsequent months/years or not or it is only a case of camouflage during the demonetization period to show huge amount of sales to generate cash and deposit in the bank account. In our opinion, neither the assessee has produced the details nor the AO has called for all these details to inquire about the genuineness of such huge turnover after the demonetization period on the basis of a small machine costing Rs.13.74 Lakhs. Considering the totality of the facts, we deem it appropriate to set-aside the order passed by Ld. CIT(A) and remand the mater back to the file of the Assessing Officer to pass assessment order afresh as per facts & law after providing reasonable opportunity of hearing to the assessee so that he can produce relevant documents/evidences in support of his contentions. The assessee is hereby also directed to appear on the

date fixed for hearing without taking any adjournment under any pretext, otherwise Assessing Officer shall be at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 19th day of November, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th November, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.