

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : H : NEW DELHI

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

ITA No.3067/Del/2024  
Assessment Year: 2017-18

Vision Diagnostic India Pvt. Ltd., Vs ACIT,  
A-10, 2<sup>nd</sup> Floor, Circle 26(2),  
Acharya Niketan, Delhi.  
Mayur Vihar Phase-I,  
Delhi – 110 091.

PAN: AABCV9939R

(Appellant)

(Respondent)

Assessee by : Shri Kapil Goel, Advocate  
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 30.10.2024  
Date of Pronouncement : 18.11.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 16.03.2024 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.CIT(A), Delhi-9/10736/2019-20 arising out of the appeal before it

against the order dated 30.12.2019 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 26(2), Delhi (hereinafter referred to as the Ld. AO).

2. The facts of the case are the appellant herein, M/s Vision Diagnostic (India) Private Limited was having ongoing business of import, export, purchase and acquire stock, warehouse, sell and distribute and traders, stockiest, agents, dealers, representatives, commission agents and brokers, distributors of surgical instruments, dressing disposables and other medical, pharmaceutical, surgical, dental, anesthesia, X-ray supplies, drugs and cosmetics, chemicals, sera, detergents and disinfectants, PCR kits, viral load kits, antibodies for immune his to chemistry and other applications.

3. The return of the assessee was picked up for scrutiny under CASS and the AO examined the cash deposits amounting to Rs.38 lakhs in Specified Bank Notes during the demonetization period from 09.11.2016 to 31.12.2016. The assessee had tried to explain the AO that the cash deposits of Rs.38 lakh was majorly from the cash withdrawn from the bank in the month of October and cash in hand already in the books of the assessee. However, the same was not found sufficient explanation and the addition of Rs.13,84,097/- was made on the basis of the reasoning that the reply of the assessee is not found tenable and an amount of Rs.38,00,000 minus Rs.1,864,403 + Rs.5,51,500 (the average closing cash balance for the past six months before October 2016 amounting to

Rs.1,864,403 and the average of cash withdrawn from the bank for last six months before October 2016 amounting to Rs 5,51,500 were allowed) which equals to Rs.13,84,097 is added back to the income of the assessee as unexplained income u/s 68 rw 115BBE of the IT Act, 1961.

4. The assessee's appeal has been dismissed by the CIT(A) with the following findings:-

*"5.1. The main ground of appeal is with regard to addition of Rs. 13,84,097 u/s 68 of the IT Act, 1961 on account of cash deposits made in the bank account. The appellant contended as under:--*

*(i) That the assessing officer erred in making addition u/s 68 of the IT act without reckoning about the applicability of provision Section 68, on astonishing presumption and illogical basis adopted in engineering allegations and creation of addition of Rs 13,84,097/-, where appellant has already offered its entire sales, credited into books of account, as income for taxation, leaving no instance of default, through profit and loss account pertaining to relevant assessment year and cash withdrawn/deposited into bank account represented natural flow of liquid assets in the normal course of appellant business, therefore, same could not have been considered as unexplained income under income from other source, within the meaning of section 68 of IT Act., in complete disregard to settled precedence, is vehemently contended That the entire assessment is based on divergent visions, illogical interpretations, and the most interesting is gross negligence in application of mind and in gross violation of principles of natural justice and fair play without affording proper opportunity to the applicant by issuing Show Cause Notice with clear depiction of additions, for its rebuttal and make presentation thereon about the flabbergasting assumption and illogical basis adopted in creation of addition of Rs. 13,84,097/- while making addition on account of cash deposits without having due regard for cash withdrawals from banks and its proper adjustment in respect thereof, is strongly contended and denied;*

*(ii) That the additions of Rs. 13,84,097/- alleged as cash deposit into bank account during the demonetization period, with an unfounded presumption that this would be the amount of unexplained cash credit into the books of accounts without relevance and on the illogical grounds and erred in determination of tax liability as provision of section 115BBE of the act in respect of business Income which has already been disclosed and found*

*included in return of Income without appreciating that the income/sum credited has already been offered for tax, cannot be deemed to be unexplained/undisclosed income within the meaning of Section 68 of the Act and therefore Section 115BBE is not applicable in this case. Short/insufficient opportunities and chaotic process was intentional to clothe cleans into muddled and is against provisions of law, is unconstitutional, rebutted, denied and strongly contended."*

*5.2. I have gone through the facts of the case, submissions made by the appellant and the findings of the AO. It is gathered that the AO has made addition of Rs. 13,84,097 u/s 68 of the IT Act, 1961, after allowing the average closing cash balance of Rs. 18,64,403/- for the past six months before October 2016 and the average of cash withdrawn amounting to Rs 5,51,500/- from the bank for last six months before October 2016. The explanation of the appellant was not accepted by the AO in toto. However, while completing the assessment, to be fair and reasonable, the AO has accepted the submissions of the appellant with regard to average closing cash balance and average withdrawals made. With regard to the remaining addition of Rs.13,84,097/-, the appellant could not submit offer any cogent explanation to the satisfaction of the AO, Accordingly, the AO is justified in making the addition of Rs. 13,84,097 u/s 68 of the Act.*

*5.3. In this regard, a bare perusal of section 68 shows that where any sum is found credited in the books of an appellant maintained for any previous year, the same may be charged to income tax as income of the appellant of that previous year if,*

*(i) The appellant offers no explanation about the nature and source of such sum, or*

*(ii) The explanation offered by him is in the opinion of the Assessing Officer is not satisfactory.*

*5.4. That in the instant case, appellant has failed to offer any explanation so as to prove the genuineness of said share transactions. Hence, the first limb of section 68 is clearly attracted in this case. The Hon'ble Supreme Court in the case of **Roshan Di Hatti V CIT (1977) 107 ITR 938** and **Kale Khan Mohammad Hanif V. CIT (1963) 50 ITR 1**, held as under:*

*"The law is well-settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source."*

**5.5. Delhi High Court in the case of Commissioner of Income Tax-II Vs. Jan Sampark Advertising & Marketing Pvt. Ltd. 2015- TIOL-600-HC-DEL-IT.** The Hon'ble Court has held that:-

*"Since section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party."*

5.6. In the light of provisions of the section 68 of I.T Act, 1961 and above discussed judicial pronouncements, it is evident that the onus to prove the genuineness of the transaction as well was on the appellant, in case of cash credit in its books of accounts. It is to be reiterated that in the present case appellanthas failed to prove the genuineness of the transaction. Thus, in view of the totality of the facts of the case, addition of Rs.13,84,097/- as unexplained cash credit u/s 68 of the LT. Act. 1961 is confirmed and the grounds of appeal are dismissed.

5.7. In the grounds of appeal, with regard to charging of interest u/s 234B and 234C of the Act, the appellant has taken the ground as under

*"That the Assessing Officer also erred in charging interest u/s 234B and 234C of the Act while determining demand payable by the Appellant without appreciating that since the Appellant could not be held liable for the payment of advance tax for the amount under reference, no interest u/s 234B and 234C could be charged particularly for the reason that special rate of tax has been provided under the Act and in any case charging the interest and also initiation of penalty u/s 270A, without recording proper satisfaction in this regard is illegal and unjustified and also resulted in demand, being more than the amount of additions made."*

*It is pertinent to mention here that charging of interest u/s 234B and 234C of the Act and also initiation of penalty u/s 270A or consequential in nature and thus do not require any adjudication."*

5. The assessee is in appeal raising various grounds questioning assumption of jurisdiction and on merits. However, at time of arguments ld. AR has argued on merits alone on following grounds;

*GROUND ON MERITS: ARBITRARY AND NON-APPLICATION OF MIND ON PART OF LD AO AND LD CIT-A*

*4. That impugned assessment order passed u/s 143(3) of 1961 Act (dated 30.12.2019) and further impugned first appeal order passed u/s 250 of 1961 Act (dated 16.03.2024) are both totally invalid and unlawful in so far as the impugned sole addition made u/s 68/115BBE amounting to Rs.13,84,097 is concerned which is arbitrarily and perversely sustained by Ld' CITA.*

*4.1 That impugned assessment order passed u/s 143(3) of 1961 Act (dated 30.12.2019) and further impugned first appeal order passed u/s 250 of 1961 Act (dated 16.03.2024) are both totally invalid and unlawful in so far as the impugned sole addition made u/s 68/115BBE amounting to Rs 13,84,097 is concerned as never sec 145(3) is pressed (rejection of audited books) qua subject ad-hoc addition u/s 68 of IT ACT, sans which entire exercise of making addition u/s 68 fails and falls;*

6. Heard and perused the record.

7. Although ld. DR has vehemently defended the orders of Ld. Tax Authorities below, but what we find is that in respect to questionnaire, raised by the ld. AO, specifically pointing out and seeking details "Related to Cash Deposit" assessee company had submitted vide its submissions dated 08/12/2019, as made available at page no. 47 to 52 of the PB, that the assessee company has deposited 3800 SBNs of denomination 1,000 amounting to Rs. 38 Lacs during demonetization period out of cash withdrawal for meeting cash expenses, being cash in hand at the date of deposit. Excess cash in the denominations of withdrawn currency were deposited in Bank during

Demonetization period. In regard to source and documentary evidence thereof, cash book for the period from 9th November 2016 to 30<sup>th</sup> December 2016 along with copy of bank statement for the said demonetization period, were provided to the ld AO. It comes up that assessee had impressed on the ld. AO of the fact that total income of assessee in FY 2016-1 was Rs.1,68,69,652.00, as per Income Tax Return for the assessment year relevant to financial year 2016-17 and the nature of business required frequent cash withdrawals.

8. The ld. AO has been unable to dispute the claim of assessee that there was nothing abnormal in the cash flow of the assessee company as compared to previous financial year as percentage of cash deposit to Gross Total Income, for the FY 2016- 17 during the period from 9<sup>th</sup> Nov 2016 to 30<sup>th</sup> Nov 2016, stood at 22.53% i.e. (Rs.38,00,000/1,68,69,652%) and that Percentage of cash deposit to Gross Total Income, for the FY 2015-16 during the period from 9<sup>th</sup> Nov 2015 to 30<sup>th</sup> Nov 2015, stood at 18.57% i.e. (₹20,00,000/1,07,71,870%).

9. We find that Ld. AO has not at all disturbed this income calculation on the basis of cash sales or purchases, stock or inventory as reflected in the financials. All these necessary details were provided to the ld. AO including the VAT returns.

10. Then we find that Ld. AO has not examined the business structure and peculiarity or circumstances of the assessee to say that there was no possibility of assessee company did not need cash withdrawals or deposits as due to nature

of business as it was the case of assessee that Assessee withdraws cash as per monthly sale targets achieved and since the total turnover of the Assessee company during the financial year 2015-16 was Rs.21.14 Crores whereas the Turnover secured during the Financial Year 2016-17 has been Rs.37.67 Crores, approximately 78% higher than the previous year, so cash withdrawal were higher.

11. In the light of the aforesaid, if we consider the orders of the ld. tax authorities below, we find that instead of examining the facts and circumstances leading to the cash withdrawal and deposits explained by the assessee in a very cursory manner and on ad-hocism, which has no place in law, the addition was made by the ld. AO on the basis of average closing cash balance for the last six months before October, 2016 and average of cash withdrawn from the bank for the last six months before October, 2016. There appears to be a very casual approach of the ld. First Appellate Authority also as in para 5.4 the ld. First Appellate Authority mentions that “appellant has failed to offer any explanation so as to prove the genuineness of **said share transactions.**” Thus, it appears that the ld. First Appellate Authority has erred in not appreciating the explanation offered by the assessee for the purpose of section 68 of the Act. It is unjust to make an addition u/s 68 of the Act on the basis of allegation of abnormal withdrawals of cash from the bank account when the purpose of section 68 is to examine the genuineness of any sum found credited in the books

of an assessee. Thus, we are not inclined to sustain the orders of the ld. tax authorities below. The grounds pressed being grounds No.4 and 4.1 on merits deserves to be sustained and as a sequel of the same, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.11.2024.

Sd/-

(BRAJESH KUMAR SINGH)  
ACCOUNTANT MEMBER

Dated: 18<sup>th</sup> November, 2024.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi