

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 2593/Mum/2023
Assessment Year 2017-18

DCIT-15(1)(2), Aayakar Bhavan, M.K. Road, Mumbai.	vs.	Nikita Jewellers Pvt. Ltd., Shop No. 8 and 9, Grain Merchants Co-Op. Hsg. Soc. Ltd., Sector-17, Vashi, Navi Mumbai PAN : AABCN1602K
(Appellant)		(Respondent)

For Assessee :	Shri Vipul Joshi
For Revenue :	Shri S. Srinivasu, CIT-DR

Date of Hearing :	21-08-2024
Date of Pronouncement :	14-11-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dt. 23-05-2023 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi and it relates to the Assessment Year (AY.)2017-18. The Revenue is aggrieved by the decision of the Ld.CIT(A) in deleting the addition of Rs.16.74 crores relating to cash deposits made into the bank accounts of the assessee during the period of demonetization.

2. The facts relating to the case are stated in brief. The assessee runs two jewellery shops in Vashi. It filed its return of income for the year under consideration declaring a total income of Rs.4.49 crores. During the scrutiny proceedings, it was noticed that the assessee has deposited cash into its bank accounts maintained with Punjab National Bank and YES Bank in old demonetized currency notes aggregating to Rs.16.74 crores. Hence, the AO asked the assessee about the sources of the same. The AO also issued summons to one of the Directors, Shri Suresh D. Baghreacha and recorded a statement on oath from him. The Director as well as the assessee explained that the above said cash deposits have been made out of cash balance available in the Books of Account, which was generated out of cash sales made during the period of demonetization to various customers. The AO noticed that the assessee has made the majority of sales in cash after announcement of demonetization by Govt. of India, which was un-usual. The AO further noticed that the assessee was also not able to furnish the details of buyers of jewellery.

2.1. Accordingly, the AO took the view that the assessee has failed to discharge its onus placed upon it u/s. 68 of the Act by not proving identity and creditworthiness of buyers and genuineness of the transactions. Accordingly, by placing reliance on the decision rendered by the Hon'ble Supreme Court in the case of CIT vs. P. Mohanakala [2007] (291 ITR 278) and Vijay Kumar Talwar vs. CIT [2011] (330 ITR 1), the AO took the view that the assessee has failed to prove the genuineness of the transactions. The AO also placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of Sumati Dayal 1995 AIR 2109 and held that the claim of cash sales is beyond the scope of human probability. Accordingly, he assessed the entire cash deposit of Rs. 16.7 crores as un-explained income of the assessee u/s. 68 of the Act.

3. In the appellate proceedings, the Ld.CIT(A) deleted the addition and hence, the Revenue has filed this appeal.

4. We heard the parties and perused the record. We notice that the assessee has recorded the cash sales in its Books of Account and the said sales have not been doubted by the AO. Further, the entire sales have been reported to VAT authorities also and the total income of the assessee for the year under consideration has also been computed after taking into account the cash sales made during demonetization period. We notice that the assessee has also furnished a copy of cash book, sales register with periodic break-up, purchase register with periodic break-up, stock register along with quantity details, VAT returns and challans. All these documents would show that the assessee was having enough stock of jewellery and they were sold in cash during the period of demonetization. We notice that the AO did not find fault with any of the above said records/documents.

4.1. When the assessee has furnished all the evidences to prove the cash sales, in our view, the AO was not justified in holding that the assessee has not proved the genuineness of the sales. The Ld A.R submitted that majority of sales bills were for a value of less than Rs.2.00 lakhs and hence there was no requirement for the assessee to keep record of details of buyers. When the cash has been generated out of cash sales, which were in turn was on account of sale of available stock of jewellery, in our view, the AO was not justified in invoking the provisions of sec.68 of the Act to the cash sales recorded by the assessee. Hence, we are of the view that various case laws relied upon by the AO are not applicable to the facts of the present case.

4.2. We notice that the Ld.CIT(A) has relied on the following decisions in deciding this issue in favour of the assessee:

- a. ACIT vs. Hirapanna Jewellers (ITA No. 253/Viz/2020);
- b. Lakshmi Rice Mills vs. CIT[1974] (97 ITR 258 (Pat.));

c. Kailash Jewellery House – Hon'ble Delhi High Court
[ITA No. 613/2010];

4.3. For the sake of convenience, we extract below the decision rendered by the Ld.CIT(A):-

“5.1 I have gone through the submission of appellant and the Order of Learned Assessing Officer. The ground of appeal pertains to carrying out addition u/s 68 (i.e. unexplained cash credits) in the event of depositing cash in the bank account during demonetization for sum of Rs. 16,74,56,383/-.

The contentions of the appellant are evaluated and adjudicated as under.

5.1.1 The Appellant is engaged in the business of wholesale and retail trading of gold bar, ornaments, silver jewellery, diamond studded jewellery.

5.1.2 During demonetization period the appellant had deposited cash for sum of Rs. 16,74,56,383/-. The learned Assessing Officer questioned the source of such cash along with genuineness claim made by appellant.

5.1.3 In this regard the appellant submitted that there was Surge in the customers post announcement of demonetisation news to buy silver and gold from his shop. Many customers placed deposits against future delivery of gold and silver. Such deposits were duly accounted and treated as turnover in books of accounts and accordingly VAT & income taxes were also paid thereto. In future date such cash was deposited into multiple bank accounts.

5.1.4 The appellant submitted following documents before Assessing Officer.

- Copy of cash book*
- Bank statement*
- Sales register with periodic breakup*
- Purchase register with periodic breakup.*
- Stock register with periodic breakup and with quantitative details*
- MVAT returns and challans*

5.1.5 The Apparent could submit stock statement to substantiate that it had actually sold gold, silver, diamond and platinum jewellery to its customer. The assessing officer has not mentioned any anomaly in his order regarding same. On the contrary the learned Assessing Officer disregarded contention of appellant by stating that the appellant could

not submit details of customers to whom notice u/s 133(6) could be issued to test the genuineness of appellant's claim. Thus the learned Assessing Officer treated such cash deposit as unexplained u/s 68.

5.1.6 Provision of section 68 is reproduced here under:

"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..."

In order to invoke section 68, the most essential aspect is that the tax payer do not offer any explanation towards source and nature of such cash credit. In the underline case the appellant has very well explain the source i.e. Sales proceed from the business.

Further the learned Assessing Officer had also not objected on the stock register, cash book, purchase register of the appellant. It has not disputed that movement of stock is directly linked to the purchase and the sales. In absence of any such adverse finding of learned Assessing Officer on contention of appellant, the cash deposited shall not be treated as unexplained cash credit.

5.1.7 In this regard, reliance can be placed on following judicial pronouncements:

ACIT VS Hirapanna Jewellers [ITA No.253/Viz/2020] - Vishakhapatnam

"..In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the Assessing Officer did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc..."

Further in case of In the case of Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Pat.) Hon'ble Patna High court held as under:

"It is, in my view, a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not

genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law."

In case of CIT VS KAILASH JEWELLERY HOUSE, Hon'ble Delhi HC [ITA613/2010] upheld finding of CIT(A) and ITAT that once the amount was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return, the same could not be treated as undisclosed income and no addition could be made once again in respect of the same.

5.1.8 Having regards to judicial pronouncements of honourable courts and facts of the appellant case, I am of the considerate view that the cash deposited once treated as turnover, the same shall not be considered unexplained cash credit. It would lead to unjustified addition to the appellant's case. Therefore, the addition proposed by learned Assessing Officer for sum of Rs. 16,74,56,383/- u/s 68 (i.e. unexplained cash credit) is deleted."

4.4. Before us, the Revenue could not furnish any other material to contradict the decision rendered by the Ld.CIT(A). Under these set of facts, we do not find any infirmity in the order passed by the Ld.CIT(A).

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 14-11-2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 14-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai