

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

	ITA NO. 1465/Del/2024		
	A.YR. : 2017-18		
KAMLESH KAMPANI, C/O KAPIL GOEL, F-26/124, SECTOR-7, ROHINI, DELHI – 110 085 (PAN: BPGPK1921J)	VS.	ITO, WARD 50(1), CIVIC CENTRE, MINTO ROAD, NEW DELHI – 2	
(APPELLANT)		(RESPONDENT)	

Appellant by : Shri Kapil Goel, Adv.  
Respondent by : Shri Sanjay Kumar, Sr. DR.

Date of hearing : 12.11.2024  
Date of pronouncement : 21.11.2024

**ORDER**

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 31.01.2024, relating to assessment year 2017-18 on the following grounds:-

1. On the facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming the addition of Rs. 44,50,000/- made u/s. 69A dismissing appeal of the assessee and sustaining order of AO is totally arbitrary, unlawful and contrary to mandate of 1961 Act without appreciating the facts and circumstances of the case;

2. On the facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming the invocation of 69A in addition of Rs. 44,50,000/- for cash deposit which are duly disclosed and recorded in books.
3. On the facts and circumstances of the case and in laws the NFAC / CIT(A) erred in confirming the addition of Rs. 44,50,000/- made by AO in discarding disclosed cash sales forming part of cash in handout of books without rejecting such audited books of accounts and following the mandate of law;
4. On the facts and circumstance of the case and in law the NFAC/CIT(A) erred in confirming addition of Rs. 44,50,000/- on mere surmises and conjectures without appreciating the correct facts of the case;
5. That provision of section 115BBE of 1961 are arbitrarily invoked qua stated cash deposits;
6. That impugned order of passed u/s. 250 by NFAC / CIT(A), dismissing appeal of assessee and sustaining of order of AO are totally illegal, unlawful and contrary to mandate of 1961 Act for fatal infraction of binding CBDT instruction no. 20/2015 dated 29.12.2015 for want of valid show cause notice being issued;
7. That impugned order passed u/s. 250 by NFAC/CIT(A) dismissing appeal of the assessee and sustaining order of AO are totally illegal as passed in violation of principles of natural justice as no books of accounts were examined by AO.

2. The brief facts of the case are that assessee is an individual and was engaged in the business of trading of cloth/fabrics/textiles. The assessee filed his return of income for AY 2017-18 on 03/11/2017 declaring total income of Rs. 4,30,970/-. The case of the assessee was selected for scrutiny through CASS and notices u/s 143(2)/142(1) of the Act were issued time to time

calling for various information. On perusal of the Income Tax Return and bank statement of the assessee, the AO observed the assessee had made cash deposits amounting to Rs. 44,50,000/- in his bank account maintained with Axis bank Ltd during demonetization period (09/11/2016 to 30/12/2016). The AO also noted that the submission given by the assessee was not appeared to be genuine to prove that such huge cash in hand was available as on 08/11/2016. The AO further noted that no cash withdrawals were reflected up to 08/11/2016. Subsequently, the AO completed the assessment u/s. 143(3) of the Act based on the evidences available on record by making an addition of Rs. 44,50,000/- on account of unexplained money u/s 69A of the Act. Aggrieved by the order of the AO, the assessee appealed before the Ld. CIT(A). Upon assessee's appeal, Ld. CIT(A) confirmed the AO's action.

3. Against the Ld. CIT(A)'s order, assessee is in appeal before me.

4. Ld. counsel for the assessee submitted that Ld. CIT(A) erred in confirming the invocation of 69A in addition of Rs. 44,50,000/- for cash deposit which are duly disclosed and recorded in books and discarded disclosed cash sales forming part of cash in handout of books without rejecting such audited books of accounts, which is based on surmises and conjectures and without appreciating the correct facts of the case. To support his aforesaid contention, he relied upon the following case laws:-

- i) Delhi High Court in CIT vs Kailash Jewellery House ITA No.613/2010 dated 09.04.2010
- ii) Delhi High Court in PCIT vs Agson Global Pvt Ltd (2022) 441 ITR 550 (Del)
- iii) Decision of ITAT Delhi decision in Rama Hygienic Products Pvt Ltd in ITA No.1455/Del/2021 order dated 27.09.2023; and
- iv) Decision of ITAT Delhi in the case of S Balaji Mech Pvt Ltd in ITA No.556/Del/2024

5. Per contra, Ld. DR relied upon the order of the Ld. CIT(A).

6. I have heard both the parties and perused the records. I find that AO has passed the assessment order u/s 143(3) with income of Rs.48,80,970/- (with addition of Rs 44,50,000/- u/s 69A in returned income of Rs.4,30,970/-). In appeal, assessee's appeal was dismissed after confirming the order passed by the AO for making additions of Rs.44,50,000/- (100% of cash deposited during demonetization of Rs.44,50,000/-) being sourced from recorded cash sales in defect free audited books of accounts. I further note that addition of Rs.44,50,000/- was explained before AO in assessment as part of cash sales as per cash book and cash summary flow chart, which is made without rejecting the trading results of the assessee. I further find that cash flow statement placed at page nos. 60 – 62 of APB and copy of cash book placed at Page nos. 63-96 of APB is merely rejected by AO is without bringing on record any material evidence to show any other utilization of such cash available in hands of assessee. I further note that both the revenue authorities have accepted the books of accounts, book results could not be disturbed once it is admitted that cash sales are recorded in books and forming part of turnover of the business. I further find considerable cogency in the contention of the Ld. AR that AO has wrongly invoked the section 69A on disclosed cash sales proceeds in disclosed bank account i.e Axis Bank account which cannot be applied to disclosed bank accounts. The books have not been rejected and no defect has been pointed out by the revenue authorities. In these circumstances, in my considered opinion, the adverse inference drawn for on disclosed cash sales proceeds has no basis of any sound footing. To support my aforesaid view, I draw support from the decision of the Coordinate Bench in the case of S. Balaji Mech-Tech Private Limited vs. ITO passed in ITA No. 556/Del/2024 (AY 2017-18) wherein vide order dated 25.09.2024, the Coordinate bench has held as under:-

*“...21. Respectfully, following the above decisions, we are inclined to allow the grounds raised by the assessee with the*

*observation that AO/CIT(A) cannot invoke the provisions of section 68 or 69A when the assessee is already declared the source for cash deposits in the books of accounts and the lower authorities without their being any material to support on their contrary view, the provisions of section 68 or 69A cannot be invoked.*

22. *In the result, appeal filed by the assessee is allowed.”*

7. In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, I direct to delete the addition in dispute and allow the grounds raised by the assessee.

8. In the result, the Assessee’s appeal is allowed.

Order pronounced on 21/11/2024.

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

SR Bhatnagar

**Copy forwarded to:-**

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

Assistant Registrar