

**IN THE INCOME-TAX APPELLATE TRIBUNAL “G” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

ITA No.1095/M/2024

Assessment Year: 2017-18

Shobha Prakash Shetty F-303, Green Wood Co-op Hsg, Andheri Kurla Road, Chakala, Andheri East,Mumbai - 400094 PAN: AMQPS3688C	Vs.	Assistant Commissioner of Income Tax, Circle 25(1), Mumbai 202, 2nd Floor, Kautilya Bhavan, C- 41-43, G Block, Bandra Kurla Complex, Bandra(E) Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Devendra Jain, Advocate
Revenue by : Shri Bhangepatil P. Ramesh, Sr.DR
Date of Hearing : 29.10.2024
Date of Pronouncement : 22.11.2024

ORDER

Per : Prabhash Shankar, Accountant Member:

The present appeal has been filed by the assessee, which arises from the appellate order passed by the Ld. Commissioner of Income Tax(Appeal)-51,Mumbai,(henceforth ‘CIT(A)’) with regard to the assessment order dated 16/12/2019 passed under section 143(3) of the Income Tax Act 1961, (in short ‘the Act’) for the A.Y. 2017-18 by the Ld.ACIT,Circle-25(1),Mumbai.

The Assessee has raised following ground of appeal :

“1. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the additions of Rs.29,15,468/- made by the Ld. AO u/s. 68 of the Act. Your appellant, therefore, prays that the aforesaid addition of Rs.29,15,468/- be deleted.”



2. Facts of the case are that the AO found that the assessee had deposited cash of Rs. 92,24,000/- between 09.11.2016 to 30.12.2016 in her bank account with Vijaya Bank during the demonetization period. A survey u/s. 133A of the Act was conducted in this case on 29.03.2017 and during the survey, it was found that the appellant had deposited an amount of Rs. 44,05,000/- in old demonetized currency, out of which an amount of Rs. 15,50,000/- had been declared by the appellant in PMGKY 2016 scheme and balance old currency amounting to Rs. 29,15,468/- was claimed to be deposited out of the cash in hand as on 08.11.2016. The AO further found that while the assessee claimed during survey that the source of this was from cash in hand, the opening cash in hand for FY 2016-17 was Rs. 23,876/- only. She failed to submit entire cash book for the year during the Survey and as per the survey report, the cash book was not maintained by her. The cash trail submitted by her at the time of the survey did not include the cash expenses incurred. The assessee also did not submit the source of month-wise cash receipts along with documentary evidences. According to the AO, the cash book submitted at the time to assessment was a post facto thought and was held to be fabricated. He observed that on analysis of the cash deposited in the month of November, 2016, when old denominations were deposited in Vijaya bank by the assessee, it could be seen that cash was deposited 18 times from amounts ranging from Rs. 30,000/- to Rs. 4,95,000/-. Therefore the argument of the assessee that the amount which was deposited was cash in hand on 8th November was not acceptable, because if the same was true then there would have been no point of making so many cash deposit transactions in the bank. The assessee in her response to the show-cause notice dated 04.12.2019 tried to justify the source of deposit for Rs. 29.15 lacs, whereas the actual cash deposited was Rs. 44.05 lacs. The argument of the assessee was that she always kept significant cash in hand to meet expenses, and for other contingencies, but the cash in hand on



1st April, 2016 didn't support her arguments. She failed to provide the entire cash book during survey or during survey proceedings. Therefore, the cash book being produced during scrutiny proceedings has been fabricated to match the figures being claimed by the assessee to justify the cash deposited during demonetization period. The cash trail being produced now could not be accepted, as they have been manipulated to match the figures of the cash book being presented. If there was no record of the cash expenses on 29.03.2017 (i.e. during the survey and survey proceedings), then the figures being produced presently could not be relied upon. It clearly reflected that the cash book had been manipulated, and therefore the cash book could not be accepted. He went to state that during the survey proceedings, the assessee failed to submit the source of month wise cash receipts with documentary evidences, and in the absence of reconciled cash sales, purchase and stock registers, determining the opening cash on hand could not be relied upon, and therefore they can be fabricated, which has been done by the assessee in this case. The most important point to be taken note of is that if all the books which have been produced during the scrutiny proceedings were regularly maintained and updated, then why were they not produced during survey proceedings. This clearly implied that the cash book being presented now had been made as afterthought due to the survey, and therefore it has been fabricated and therefore could not be accepted. Therefore, the AO did not accept the submission made by the appellant and the source and genuineness of the cash deposited amounting to Rs.29,15,468/- was held to be unexplained which was added to the total income u/s 68 of the Act. The Ld.CIT(A) upheld the addition made relying on the contents of the assessment order.

3. Before us, the learned AR has vehemently argued against the observations and conclusions drawn by both the lower authorities. He has also referred to the detailed submissions made before the Ld.CIT(A). It is submitted that while



the cash book could not be produced at the time of the Survey, it was presented during the assessment proceedings. According to the assessee, the cash was deposited out of the cash balance as on 08.11.2016 i.e. the eve of demonetization. Since the survey was conducted in the month of March 2017, the books of accounts had not been finalised at that time. He argued that the cash deposits had been duly accounted for in the books of accounts and hence the addition made be deleted. It is submitted that the assessee merely admitted that approximately Rs 35 lakh was deposited in old notes and had accordingly disclosed Rs 15 lakh under PMGKY. The said deposits were stated to be out of cash in hand and small cash sales by staff. She could not reconcile the source of deposit during survey and surrendered a part of it. It was stated that the assessee was engaged in retails sale of liquor mostly in cash or card swipe. Books of account were not stated to be updated. **She has referred to the reply dated 7.12.2019 as made to the AO in para g)** as made before the AO. Drawing attention to cash sales vis-a-vis cash sales and percentage thereof.

Sr. No.	Financial Year	Annual Sales as per audited accounts (in crores)	Cash deposited in the Bank Account (in crores)	% of Cash Deposits to total Sales
1	2014-15	7.04	6.79	96.44
2	2015-16	7.44	7.07	95.02
3	2016-17	8.44	6.74	79.85

3.1 It was claimed that cash deposits in fact reduced to the proportion of annual sales in 2016-17 as compared to earlier years. This was primarily on account of demonetization effect as lot of transactions were executed digitally. The cash deposit level was a normal phenomenon in the business. In **para (h)** it was submitted that she being a widow, in order to manage the business with her sons had a policy of depositing only that much of cash which was required for making payments and for urgent needs. She used to keep certain amount of



cash with herself for purchase of urgent requirement of stock only. It is further submitted by the Ld. AR that both the authorities failed to take due note of detailed reply as also evinces submitted by it before them. The assessee had also opted partly under PMGK which was also not appreciated correctly. Nature of the business being a dealer in liquor, its major part of receipts are in cash and there was appreciable change in the ratio of cash sales vis-à-vis gross sale in comparison to past years also. In **para (i)**, it was submitted that cash had accumulated with her and subsequent to demonetization order was deposited in bank. In **para (j)** it was stated that as per one seized document during survey, there was one cash summary which showed closing cash balance of Rs 29,15,468/- on 8.11.2016. Since no adverse view was taken of it, veracity was never doubted. Evidently, the survey party had prima facie accepted this cash balance. It is further submitted in other paras of the said reply that cash book was not updated which did not imply non-maintenance of books of account. There was no question of any manipulation of books of account later. Proper books of account were duly maintained by the concern duly audited by Chartered Accountant. Moreover, the amount could not be treated as unexplained u/s 68 as it reflects sale proceeds only and could not be considered unexplained cash credit.

4. On careful consideration of all the facts and the circumstances of the case, We find that the AO was not justified in rejecting the cash book produced before him as fabricated and unreliable without pointing any specific defect therein. He has completely overlooked the comparative figures of sales vis-à-vis cash sales as also the percentage of cash sales going down during the year. There appears no abrupt jump in the quantum of cash sales during the year under consideration. The reasons for keeping sufficient cash in hand by a widow lady running a retail liquor business cannot be brushed aside without any cogent reason. Moreover, the assessee was fair enough to disclose almost



50% of the impugned sum under PMGKY rather than squabbling over it also. The amount of cash kept at home which is also to be evident from one seized paper during survey could not be considered unreasonable considering the nature of business. It is also not disputed that the accounts of the assessee have been consistently audited by qualified Chartered Accountant over the years. Besides, there being no other evidence of any other undisclosed source of income, the cash deposits were evidently business receipts which could not be considered as unexplained cash credit liable to be added u/s 68 of the Act. In view of the above discussion, we have no hesitation in concluding that the impugned amount was incorrectly added to the income without appreciation of all relevant facts of the case and the Ld. CIT(A) was not justified in upholding the addition. The addition made is, therefore, deleted.

In the result, the appeal of the assessee is **allowed**.

Order pronounced in the open court on 22.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 22.11.2024

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.



3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

