

आयकर अपीलिय अधिकरण  
दिल्ली पीठ "एसएमसी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.1520/दिल्ली/2024 (नि.व. 2017-18)

ITA No.1520/DEL/2024 (A.Y.2017-18)

Viyona Sales And Marketing P. Ltd.,  
H-35, 1<sup>st</sup> Floor, Jangpura Extension,  
New Delhi 110014

PAN: AAECV-7844-C

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward 26(3),  
C.R Building, ITO, I.P Estate, New Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Rajeev Saxena, Dishant Sethi &  
Ms. Sumangla Saxena, Advocates

प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal , Sr. DR

सुनवाई की तिथि/ Date of hearing : 10/09/2024

घोषणा की तिथि/ Date of pronouncement: : 28/11/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 08.02.2024, for assessment year 2017-18.

2. The solitary issue in appeal by the assessee is against addition of Rs.43,45,000/- u/s. 68 of Income Tax Act, 1961(hereinafter referred to as 'the

Act') on account of cash deposits in the bank account during the period of demonetization.

3. Shri Rajeev Saxena, appearing on behalf of the assessee submits that the Assessing Officer (AO) and the CIT(A) have erred in making/confirming addition of Rs.43,45,000/- on account of cash deposits during demonetization period. The Id. Counsel referring to Statement of Profit & Loss Account for the year ended 31.03.2017 at page 163 of the paper book submitted that the assessee had Revenue from operations to the tune of Rs.68,92,41,902/- during relevant period. The percentage of cash deposited in the impugned assessment year is only 0.78% of total sales, whereas, in the preceding assessment year it was 1.14%. The AO has disbelieved the contention of the assessee that cash deposits in the bank are from cash sales of the assessee. The AO further erred in not considering the fact that apart from cash deposits during demonetization period, the assessee had deposited cash of Rs.1,30,000/- from April 2016 till October 2016. The assessee has no other business except sale of cloth. The assessee had furnished all the relevant documents including Audited Balance sheet and P&L Account for the Financial Year ended 31.03.2017, cash book, ledger account, month wise cash sales, stock register, party wise details of purchases, party wise sales and purchases list, etc. The AO failed to take note of total sales turnover reflected in Audited Books of Accounts and instead insisted for VAT returns. The assessee is trading in cloth, cloth is not subject to VAT/GST provisions.

4. Ms. Shivani Bansal, representing the department vehemently defended the assessment order and prayed for dismissing appeal of the assessee. The Id. DR

pointed that despite repeated notices, the assessee failed to appear before the CIT(A). Hence, the CIT(A) was constrained to pass impugned order in ex-parte proceedings. She further referred to para 7 of the assessment order to contend that the AO had not fully accepted books of the assessee.

5. Both sides heard and orders of the authorities below examined. The solitary issue raised by assessee in appeal is against addition of Rs.43,45,000/- u/s. 68 r.w.s 115BBE of the Act, in respect of cash deposits in bank account of the assessee during the period of demonetization.

6. During assessment proceedings, the assessee in response to notice issued u/s. 142(1) of the Act had *inter alia* furnished audited financials for the year ended 31.03.2017 before the AO. A perusal of Profit & Loss Account for the year ended 31.03.2017 reflect revenue from operations amounting to Rs.68,92,41,902/-. The assessee is not having revenue from any other business except sale of cloth. The assessee has placed on record tabulated details of month wise cash sales during Financial Year 2015-16 and 2016-17 at pages 148 and 260, respectively. For the sake of ready reference month wise cash sales and total sales for Financial Year 2015-16 (AY 2016-17) and 2016-17 (AY 2017-18) are reproduced herein below:-

AY 2016-17 (FY 2015-16)

MONTH	CASH SALE	SALE
APRIL	3,404,262.45	71,716,691.75
MAY	2,341,523.00	49,211,239.49
JUNE	1,721,329.00	45,668,557.32
JULY	2,466,753.60	105,451,442.53
AUGUST	1,035,391.40	101,782,720.98

SEPTEMBER	296,708.00	83,338,277.94
OCTOBER	301,616.80	29,394,889.32
NOVEMBER	181,138.00	65,686,372.00
DECEMBER	555,427.20	57,131,350.36
JANUARY	302,930.90	116,098,578.97
FEBRUARY	38,283.75	102,098,267.27
MARCH	154,037.45	80,479,956.50
TOTAL	12,799,401.55	908,058,344.43

## AY 2017-18 (FY 2016-17)

MOTNTH	CASH SALE	SALE
APRIL	636,104.80	109,449,863.39
MAY	388,004.92	89,004,388.69
JUNE	768,956.94	58,316,008.91
JULY	583,668.43	66,336,320.25
AUGUST	481,506.35	61,333,890.70
SEPTEMBER	733,136.08	26,801,848.53
OCTOBER	840,112.55	41,129,212.13
NOVEMBER		34,534,246.49
DECEMBER	14,650.00	42,474,887.46
JANUARY	165,060.00	81,083,986.25
FEBRUARY	484,538.00	50,374,140.00
MARCH	323,640.00	28,403,109.70
TOTAL	5,419,378.07	689,241,902.50

7. The cash sales during the period relevant to assessment year under appeal are less than 1% of total turnover. One of the reasons for rejecting assessee's explanation by the AO is that the assessee failed to substantiate sales through VAT/GST returns for the relevant period. The Counsel for the assessee had made a statement at Bar that sale of cloth is not subject to VAT/GST provisions, hence, the assessee was not required to file any return under VAT or GST. The said statement remained un rebutted by the Department. If the assessee does not fall

within the ambit of VAT/GST provisions, by no means the assessee could have furnished GST returns to substantiate sale of cloth.

8. Taking into consideration entire facts of the case, including month wise cash sales submitted by the assessee and considering the fact that cash sales are only 1% of the total turnover, I find the explanation given by the assessee for cash deposits in the bank, plausible. It is further observed from the table giving total sales and cash sales (reproduced above) show that cash sales are evenly spread out during the year and it is not that the cash sales are during demonetization period only. The Assessing Officer in the assessment order has given analysis of month wise cash sales and cash deposits from 01.04.2016 to 08.11.2016. A perusal of the said table reflects that the assessee is having cash balance of Rs.43,95,536/- from cash sales from 01.04.2016 till 08.11.2016. During the aforesaid period the assessee had deposited cash of Rs.1,30,000/-. Cash of Rs.43,45,000/- was deposited during the demonetization period. The assessee has been able to demonstrate that the cash deposits in the bank are from cash sales and cash in hand. The AO has raised doubt over reliability of the books of accounts of the assessee. However, no reason has been given by the assessee to raise such suspicion. The Books of Accounts of assessee are subject to Audit. The books of assessee cannot be rejected by the AO merely on suspicion unless the Assessing Officer is able to show defect in the books. No specific defect has been pointed by the AO, therefore, there is no reason to suspect reliability of books of the assessee. In absence of any contrary material, explanation furnished by the assessee for cash deposits during Financial Year 2016-17 is accepted.

9. In the result, impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Thursday the 28<sup>th</sup> day of November, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 28/11/2024

**NV/-**

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI