

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

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

ITA No.1550/Del/2022
Assessment Year: 2017-18

DCIT,
Central Circle-01,
New Delhi.

Vs Manuvel Mezhukanal,
209-10, Mohan Singh Place,
INA Market,
New Delhi.

PAN: ABLPV5671Q

(Appellant)

(Respondent)

Assessee by : Shri Gautam Jain, Advocate &
Shri Parth Singhal, Advocate
Revenue by : Shri Krishna K. Ramawat, Sr. DR
Date of Hearing : 19.11.2024
Date of Pronouncement : 05.12.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the revenue against the order dated 31.01.2022 of the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.10504/2019-20 arising out of the appeal before it against the order dated 27.12.2019 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 53(1), Delhi, (hereinafter referred to as the Ld. AO).

2. Heard and perused the grounds. The revenue has filed this appeal raising following grounds;

“1. The order of Ld. CIT(A) is not correct in law and facts.

2. That on the facts and circumstances of the case, Ld. CIT(A) has erred in deleting addition of Rs.3,10,47,499/- made by AO on account of unexplained cash credit u/s 68 r.w.s 115BBE of the Income Tax Act, 1961.

3. That on the facts and circumstances of the case, Ld. CIT(A) has erred in allowing appeal of the assessee relying on decision of the ITAT, Vishakhapatnam in the case of Hirapanna Jewellers (128 Taxmann.com 291) without appreciating that relied case is distinguishable from the case of the present assessee as in that case, the revenue had not disputed the disclosed cash sale and added the sale proceeds as unexplained cash credit besides taxing the cash sales recorded, whereas in this case the AO has not accepted the transaction of cash sale and has in fact not taxed any profit on sale.

4. That on the facts and circumstances of the case, Ld. CIT (A) has erred in deleting addition when the CIT(A) himself observed that customer came to shop with a mindset to buy jewellery or gold and to get rid of SBNs which will become illegal after midnight and the assessee failed to provide complete details of customers who bought the jewellery during the assessment proceedings.

5. That on the facts and circumstances of the case, Ld. CIT(A) has erred in deleting the addition holding that no mistakes in the stock ledger or stock movement were pointed out by AO without appreciating that the AO in the assessment order pointed out the defects in books of account of the assessee.

6. The Learned CIT(A) erred in holding that non supply of list of customers who bought jewellery for less than Rs. 2 Lakhs cannot be held against the assessee, as in absence of this information, the assessee's claim that each sale was less than Rs. 2 Lacs remains unverified and the assessee has failed to comply with the provisions of sec 269 ST & hence liable for penalty u/s 271DA.

7. That on the facts and circumstances of the case, Ld. CIT(A) has erred in ignoring the decision of Hon'ble Punjab & Haryana, High Court in the case of Sudhir Kumar Sharma (HUF)([2014] 46 taxmann.com 340) against which SLP was dismissed by the Hon'ble Supreme Court, wherein it was held that since assessee had failed to give list of persons who advanced

cash to him along with their confirmation in respect of said cash credits, addition made by Assessing Officer under section 68 was to be confirmed.”

3. Ld. DR has primarily relied the findings of Ld. AO while ld AR has relied the findings of CIT(A) and has further relied the decision of coordinate bench in the case of Manuvel Malabar Jewelers (P) Ltd. ITA 1011/Del/2022 order dated 18.08.23, to contend that the facts and circumstances are similar and the appeal of revenue was dismissed.

4. We find that the Assessing Officer treated part of the cash sales claimed to have been made by the appellant in the night of 8th November 2016 (the day of announcement of demonetization) as unexplained cash credit in his books u/s 68 and added Rs.3,06,92,049/ in its income. The AO in his order has stated that appellant has claimed cash sale of Rs.3,24,71,745/- on 8th November from 8 pm to midnight (the "window period" after the announcement of demonetization to the midnight when specified bank notes (Rs.500 and Rs.1000) were legal to more than 200 customers with cash sale less than Rs.2 lacs. The AO asserted that it is humanly impossible to cater more than 200 customers in a span of three hrs. AO allowed cash sales of Rs. 17,79,636/- which was the cash sale made by the appellant on Dhanteras (28.10.2016) and disallowed the balance cash sales of Rs.3,06,92,049/- and added as unexplained credit u/s 68. The AO also noted that the appellant was not able to provide details including PAN of the customers whom so called cash sales were made on the 8th Nov. The AO also

pointed out that stock register was not maintained by the appellant and therefore sales shown by the appellant could be manipulated as well.

5. The assessee had submitted to the CIT(A) that there was a huge rush on 08.11.2016 for purchase of jewellery throughout the country, since people were in hurry to dispose off SBN s in view of the announcement of demonetisation of these notes after the midnight of 08.11.2016 i.e. 09.11.2016. The assessee further submitted that he had grabbed the opportunity as a businessman and made cash sales to the willing customers. The sales so made have been offered as revenue receipt and the taxes were duly paid. The assessee emphasized that since, the sale proceeds were offered and admitted as income hence AO is legally not correct to add same amount u/s 68 of the Act, resulting into double addition once as sales and secondly as unexplained credit. Assessee relied on the decision of Hon'ble High Court of Delhi in the case of Kailash Jewellery House on this issue. The assessee has argued that as he is in the jewellery business and there was huge rush on the jewellery shops allover India after demonetisation announcement for the purchase of jewellery on 8th November in the window period. He made money by selling the jewellery legally and it was not barred by law. As the income so earned was offered to tax, it shall not be treated adversely.

6. Regarding the capacity of the assessee to cater large number. of customers, the assessee submitted detailed analysis of invoices issued on 8th November. Assessee stated that total no. of 195 invoices were issued on 08.11.2016 out which 175 invoices were issued after the announcement of demonetisation and till midnight. Assessee also stated that 221 invoices were issued by him on the day of Dhanteras on 28.10.2016. The assessee has further claimed that the shop has multiple billing points and has record of successfully handling huge crowds (like on Dhanteras). The assessee also claimed that issuing 195 invoices on 8th November was not impossible for him considering the past records. He further stated that all the contentious invoices of sales were submitted to AO and no doubts on genuineness of any invoice were raised by him.

7. The CIT(A) was satisfied with the plea and allowed the appeal with following observations and findings;

“After careful perusal of the submissions of the appellant I find that catering of 175 customers in the window period of 3 to 4 hrs with multiple billing points is not impossible specially when the customers came to the shop with a mindset to buy jewellery or gold and to get rid of SBNs which were becoming illegal after midnight.

9.3 With regard to details of customers who bought the jewellery, the appellant stated that PAN of customers, buying goods for less than Rs.2 Lakhs, were not collected by him as it was neither legally mandatory nor practically advisable/possible. The appellant cannot be expected to do things which are legally not mandated. I find that, non-supply of detailed list of customers who bought jewellery of value less than Rs. 2 Lakhs on 8th November cannot be held against appellant.

9.4 Regarding qualification of the auditor in the from 3CEB regarding the quantitative movement of inventory and stock register as noted by AO in para

4.8 of his order, the appellant submitted detailed explanation, which is reproduced in this order (para E 11 to 17).

9.5 I have carefully considered the submission of the appellant in the light of observations of AO on maintenance of stock register in the Assessment Order. I also perused the attachments 4 and 5A mentioned (supra). To reject the cash sales, some mistakes in the sales invoices, stock movement or purchases should have been identified. As no mistakes in the stock ledger or stock movement were pointed out by the AO, it cannot be held that the cash sales made by the appellant were manipulated/or bogus.

9.6 The appellant relied on the decision of Hon'ble High Court of Delhi in the case of CIT vs Kailash Jewellery House [09.04.2012] in which it was held that cash sales cannot be treated as undisclosed income and no addition could be made once again in respect of the same. The appellant also relied on the decision of Hon'ble ITAT (Visakhapatnam) in the case of Hirapanna Jewellers [128 taxmann.com 291]. It has also been observed by Hon'ble Tribunal in the said case that there was huge rush on jewellery shops in the night of 8th November to buy jewellery using specified bank notes as they were becoming illegal from the midnight. In these circumstances it cannot be held that the appellant cannot make cash sales more than its routine sales. The above decision of Hon'ble ITAT was perused and has been found to be similar to the appellant's case.

9.7 In view of the above discussion, I find that the cash sales on 8th November 2016 made by the appellant cannot be treated as unexplained credits u/s 68. Therefore, the addition made by the AO amounting to Rs.3,06,92,049/- is hereby deleted. AO reduced Rs.4,17,411/- (1.36% of Rs.3,06,92,049/-) being profit corresponding to cash sales of Rs.3,06,92,049/- which was added u/s 68. Now as addition u/s 68 is deleted and Rs.3,06,92,049/- is treated as part of cash sales, profit corresponding to this amount which was reduced by the AO from the business income shall be added back to arrive at correct profit.”

8. We have considered the submissions and perused the material placed on record. In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into section 68 which reads as under:

“68. 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.”

9. This section 68, of the Act provides that the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. The explanation from a business entity should be on the basis of facts supported by some evidences which will establish that in due course of business, such income could have been generated by the assessee. It is not a case of survey or search, but scrutiny. Thus AO, could have only relied the financials or other evidences supporting the financials to see if the onus is duly discharged.

10. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. Purchases, sales and the Stock are interlinked and inseparable. We find that primarily the AO has not doubted the sales on the basis of suspicious sales through 221 invoices and that no stock register was maintained. It will be beneficial to reproduce the relevant part of the order of AO in **para 4.8**, which runs as follows:-

“4.8 The figures claimed by the assessee becomes even more suspicious due to the following qualification of the Auditor in the Form No.3CB

“We have not been in a position to ascertain the quantitative movement of inventory and hence relevant data in 3CD could not be provided. Closing stock is recognised in the Financials on the basis

of physical stock taking done by the management and we were not involved in physical stock taking"

This qualification shows that the auditor was not in position to track the movement of stock. No stock register was maintained. Even the quantitative figures were not furnished in Form 3CD. Closing stock was accepted based on the data provided by management. The Auditor has not verified the actual stock on 31.03.2017. This shows that the claim of assessee regarding purchase register, sales register and stock register are not at all reliable. Had there been any authenticity in these registers, auditor would have easily tracked the movement of inventory.

Further the column no 11(b) of the Form 3CD requires the Auditor to furnish the list of books of accounts maintained by the assessee. The Auditor has mentioned that following books of accounts were maintained-

- a. Cash Book*
- b. Ledger*
- c. Journal*
- d. Sales bills*
- e. Purchase Vouchers*
- f. Expenses*

This qualification shows that the assessee did not maintain any stock register in the absence of which how claims of astronomical sales of Rs more than 3 crore in one single day can be accepted to be genuine. Similarly, column 11 (c) requires the auditor to mention books of accounts examined. Again the stock register does not found a mention in the list of books examined by the Auditor. These facts show that the books of accounts are not genuine and claims made by assessee are required to see in the light of 'Human Probability laid down by the Hon'ble Supreme Court.'"

11. Now to every purchase increases the stock and every sale decreases the stock. We find that auditors mentioned assessee was maintaining the aforesaid mentioned six set of books. However, the assessing officer has not examined them show any defect or inconsistency. Especially with regard to the purchases vouchers the assessing officer should have made some attempt to examine them and show that as the stock register is not maintained the purchaser vouchers reveal a different picture than as canvassed by assessee for the sales and cash

book. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/ stocks. This was very much possible to be established by examination of whatever books assessee had made available. Merely for no maintaining stock register, a suspicious circumstance to say that assessee has failed to discharge the onus of cash sales supported by invoices. Without showing defect in the purchases and sales AO cannot allege that inflow and the outflow of stock may not be matching so to disbelieve the sales. The assessing officer accepted the sales and the purchases. He has not examined the closing stock which has direct nexus with the sales. The AO did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the contention of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

12. In the case of **CIT v. Associated Transport (P.) Ltd. [1996] 84 Taxman 146 (Cal.)** the Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Calcutta High Court against the order of the tribunal and the Hon'ble

High Court has confirmed the order of the Tribunal while deleting the penalty,

Hon'ble Calcutta high court held as under:

“8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs. 81,000. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs. 81,000 as concealed income of the assessee and consequently imposition of penalty was also not justified in this case.”

13. In the case of **Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC)**, the Hon'ble Apex Court decided the matter in favour of assessee of the ground that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.

14. 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.”

15. The reasons 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., were not found to be good enough to make addition u/s 68 of the Act, in **ACIT Vs Hirapanna Jewellers (ITAT Visakhapatnam), I.T.A.No. 253/Viz/2020** order dated 12/05/2021. Also, the contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 09.11.2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable, and deserved due consideration, as done by the Ld. CIT(A).

16. Thus we do not find any case of erroneous conclusion drawn by the Ld. CIT(A) requiring our interference. The grounds raised have no substance. The appeal of Revenue is dismissed.

Order pronounced in the open court on 05.12.2024.

Sd/-

(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Dated: 05th December, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi