

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2271/Del/2024
Assessment Year: 2017-18

Lachman Das Bhatia Hingwala (P) Ltd., 5162, 1 st Floor, Kohlapur Road, Kamla Nagar, New Delhi	Vs.	Income Tax Officer, Ward-15(1), Delhi
PAN :AAACL2194B		
(Appellant)		(Respondent)

Assessee by	Sh. Somil Agarwal, Adv. Dr. Rakesh Gupta, Adv. Sh. Saksham Agarwal, CA
Department by	Sh. Akhilesh Kumar Yadav, Sr. DR

Date of hearing	04.12.2024
Date of pronouncement	13.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [in short, the "CIT(A)-NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1061810781(1) dated 01.03.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case file perused.
3. The assessee raises the following substantive grounds in the instant appeals:

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the action of Ld. AO in making aggregate addition of Rs.94,66,666/- on account of cash deposits by treating it as alleged unexplained deposits and that too u/s 68 and taxing the same u/s 115BBE by recording incorrect facts and findings and without following the principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making aggregate addition of Rs.94,66,666/- on account of cash deposits u/s 68/115BBE, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in treating the addition made as unexplained money by Ld. AO u/s 69A as unexplained deposits u/s 68 by holding that the quoting of wrong section is a curable mistake u/s 292B and that too without any basis and without giving show cause notice in this regard and without following the principles of natural justice.

4. That having regards to the facts and circumstances of the case, the Ld. CIT(A) erred in law and facts by considering 1/3rd of the cash deposits as not derived from business sales without any basis or finding and by purely relying on estimation or conjectures or surmises.

5. That having regards to the facts and circumstances of the case, the Ld. CIT(A) erred in law and facts by considering cash deposits made within 10 days of declaring of demonetization under suspicion that these deposits might have not come from realization of debtors even when all the deposits were made from the legitimate declared sales and from the cash balance available in the books of accounts.

6. That having regards to the facts and circumstances of the case, the Ld. CIT(A) erred in law and facts by considering cash deposits made in Karur Vysya Barik as not derived from sales is devoid of any basis, findings and logic.

7. That having regards to the facts and circumstances of the case, the Ld. CIT(A) erred in law and facts, in addition of cash deposited during demonetization period of admitted sales as per the audited books of

account as well as per the returns filed under Delhi Value Added Tax leading to double addition and without providing relief of reduced sales and stock as per the Provisions of Income Tax Act, 1961.

8. That having regards to the facts and circumstances of the case, the Ld. CIT(A) erred in law and facts, in proceeding with the matter without being reasonable, just and applying his mind.

9. That having regards to the facts and circumstances of the case, the Ld. Assessing Officer erred in law and facts, without prejudice to the above in treating the income of business as Income of Other Sources.

10. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B, 234C and 234D of Income Tax Act, 1961.

11. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

4. Both the learned representatives reiterate their respective stands against and in support of correctness of the learned lower authorities' action making section 68 read with section 115BBE unexplained cash deposit addition of Rs.94,66,666/- in assessee's hands.

5. Learned departmental representative vehemently argues that the Assessing Officer had rightly rejected assessee's explanation herein whilst making the impugned addition of Rs. 2,52,75,406/- representing Rs.2.20 crores deposited during demonetization and Rs.32,75,406/- thereafter, both in the relevant previous year once

it had failed to explain the source thereof as attributable to regular business sales in cash, during scrutiny.

6. It is next noticed that the CIT(A)-NFAC's lower appellate discussion in paragraph 5(a) to 5 (C), has upheld the impugned addition to the extent of 1/3rd only as not derived from business sales; coming to Rs.62,66,666/- out of the ICICI Bank deposit of Rs.89 lakhs made on 10th November, 2016 and Rs.80 lakhs on 11th November, 2016, respectively and further confirms the impugned addition of Rs.32 lakhs deposited in M/s. Karur Vysya Bank, and, in this manner the assessee is aggrieved against the addition of Rs.62,66,666/- + Rs.32,00,000/-, aggregating to Rs.94,66,666/- in question.

8. It is in this factual backdrop that there arises the clinching question between the parties as to whether the impugned addition could be upheld merely on estimation basis at the rate of 1/3rd hereinabove or going by the bank-wise deposits, as the case may be, once the assessee had already filed all the relevant evidences attributing the same to its regular business sales in cash.

9. We are of the considered view that such a course of action is nowhere admissible to the learned departmental authorities as

they ought to examine each and every entry on merits in light of the cogent supportive material coming from the assessee side. All this has not been done by the learned lower authorities which could support the Revenue's stand as to which of the deposits, even in broader sense, are liable to be added. We accordingly conclude that the impugned addition of Rs.94,66,666/- upheld in assessee's hands is not sustainable as it has duly explained source thereof in both the lower proceedings. Deleted accordingly.

10. This assessee's appeal is allowed.

Order pronounced in the open court on 13th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 13th December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi