

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER
ITA No.1541/M/2024
Assessment Year: 2017-18

Sunrise Gold Office No. 3, 3 rd Floor, Laxmi House, 177/179, Kalbadevi Road, Mumbai- 400002. PAN: ACUFS0396M	Vs.	ITO Ward 23(3)(7) Mumbai.
Appellant	:	Respondent

Present for:

Assessee by

: Shri Navin B. Shah

Revenue by

: Shri Dharamveer D. Yadav- Sr. D.R.

Date of Hearing

: 10.10.2024

Date of Pronouncement

: 20.12.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 15/03/2024 passed by Ld. NFAC/CIT (A) for assessment A 2017-18 on following grounds of appeal:

“GROUND NO 1

The Hon'ble CIT(A)(NFAC) has erred in rejecting the cash sales during April 2016 to June 2016 of Rs 5,54,482/-as the source of cash



deposits made during November 2016, While accepting the remaining cash sales of Rs 14,64,403/- made in identical manner during October 2016 and November 2016 as genuine source of cash deposit in bank during November 2016 on the ground that

"Though, the appellant cannot be doubted for its business activities and that to cash sales in specific, but the appellant's claim of sources out of long back cash sales are little unconvinced"

Relief Claimed

The appellant firm requests to allow the said cash sales of Rs 5,54,482/- as the source of cash deposit as the same were genuine cash sales made in ordinary course of business and also held genuine by the AO by accepting the total business income as it is of Rs 14,19,610/-declared in return of income.

GROUND NO 2

Without Prejudice to Ground No 1 above, the Hon'ble CIT(A)(NFAC) has erred in confirming addition u/s 68 as unexplained cash credit being cash sales of gold ornaments during April 2016 to June 2016 of Rs 5,54,482, Without appreciating the fact that the Ld AO could not identify/mention any undisclosed source other than business activities of the jewelry manufacturing and sale activities of the appellant.

Relief Claimed

The appellant firm humbly requests to delete the addition made u/s 68 as the cash sales of April 2016 to June 2016 of Rs 5,54,482/- were made during the ordinary course of business activities; and in absence of any unexplained cash credit invoking section 68 is unwarranted.

Ground No.3

The appellant firm prays for your leave to add, alter & amend the above ground of appeal, if necessary."

Brief facts of the case are as under:

2. The assessee is a partnership firm engaged in the business of manufacturing and wholesale of gold and diamond ornaments. For the year under consideration, the assessee filed its return of income on 09/09/2017 declaring total income of Rs.14,19,610/-. The return was processed under section 143(1) of the act, and notice under section 143(2) along with 142(1) of the act was issued to



assessee. In response to statutory notices the assessee filed submissions and evidences as called for.

2.1. The Ld.AO called for explanation in respect of the demonetised cash amounting to Rs.27,19,500/- deposited into the accounts of the assessee for the year under consideration. The assessee submitted that, cash deposited was out of cash sales that was recorded and included in the total sales of the assessee. The Ld.AO called for information from the bank u/s. 133(6) of the act in respect of the cash deposited by the assessee.

2.2. From the statement received from the bank the Ld.AO noted that, the assessee deposited in total Rs. 31,19,500/- during the financial year relevant to A.Y. under consideration out of which Rs.27,19,500/- was deposited in SBM during the demonetisation period. It was also noted that, assessee deposited a sum of Rs.4,00,000/- prior to the demonetisation period during the financial year relevant to A.Y. under consideration. The Ld.AO after considering the submissions of the assessee, treated a sum of Rs.20,18,885/- as unexplained cash credits that was added in the hands of assessee u/s. 115 BBE of the act.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A)

3. Before the Ld.CIT(A) the assessee furnished cash memos for sale undertaken during the year under consideration from 01.04.2016 till the month of November 2016.



3.1. The Ld.CIT(A) on examination of documents observed as under:

“7.4. Without prejudice to the above judgements, I have considered the claim of cash sales for the beginning of the year as sources for the said impugned cash deposits into its bank account after 7 to 5 months at the time of demonetization. On perusal of the cash memos for sales during the year under consideration, the appellant claimed some cash sales in the beginning of the year, i.e, April, May and June and remaining sales were claimed to have been done in the month of November, 2016 before the demonetization. On examination of the these vouchers, it could be noticed that the appellant is claiming the cash sales made during the months of April, May and June (the first quarter of the F.Y. 2016-17) as source for the impugned cash deposits during the demonetization period. The details of cash sales during the month of April, May and June are as under:

1.	19.04.2016 (Cash memo no. S-1)	:	Rs.1,73,055/-
2.	28.05.2016 (Cash memo no. S-1-23)	:	Rs.1,94,754/-
3.	13.06.2016 (Cash memo no. S-1-29)	:	Rs.1,86,673/-
	Total:	:	Rs.5,54,482/-

7.5. Though, the appellant cannot be doubted for its business activities and that to cash sales in specific, but the appellant's claim of sources out of long back cash sales are little unconvinced, as the appellant is into the business of manufacturing and sales of gold ornaments and thus, the purchases and corresponding expenditure of manufacturing of jewellery should be there and hence, the claim of keeping such cash generated out of sales for 7 to 5 months in its hand for depositing at the time of demonetization by the appellant is beyond any logic and same is unacceptable. Hence, the claim of cash deposits to the tune of Rs. 5,54,482/- claimed to have been generated out of cash sales vide cash memos mentioned above at para-7.4, need to be kept out of the purview of genuine sources of cash as claimed by the appellant. In my considerable opinion, the claim of genuine source of cash to the tune of Rs.5,54,482/- required to be rejected as not plausible. Therefore, the AO is directed to give the relief of remaining amount of cash deposits amounting to Rs. 14,64,403/- (20,18,885-5,54,482) during the demonetization period.

7.6. Further, the appellant in its return of income has claimed that the total cash deposits into the bank account during the demonetization period as Rs. 17,75,500/- and after verification of the bank statement only, as obtained u/s 133(6) of the Act by the AO during the asst. proceedings, the exact cash deposits have been identified and that amounting to Rs.27,19,500/-, Keeping the discrepancies in the appellants own

declaration with regard to SBN cash deposits in its return of income which had been put forward correctly by the AO in the impugned order, I am of the view that the appellant has under reported its sales to the extent of above cash sales to the tune of Rs. 5,54,482/-. The grounds of appeal are partly allowed.”

The Ld.CIT(A) thus restricted the disallowance to the tune of Rs.5,54,482/-.

Aggrieved by the order of the Ld.CIT(A) assessee is in appeal before this *Tribunal*.

4. The only issue assessed by the assessee is in respect of the addition confirmed by the Ld. CIT(A) to the extent of Rs.5,54,482/- being the cash deposited prior to the cash demonetisation period.

4.1. The Ld.AR submitted that, on one hand Ld.CIT(A) agreed to the cash sales which is specific in the kind of business the assessee is carried on, but on the other hand cash deposits to the tune of Rs. 5,54,482/- was held to be unconvincing and beyond any logic. The Ld.CIT(A) also did not doubt the activity carried on by the assessee.

4.2. The Ld.AR submitted that, the Ld. CIT(A) restricted addition to Rs.5,45,482/- being cash deposited between 19.04.2016 and 13.06.2016, for which there are specific cash memos available with the assessee to explain the same. He further submitted that, an addition u/s. 68 cannot be made in respect of such sales as the documents are verifiable and forms part of the total turnover.

4.3. The Ld.AR further submitted that, total cash deposited prior to 08.11.2016 was Rs.10,73,326/-. The Ld.CIT(A) has partly confirmed



the cash sales during the relevant period by accepting the other deposits that were made on 02.11.2016 and 08.11.2016.

4.4. The Ld.AR further submitted that, the stock declared by the assessee has also been accepted by the authorities below and therefore there is no allegation that the cash sales were made of the stocks that did not form part of the goods. He thus submitted that, the sales and purchases has been accepted to have been made out of stock declared by the assessee. The Ld.AR further submitted that, the books of accounts of the assessee has not been rejected and there is no iota of evidence of any undisclosed cash or the unexplained income generated by the assessee.

4.5. The Ld.AR submitted that Rs. 5,54,482/- are generated from the sales made in cash supported by relevant cash memos and therefore cannot be added an undisclosed receipts u/s. 68 r.w.s.115BBE of the act.

4.6. On the contrary the Ld.DR relied on the orders passed by the authorities below.

We have perused the submission advanced by both sides in light of records placed before us.

5. It is an admitted position that, the cash sales in the kind of business carried on by the assessee cannot be doubted as they are supported by relevant cash memos. The assessee deposited Rs. 9,45,000/- as SBA notes as on 08.11.2016 from the following cash sales.



Date	Cash memo no	Amount	
19/04/2016	S-1	1,73,055.00	
28/05/2016	S1-23	1,94,754.00	
13/06/2016	S1-29	1,86,673.00	
02/11/2016	S1-59	1,42,208.00	
08/11/2016	S1-63	1,86,909.00	
08/11/2016	S1-64	1,89,727.00	10,73,326.00
		TOTAL	20,18,326.00

5.1. The Ld.AO in the assessment order has specifically observed as under:

“4.10.Further, on perusal of all the cash bills submitted, it has been noticed that all the cash bills are of amount less than Rs.2,00,000/- which is highly improbable and unrealistic and therefore beyond any human probability. Hence, it can be easily inferred that bogus cash sale below Rs.2,00,000/- are booked only to avoid KYC provisions and also to make verification of bogus cash sale booked impossible. This process is only used as a colourable device to bring into the books the unaccounted and unexplained money generated through out of books activities.”

5.2. The above observation by the Ld.AO do not have any evidence in support. The book result, the total sales and the stock declared by the assessee has not been found fault with. In fact, we note that the books of accounts of the assessee has also not been rejected. However Ld.AO recorded a finding that assessee booked concocted cash sales from April 2016 to the date of demonization i.e. 08.11.2016. The Ld.AO is presuming that there are bogus sales made by the assessee in order to account for the unaccounted cash prior to the date of demonization without any corroborative



materials. Even for the moment one has to be believed such presumptions there has to be some evidence to support the same. The Ld.AO has not been able to unearth any evidence that could support the observations of Ld.AO.

5.3. The Ld.CIT(A) while considering the appeal restricted the disallowance only to Rs.5,54,482/-, by observing that the assessee generated cash sales to the extent by creating memos on 19.04.2016, 28.05.2016 and 13.06.2016. The Ld.CIT(A) failed to appreciate that, to hold these cash sales to be not genuine there has to be unaccounted stock available to the assessee to that extent which is not the case made out by the Ld.AO or Ld. CIT(A) himself. We are therefore unable to agree with the observations of the Ld.CIT(A) as nothing has been brought on record to justify the addition restricted by the Ld.CIT(A) and the same deserves to be deleted.

Accordingly the grounds raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 20-12-2024.

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER

Place: Mumbai,

Dated: 20.12.2024

Snehal C. Ayare, Stenographer/ Dragon



Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Ld.DR, ITAT, Mumbai
4. Guard File
5. CIT

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai