

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

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3447/Del/2024
Assessment Year: 2017-18

Rajesh Kumar Prop Gupta Paints and Harware Store6 New Tikona Market Faridabad 121001 Haryana PAN No. AEZPG7691E	Vs	Income Tax Officer Ward 2(4) Faridabad
(APPELLANT)		(RESPONDENT)

Appellants by	Kapil Goel Advocate
Respondent by	Ms. Harpreet Kaur Hansra Sr. DR

Date of hearing:	12/11/2024
Date of Pronouncement:	20/12/2024

ORDER

PER SUDHIR KUMAR: JUDICIAL MEMBER:

The above captioned appeal by the assessee is directed against the order of the NFAC/Commissioner of Income Tax (Appeals), Delhi [hereinafter referred to as "CIT(A)"], vide order dated 04.07.20224 pertaining to A.Y.2017-18 arises out of the order passed by the Assessing Officer dated 14.11.2019 u/s

143(3) of the Income Tax Act,1961[hereinafter referred as ‘the Act’]

2. The assessee has raised the following grounds of appeal:

10.1 That impugned order of passed u/s 250 by National Faceless Assessment Centre (NFAC)/CIT(A), dismissing appeal of assessee and sustaining order passed by ACIT CIRCLE 34(1) DELHI) are totally unlawful and contrary to mandate of 1961 Act for want of valid jurisdictional notice u/s 143(2) being "issued" by ld AO who completed the impugned assessment u/s 143(3) of 1961 Act;

10.2_That impugned order of passed u/s 250 by nfac cita, dismissing appeal of assessee and sustaining order passed by ITO WARD 2(4), FARIDABAD for applying section 69A on disclosed cash deposits of Rs.40,00,000/- forming part of total turnover recorded in audited books;

10.3 On facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming the addition of Rs.40,00,000/- made by Ld AO) in discarding disclosed cash sales forming part of cash in hand out of books without rejecting such audited books of accounts without following the mandate of law;

10.4 On facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming addition of Rs.40,00,000/- u/s 69A without considering the submissions and evidence of VAT returns sales register etc for substantiating source of cash deposits being recorded in books;

10.4 That impugned order of passed u/s250 by NFAC/CIT(A) dismissing appeal of assessee and sustaining

order passed ITO Ward 2(4), Faridabad under Section 115BBE qua addition of Rs.40,000/- which is arbitrarily invoked qua stated cash deposits.

10.5 That impugned order passed u/s. 250 by NFAC/CIT((A) dismissing appeal of assessee and sustaining order passed by ITO Ward 2(4), Faridabad are totally illegal as passed without issue of prior mandatory show-cause-notice in violation of principles of CBDT Instruction No.20/2015 and principles of natural justice:

That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”

3. The brief facts of the case are that the assessee is engaged in the business of retail trading of paints and hardware items used in the construction of buildings in the name of M/S Gupta Paints and Hardware store. He had filed his return of income on 14-09-2017 declaring an income of Rs 1051970/-on a turnover of Rs11.98 crores. The case of assessee was selected for scrutiny through CASS to examine the issue of “cash deposit during demonetization period”. A notice u/s 143(2) of the Act was issued on 09-08-2018. Again notice u/s 142(1) of the Act was issued with certain queries. The assessee has deposited Rs 40,00,000/- in two bank account during the demonetization

period. The assessing officer after considering the reply submitted by the assessee made the addition of Rs 40,00,000/- as unexplained income u/s 69 of the Act.

4. Aggrieved the order of the AO the assessee has filed the appeal before the Ld CIT(A) who vide his order dated 04-07-2024 dismissed the appeal against which the assessee is in appeal before us.

5. Ld. counsel has submitted that the assessing officer has neither rejected the books of account nor doubted the genuineness of opening cash in hand shown in the balance sheet and the cash was duly recorded in the cash book of the assessee. He has further submitted that assessee has discharged the onus with regard to the cash deposit of Rs 40,00,000/-. Ld. counsel appearing for the assessee has relied the following decisions;-

i-Ayyappa Seva Sangham Bombay vs Deputy Commissioner of Income Tax [2024] 467 ITR 672 (Bom)

ii-Padam Sarup Goel vs Income Tax Officer ITA No 56/Del/2024 order dated 23-09-2024

iii-A.G.India Retail Pvt Ltd Vs ACIT ITA No 449/Del/2024
order dated 27-08-2024

6. Ld. Sr DR placed reliance on the AO and Ld CIT(A) finding and prayed for dismissal of the appeal.

7. We heard both the parties and perused the material available on the record. In the case of Balaji Mech-Tech Private Ltd vs ITO Ward 22 (1) New Delhi in ITA No. 556/Del/2024, the Coordinate-Bench has held as under:

20. Whether the recording of cash sales which is already declared in the books of account will attract the deeming provisions of sec.68 or 69A of Act. We observed that the assessee has declared all the cash transactions in its books of account and merely because the cash deposits are more during the demonetization period, whether the CIT(A) can invoke the provisions of section 69A of the Act. As per provisions of the section, it is necessary that the assessee be found with the money, the same is not recorded in the books accounts maintained by it for any source and not offers any explanation or such explanations are not found to be satisfactory to the AO. In this case, the assessee has already declared the cash sales in its books of account and offers the explanation as cash sales, which the lower authorities has accepted it as regular business transactions because they have not rejected the book results and brought to tax the total sales declared by the assessee in its books. Since the cash were already recorded and explanation is already part of the book results, there is no avenue for the CIT(A) to reject such explanations. This expression "explanation is found not satisfactory to the

AO” is purely 38 ITA No.556/DEL/2024 relates to the money found with the assessee which are not recorded in the books of account. In this case, the above expression has no relevance since the assessee had already declared the cash sales in its books. In the similar situation, the coordinate bench has held in the case of J.R.Rice India (P) Ltd as under:

“At the cost of repetition, to the extent of sales made, the stock position is also correspondingly reduced by the assessee which goes to prove the genuineness of the claim of the assessee. On examination of the cash book of the assessee, it is found that the assessee had cash balance of Rs. 55.94 lakhs as on 8-11-2016, i.e., the date on which demonetization was announced, which sufficiently explains the source of deposit of Rs. 52.60 lakhs in specified bank notes. Apart from this, the assessee had duly furnished the month wise details of sales, month wise details of purchase, corresponding freight charges incurred month wise, month wise power and fuel expenses and month wise selling expenses in the form of rebate and discount. The assessee also furnished the quantitative details of goods month wise for rice, sugar, chana dal and wheat flour before the Assessing Officer. All these facts clearly go to prove the genuineness claim made by the assessee that cash deposits of Rs.52.60 lakhs has been made out of cash balance available with the assessee and, hence, there is absolutely no case made out by the revenue for making addition under section 68.”

Further, in the case of Fine Gujranwala Jewellers Vs.ITO (ITA No.1540/Del/2022 dated 27.03.2023, wherein it was held as under:

“22. In the case in hand the reason for disbelieving the cash deposit is that the assessee has been deposited below Rs. 2 lakh in every transactions that lead to the conclusion of the Assessing Officer that the same has been done to avoid the application of provision of section 285BA read with Rule 114E of the Act. The said observation made by the Assessing Officer without any material in his hand. There is no prohibition under law to make sale transaction below Rs. 2 lakhs as such the assessee had at liberty to manage his own affairs. From the action of the assessee in raising the sales bill below Rs. 2 lakhs the Assessing Officer cannot interpret as the sale are bogus only to give color to non-genuine transaction as genuine transaction. 5The evidence brought on record by the Assessing Officer are not enough to hold that sales were not genuine. More so, the other wing of the Govt has already accepted the sale transaction under VAT, hence, the Assessing Officer is precluded from making contrary findings on the issue when the sales are not doubted. The other contention of the ld DR is that the assessee has not maintaining stock register properly and date wise stock position are not given. The Assessing Officer made the said observation without rejecting the books of account form which true profit and loss accounts could be ascertained and there 39 ITA No.556/DEL/2024 is no quarrel on this issue. The lower authorities cannot place reliance on the circumstantial evidence which is only conjectures and surmises and the said approach of the ld CIT(A) is devoid of merit it deserves to be rejected. Further, the income of the assessee has to be computed by the Assessing Officer on the basis of available material on record and it is very important to have a direct evidence to make an addition rather than circumstantial evidence. When the assessee gives any

reply or submission or any documents to the Assessing Officer, it is duty of the Assessing Officer to examine the same in the light of the available evidence. In the present case the Assessing Officer and the 1d CIT(A) have concluded the findings on the basis of conjectures and surmises. The Assessing Officer has to establish the link between the evidence collected by him and the addition to be made. The entire case has to be dependent on the Rule of evidence, the assessee in this case explained the source of bank deposits are from cash sales. The Assessing Officer proceeded to disbelieve the explanation of the assessee on the presumption basis without bringing the corroborative material on record. The Assessing Officer is required to act fairly as reasonable person and not arbitrarily capriciously. The assessment should have been made based on the adequate material and it should stand on its own leg. The Assessing Officer without examining any parties to whom the goods are sold by the assessee, came to conclusion that the sales are not genuine, without even rejecting the books of account which is in our opinion is erroneous.”

21. Respectfully, following the above decisions, we are inclined to allow the grounds raised by the assessee with the observation that the AO/CIT(A) cannot invoke the provisions of section 68 or 69A when the assessee is already declared the source for cash deposits in the books of accounts and the lower authorities without their being any material to support on their contrary view, the provisions of section 68 or 69A cannot be invoked.”

8. The issue before us is with respect to addition of Rs 40,00,000/- made on account of cash deposits during the demonetization period. It is an admitted fact that the assessee, running a retail trading of paints and hardware items in the name of Gupta Paints and Hardware Store, have been made cash sales as well as credit sales. The assessee has maintained sales vouchers and filed VAT returns. The revenue has also failed to place any material on the record to show that the VAT returns of the relevant year had not been accepted by the VAT authority. Perusal of the order of the Ld CIT(A) , reveals that the assessee has made cash deposit of RS 4,00,000/- in April, 2016 and Rs 5,00,000/- in May, 2016 there after assessee has been deposited the Rs 40,00,000/- during the demonetization period. The assessee has stated that on the occasion of Deepawali festival the cash sale was increased. The assessee has given the satisfactory explanation of the cash deposit and discharged his burden. The addition of Rs 40,00,000/- u/s 69

of the Act, made by the AO and confirmed by the Ld CIT(A) is deleted. The appeal of the assessee is liable to be allowed.

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

Order pronounced in the open court on 20.12.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mohan Lal
Date:- 20.12.2024

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals) `
- 5.DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI