



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.98/LKW/2024
Assessment Year: 2017-18

Sumit Kesarwani 52/26, Naya Ganj Kanpur	v.	ITO 1(1)(f) Kanpur
TAN/PAN:BIOPK6450P		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	02	12	2024
Date of pronouncement:	31	12	2024

ORDER

This appeal has been preferred by the Assessee against the order dated 29.12.2023, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is the proprietor of the firm, M/s Shri Shyam Traders, Nayaganj, Kanpur and was carrying on the business of purchases and sales of Match Boxes, Pan Masala, Cigarettes and Agarbattis. The assessee filed his return of income for the year under consideration on 06.11.2017, declaring a total income of Rs.2,36,130/-. The case of the assessee was selected for scrutiny under CASS for the reason that there was an abnormal increase

in the cash deposits during the demonetization period, as compared to the cash deposits during the pre-demonetization period. The Assessing Officer (AO) noticed that the assessee had made cash deposits, totaling to Rs.50,60,000/- in his Bank Account No.2178257000020 maintained with Canara Bank during the demonetization period. The AO issued statutory notices, requiring the assessee to furnish details concerning the sources of such cash deposits duly supported with documentary evidences. The explanation of the assessee was that the cash deposits made by the assessee were from sales made by the assessee against cash payments. The AO prepared a comparative chart of month-wise cash sales, deposits in Bank and cash in Bank for financial year 2015-16 and 2016-17, wherefrom he noticed that the total cash deposits made in the bank during the year 2016-17 had substantially increased as compared to the immediately preceding year, i.e. 2015-16. The AO worked out the average sales per day made by the assessee excluding the period 01.10.2016 to 08.11.2016, which came to Rs.8,990.58 and applying the same ratio of sales made by the assessee during the period 01.10.2016 to 08.11.2016, he estimated the sales made by the assessee during the period 01.10.2016 to 08.11.2016 at Rs.31,93,527/- (Rs.8,990.58 X 39 days) and added the same to the income of the assessee under

section 68 of the Act. The AO, accordingly, computed the income of the assessee as under:

Total income as per ITR	:	Rs.02,36,130/-
Addition u/s. 68	:	<u>Rs.31,93,527/-</u>
Total assessed income	:	Rs.34,29,657/-
Rounded off at	:	Rs.34,29,660/-

3. Aggrieved by the order passed by the AO, the Assessee preferred an appeal before NFAC. However, the appeal before the NFAC came to be dismissed by the Ld. First Appellate Authority.

4. Now, the Assessee has approached this Tribunal challenging the impugned order of the NFAC by raising the following grounds of appeal:

1. Because on proper consideration of facts and circumstances of the case an addition of Rs.31,93,527/- as unexplained cash credit into the total income of the Assessee assuming the cash sales during demonetization period as bogus sales is highly arbitrary, unjustified, unwarranted, reason assigned is neither factually correct nor justified, no relations with the determination of impugned bogus sales and facts & explanations submitted in response to show cause notice has not been correctly and properly appreciated by the Assessing Authority. therefore is liable to be deleted

2. Because learned First Appellate Authority has not properly and correctly appreciated the replies and submissions filed in response to show cause notice. On the basis of

presumption and conjecture and without assigning adverse specific justified material, the cash sales during demonization period has been treated by him as bogus sales wherever all the cash sales are well recorded into the books of accounts inclusive of cash book. The assumption without any reasonable basis is not sustainable in the eyes of law. Cash sales treated as bogus and determined as "Unexplained Cash Credit" u/s 69A of I.T. Act, 1961 is not justified. The addition into total income amounting to Rs.31,93,527/- is liable to be deleted.

3. Because Assessing Authority has failed not to correctly appreciating the facts of the case and assumed erroneously amount of Rs.31,93,527/- as unexplained cash credit. The formula worked out by him is neither correct nor may be applied upon the facts of cash deposits into bank out of withdrawn from cash book. All the cash sales, other sales and purchases are completely vouched and verifiable, Books of Accounts records have been audited by a Chartered Accountants and certified as true and correct in its audit certificate, the tax audit report in prescribed form 3-CB is available with the Assessing Authority. Moreover, no single entries incorporated in cash book as far as cash sales or other entries are concerned has been proved by the record any justified adverse material in the Assessment order itself. The formula and findings with reasoning recorded by him in the Assessment order is imaginary based on presumption and conjecture, therefore is not liable to be relied upon. The addition of Rs.31,93,527/- is liable to be deleted.

4. Because the case law of Supreme & High Court cited by the Assessing Authority in its Assessment order is not

applicable upon the facts of the Assessee's case distinguished and may not be relied upon the facts of the assessee's case.

5. Because Written Submissions filed before National Faceless Appeal Centre has not been properly appreciated and considered by the First Appellate Authority.

6. Because Hon'ble Tribunal(s) and High Courts have delivered several judgment(s) to this effect. In case of Raj Kumar (M/s Radhika Sales Corp) Dhab Wasti Ram vs ITO 3(3), Amritsar ITA No.195/Asr/2022 it was held that "the AO has no right to calculate sales on hypothetical basis ignoring the evidence submitted during the course of assessment proceedings in the form of VAT return, purchase bills and quantitative details. Once the amount is declared as turn over cannot be called concealed income and be taxed doubly on same amount".

7. Because in any case and under all the facts and circumstances of the case an addition of Rs.31,93,527/- as "unexplained cash credit" in the Books of the Assessee's firm is neither factually correct nor justified, therefore is liable to be deleted.

8. That under the facts, explanations submitted in response to the show cause notice the Assessing Authority has neither correctly nor properly appreciated the facts and explanations. All the assumptions are based upon presumptions and conjectures. Irrelevant and unjustified reasons has been recorded by him regarding treating the cash sales as bogus sales amounting to Rs.35,44,160/-. The addition amounting to Rs.31,93,527/- determining "Unexplained Cash Credit" U/s 69A of I.T. Act, 1961 is

factually and actually not justified, therefore is liable to be deleted.

5. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that the sole reason for making the addition was that the assessee had deposited an amount of Rs.50,60,000/- in his bank account with Canara Bank during the period of demonetization, out of which an amount of Rs.36,01,000/- was deposited in Specified Bank Notes (SBNs). It was submitted that the assessee had submitted all the required details before the AO and even the comparative figures for financial years 2015-16 and 2016-17 were submitted. It was also submitted that the cash deposited comprised of cash sales made during the period as well as cash withdrawals and that the cash balance was available in the books of account which was deposited subsequently in the Bank Account. It was further submitted that all the purchases and sales were verifiable and further that the books of account comprising of Cash Book, Ledger, Journal, Purchase Invoices and Sales Bills were duly produced before the AO. It was submitted that without assigning any justifiable reason or rejecting the books of account, the AO did not accept the cash deposits and treated the amount of Rs.31,93,527/- as unexplained by working out some average. It was also submitted that the assessee is duly registered with the Commercial Tax Department, Kanpur

and that the sales and purchases declared by the assessee have also been declared in the VAT returns and that the same have also been accepted by the Commercial Tax Department. It was submitted that, thus, the AO has proceeded only on presumption and has made addition without there being any cogent evidence on record. It was prayed that the addition be deleted.

6. In response, the Ld. Sr. D.R. submitted that the Ld. First Appellate Authority has given detailed findings against the assessee and it was submitted that the circumstantial evidence was very much against the assessee inasmuch as the assessee could not justify the jump in sales during the demonetization period. It was submitted that the Ld. First Appellate Authority has rightly reached the conclusion that the assessee had deliberately increased the cash sales just prior to the demonetization period and had credited such bogus sales in the books of account in order to substantiate the source of cash deposits and also to accommodate his unaccounted/unexplained income in the books of account. While placing heavy reliance on the order of the Ld. First Appellate Authority, the ld. D.R. prayed that the appeal of the assessee be dismissed.

7. I have heard the rival contentions and have also perused the material on record. It is undisputed that the assessee has been maintaining regular books of account, which have been

duly audited. It is also undisputed that the assessee has submitted responses to various queries raised by the AO during the course of assessment proceedings. It is also evident from a perusal of the assessment order that the AO has not rejected the books of account and has accepted the quantum of sales and purchases declared by the assessee in his return of income. It is also undisputed that the amount of sales and purchases tally with the returns filed with the Commercial Tax Department and nothing adverse has been pointed out by the Commercial Tax Department also in this regard. However, the AO was of the view that the assessee had inflated cash sales even prior to the declaration of the demonetization and had introduced bogus sales and had deposited cash so generated in the books of account to account for his unaccounted money, which was otherwise lying outside the books of account. While arriving at this conclusion, the AO has heavily relied on preponderance of probability and, thus, has worked on the assumption/presumption that the assessee had resorted to this kind of exercise for the purpose of depositing his unaccounted money in the Bank account through the cash book. However, while doing so, as rightly pointed out by the Ld. A.R., the AO has not brought on record any single piece of evidence, which would suggest that the assessee has inflated sales so as to create cash

balance in the books of account. Moreover, no deficiency has been pointed out by the AO in the books of account nor has the availability of stock been doubted. Thus, the AO has, on the one hand, accepted the sales and purchases declared by the assessee and, on the other hand, has made addition on account of bogus sales made out of books of account and deposited in the Bank account during the period of demonetization. Undoubtedly, there has been a substantial jump in the turnover during the period of demonetization, but without there being any evidence to justify the claim of the AO that such jump in turnover was due to bogus sales having been created in the books, such claim remains a mere presumption. Although the principle of preponderance of probability is an accepted principle, but such probability has to be backed by some cogent evidence and the onus is squarely on the Department to establish that what is being said to be probable has proper evidence to support such claim. The Ld. First Appellate Authority, while dismissing the appeal of the assessee has also not considered this aspect.

8. In this regard, the reasoning provided by the ITAT Bangalore Bench in the case of Smt. Malapur Mounika, Chitradurga vs. ITO, Chitradurga in ITA No.599/BANG/2023, vide order dated 30.10.2023 would equally apply in the

assessee's case as well. The relevant portion from the above order is reproduced below:

“I have carefully considered the rival submissions. Both the AO and CITA accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman 146 on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no

defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted.”

9. Thus, to sum up, it is my considered view that in the present case, the AO was legally not entitled to calculate sales on a hypothetical basis completely ignoring various evidences submitted during the course of assessment proceedings in the form of VAT returns, Purchase Bills and quantitative details, etc. Once the amount has been declared in the VAT return as well and the same has also been accepted by the AO, such sales cannot be considered as concealed income. Accordingly, I set aside the order of the Ld. First Appellate Authority and direct the AO to delete the impugned addition.

10. In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 31/12/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:31/12/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar