

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

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

I.T.A. No.255/Lkw/2024
Assessment Year:2017-18

Jagdish Prasad, 01, Chinhat Road, Chinhat, Lucknow. PAN:CQHPP0417R	Vs.	Income Tax Officer, Range-1(2), Lucknow.
(Appellant)		(Respondent)

Appellant by	Shri K. R. Rastogi, C.A.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

(A) This appeal vide I.T.A. No.255/Lkw/2024 has been filed by the assessee for assessment year 2017-18 against impugned appellate order dated 28/02/2024 (DIN & Order No.ITBA/APL/S/250/2023-24/1061689837(1) passed by Addl/JCIT (Appeals). In this appeal the assessee has raised the following grounds:

- "1. *The Ld. CIT(A) NFAC erred on facts and in law in confirming the impugned addition of Rs.5,39,500/- made u/s 69A being cash deposited during demonetization period in demonetized currency without considering that during demonetization period an amount of Rs.39,500/- only has been deposited in demonetized currency and the rest cash was deposited in other than demonetized currency out of cash available from sale of electrical goods income from which was offered u/s 44AD of I.T. Act.*

2. *That the authorities below further erred in not considering that the cash of Rs.39,500/- only was deposited in demonetized currency which was available as cash in hand out of sale of electrical and electronic goods from the firm M/S Bharat Electricals and the turnover of Rs.42,55,200/- has been duly show u/s 44AD of I.T. Act in the ITR Filed u/s 139 of I.T. Act.*
3. *The Ld. C.I.T. (Appeals) failed to appreciate that Assessee has offered income on presumptive basis u/s 44AD being Gross Receiving Rs.42,55,200/- and has shown Income Rs.3,40,416/- which has accepted by Ld. A.O. However, Ld. A.O. again made the addition of Rs.5,39,500/- u/s 69A r. w. s. 115 BBE of I.T. Act being cash deposited during demonetization period without appreciating that Cash was deposited out of business receiving from sale of electrical goods. Thus, no addition can be made in the present sets of facts and circumstances.*
4. *That the authorities below further erred on facts and in law in not considering that the Assessee has duly furnished the bank certificate and the VAT Assessment order in support of the business receipts and the bank certificate duly confirms that cash of Rs.39,500/- only was deposited during demonetization period.*
5. *That the authorities below erred on facts and in law in not considering that when the receipts have been accepted to be business receipts and profit on presumptive basis have already been declared out of those receipts, then cash deposited in bank against such business receipts cannot be regarded as unexplained money u/s 69A of I.T Act*
6. *That the present additions are highly excessive contrary to facts, law and without affording proper opportunity to have its say on the reasons relied upon by the AO."*

(A.1) In this case assessment order dated 06/12/2019 u/s 143(3) of the I.T. Act was passed wherein the assessee's total income was assessed at Rs.8,79,916/-. In the aforesaid assessment order an addition of Rs.5,39,500/- was made by the Assessing Officer u/s 69A of the I. T. Act on the ground that the aforesaid amount was deposited by the assessee in

demonetized currency during demonetization period. The assessee's appeal against the aforesaid addition of Rs.5,39,500/- was dismissed by the learned Addl/JCIT(A) vide impugned appellate order dated 28/02/2024. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 28/02/2024.

(B) In the course of appellate proceedings before the Income Tax Appellate Tribunal, brief facts were filed from the assessee's side; which are reproduced below for the ease of reference:

BRIEF FACTS OF THE APPEAL

That the Assessee is a small business man doing business as Proprietor Bharat Electricals at Chinhat Bazar, Lucknow and selling Electrical and Electronic Goods. The Turnover of the Assessee during this year was Rs. 42,55,200/-, accordingly Return was filed u/s 44AD of I. T. Act at an Income of Rs. 3,22,850/- and later on requested that Correct Income of Rs. 3,40,416/- may kindly be considered.

The Ld. A. O. accepted the Turnover. However, made the addition of Rs. 5,39,500/- u/s 69A of I. T. Act being Cash Deposited during demonetization period. *In this regard, assessee explained that during demonetization period, assessee has deposited Rs. 39,500/- on 22.12.2016 in Old Currency being cash in hand as on 08.11.2016. Rest cash deposited on different date is in New Currency being collection of Retail sale of electrical items from 23.11.2016 to 29.12.2016.*

In support of the above, assessee also submitted a **CERTIFICATE FROM BANK OF INDIA** giving detail of Cash Deposit by Assessee through Proprietary Concern "Bharat Electricals" in Bank Account No.

753020110000381 with Bank of India, Chinhat Branch, Lucknow. Copy of Same is at page 5 in Paper Index before CIT (A). On perusal of the same it is evident that from 23.11.2016 to 29.12.2016, assessee has deposited in piece meals being Sale Proceeds of Electrical Goods in **New Currency** which is received out of sale on day to day basis. The funds so deposited in Bank Account were used for the purchase of Electrical goods through Cheque.

Assessee also submitted following documents before CIT (A) :-

- (i) Bank Certificate which is at page -5 of paper index .
- (ii) VAT Order of F. Y. -2016-17 which is at page 6 of Paper Index.
- (iii) List of Tax Invoices of Purchases and copy of Purchase Invoices and Proof of Registration with VAT Authorities which are at page 7 to 18 of the Paper Index.
- (iv) Copy of Bank Statement of Bank of India, Chinhat Branch, Lucknow, Account No. 753020110000381, which is at page 24 to 35 of Paper Index.

It is prayed that once the Sales of Rs. 42,55,200/- has been accepted and Income as per 44AD Rs.3,40,416/- has been assessed by Ld. A. O., no separate addition for Cash Deposit of Rs. 5,39,500/- in bank account during demonetization period should be made u/s 69A of I. T. Act r. w. s. 115BBE of I. T. Act as Assessee has deposited only Rs. 39,500/- in old currency on 12.11.2016 being Cash in hand as on date of demonetization and **rest deposit of Rs. 5,00,000/- in new currency from 23.11.2016 to 29.12.2016 which is verifiable from the bank Certificate. Same is reproduced here under :-**



CHINHAT BRANCH

TO,
M/S Bharat Electricals
(Prop. Jagdish Prasad)
Chinhhat Branch
Lucknow.

Subject :- RE: Details of amount credit in the Account :- 733020110000381 in the name of M/S Bharat Electricals.

Sir,

With reference to the letter dt 19-11-2019, in which you have requests us to give the details of Amount credited in our account with denomination of the notes submitted, The requested details are as under :-

Date of Credit in account	Amount credited in the account	Denomination
12-11-2016	Rs. 39500/-	1000 (old) * 17 = 17000/- 500 (old) * 45 = 22500/-
23-11-2016	Rs. 30000/-	2000 * 9 = 18000/- 100 * 120 = 12000/-
25-11-2016	Rs. 35000/-	2000 * 13 = 26000/- 100 * 90 = 9000/-
28-11-2016	Rs. 25000/-	2000 * 10 = 20000/- 100 * 50 = 5000/-
30-11-2016	Rs. 37000/-	2000 * 11 = 22000/- 100 * 100 = 10000/- 50 * 100 = 5000/-
01-12-2016	Rs. 20000/-	2000 * 8 = 16000/- 100 * 40 = 4000/-
02-12-2016	Rs. 14000/-	2000 * 7 = 14000/-
05-12-2016	Rs. 22000/-	2000 * 11 = 22000/-
05-12-2016	Rs. 72000/-	2000 * 33 = 66000/- 100 * 60 = 6000/-
12-12-2016	Rs. 86000/-	2000 * 43 = 86000/-
19-12-2016	Rs. 30000/-	2000 * 15 = 30000/-
21-12-2016	Rs. 52000/-	2000 * 26 = 52000/-
27-12-2016	Rs. 10000/-	100 * 100 = 10000/-
26-12-2016	Rs. 60000/-	2000 * 30 = 60000/-
29-12-2016	Rs. 7000/-	2000 * 1 = 2000/- 100 * 50 = 5000/-

We are confirming that the above details are correct and as per bank record.

Pooja Rai
Sepior branch manger

Accordingly, it is prayed that once the Turnover of Rs. 42,55,200/- and Income of Rs. 3,40,416/- has been assessed u/s 44AD of I. T. Act by Ld.

A. O., No separate addition for Cash Deposit of Rs. 5,39,500/- (Rs. 39,500/- deposited in Old Currency and Rs.5,00,000/- deposited in new currency in Bank Account from 12.11.2016 to 29.12.2016) should be made.

(B.1) Further, paper book containing the following particulars was filed from the assessee's side during appellate proceedings before the Income Tax Appellate Tribunal:

Sr. No.	PARTICULARS
1-	Acknowledgement of Written submission Before CIT(A) on 24.10.2023
2	Copy of Written Submission Before CIT(A) along with Annexure A Bank Certificate and Annexure B Vat Order for FY 2016-17
3	Copy of Screenshot of Documents Submitted Before Assessing Officer on 06.12.2019 being Annexure A List of Tax Invoices of Purchases and copy of Purchase Invoices, Proof of registration with VAT Authority
4	Copy of Screenshot of Written Submission Submitted Before Assessing Officer on 30.10.2019 with Annexure A Bank Certificate and Annexure B Vat Order for FY 2016-17
5	Copy of Abstract of cash deposit on different dates with Bank of India, Chinhat Branch, Proprietary Concern Bharat Electricals A/c No. 753020110000381
6	Copy of Bank Statement of Bank of India, Chinhat Branch, Proprietary Concern Bharat Electricals A/c No. 753020110000381 FY 2016-17
7	Copy of Hon'ble ITAT SMC Bench Lucknow Order in ITA No. 142/LKW/2021 in case of Hardeep Kaur V/S ITO 3(4) Lakhimpur Kheri

(C) At the time of hearing, learned A.R. for the assessee submitted that only an amount of Rs.39,500/- was deposited by the assessee in demonetized currency during demonetization period; and the Assessing Officer grossly erred in treating the entire amount of Rs.5,39,500/- being deposited in demonetized currency. Learned A.R. further submitted that aforesaid amount of Rs.39,500/- was available as cash in hand out of assessee's business of sale of electrical and electronics goods from the proprietary firm Bharat Electricals. The learned A.R. for the assessee also submitted that the remaining amount out of the aforesaid Rs.5,39,500/-, i.e. Rs.5,00,000/- was deposited out of the assessee's turnover of Rs.42,55,200/- which has been duly shown u/s 44AD of the Act in the income tax return filed u/s 139 of the Act. The learned A.R. for the assessee placed reliance on the aforesaid paper book and drew our particular attention to the certificate issued by bank wherein it has been clearly shown that the deposits in the bank (Bank of India, Chinhat Branch, Lucknow) in demonetized currency amounted to Rs.39,500/-. Relying on the submissions made, and the paper book filed from the assessee's side as also the facts of the case referred to in foregoing paragraphs of this order, learned A.R. for the assessee contended that the aforesaid addition of Rs.5,39,500/- be deleted.

(C.1) Learned D.R. for Revenue relied on the orders of the learned CIT(A) and the Assessing Officer. However, he could not rebut the facts and submissions contended on behalf of the assessee. The learned D.R. for Revenue left the matter to the discretion of the SMC.

(D) The assessee is in the business of sale of electrical and electronics goods and has shown turnover of Rs.42,55,200/- u/s 44AD of the I. T. Act (under the scheme of presumptive taxation) and has shown income of Rs.3,22,850/- in the aforesaid turnover, in the return of income. Having regard to turnover of the assessee, nature and scale of assessee's business, the claim of the assessee that part of the sale consideration received was in cash, and an amount of Rs.5,39,500/- deposited in cash in bank account is not unreasonable and further the cash balance of Rs.39,500/- in demonetized currency just before the demonetization is also not unreasonable or excessive. The addition made by the Assessing Officer is based only on doubt, surmises and guess work. As the assessee has opted for presumptive taxation u/s 44AD of the Act, the assessee is not required to maintain regular books of account and no adverse view can be taken against the assessee on this account. The certificate issued by bank to the effect that only Rs.39,500/- was deposited by the assessee in demonetized currency was available with the Assessing Officer and with the learned CIT(A) who, however, failed to take this certificate into consideration while passing their respective orders. No case has been made for sustaining the aforesaid addition of Rs.5,39,500/-. The mere fact that part of turnover was deposited in cash in bank should not colour decision of the authority. The mere fact that part of turnover was deposited in cash should not weigh so heavily in the minds of the authorities that it may lead to unjustly and unfairly reject reasonable explanation and ignore material evidence placed before the authorities. In the specific facts and circumstances of the present case, and the material evidence available on record; the explanation tendered from assessee's side that an amount of Rs.39,500/- deposited in bank in demonetized currency was part of cash balance available just before demonetized; and total amount of Rs.5,39,500/- deposited in cash in bank

was part of turnover is accepted. Accordingly, in specific facts and circumstances of the present case, the aforesaid addition of Rs.5,39,500/- is deleted and the appeal is allowed.

(D) In the result, the appeal of the assessee is allowed.

(Order pronounced in the open court on 31/12/2024)

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:31/12/2024

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT

4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar