

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 2027/Mum/2024
Assessment Year : 2017-18

Ramchandra Keshav and Company, 53, Mohan Building, 162, J.S.S. Road, Girgaum, Mumbai. PAN : AAAGR1124J	vs.	CIT(A)-30, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Anil Sathe
For Revenue :	Shri R.R. Makwana, Sr.DR

Date of Hearing :	11-12-2024
Date of Pronouncement :	31-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 22-02-2024 passed by the Ld.CIT(A)-NFAC, Delhi and it relates to the Assessment Year (AY.) 2017-18. The only issue urged in this appeal is related to the addition of Rs. 3.50 crores made by the AO u/s. 69A of the Income Tax Act, 1961 ('the Act').

2. The facts relating to the case are discussed in brief. The assessee is a partnership firm and is carrying on the business of trading in jewellery. It filed its return of income for the year under consideration, declaring a

total income of Rs. 40.52 lakhs. The return of income was taken up for scrutiny. It was noticed that the assessee has deposited Rs.3.00 crores in Saraswat Co-operative Bank Ltd and Rs.50,06,000/- in Deccan Merchants Co-operative Bank Ltd cash during the demonetization period. The aggregate amount of deposits made by way of cash was Rs.3,50,06,000/-. As per the requirement of Cash demonetization scheme, the depositors have to report the details of cash deposited in their bank account in a prescribed form. According to AO, the assessee has reported the cash deposits made into Deccan Merchants Co-op. Bank Ltd., only in the declaration form 2016 and did not report the cash deposited in Saraswat Co-operative Bank. The AO further noticed that the cash deposit made in Deccan merchants Co-op. Bank Ltd., was wrongly reported as Rs. 5,06,000/- in the return of income.

3. During the course of assessment proceedings, the assessee furnished ledger account copies of cash in hand and also details of cash sales and cash deposits made by the assessee during the year under consideration and in the immediately preceding year. The AO noticed that the cash sales have increased four times during the year under consideration vis-à-vis the preceding year. In view of the discrepancies noticed in reporting of cash deposits and also the increase in cash sales during the current year, the AO took the view that the assessee has manipulated its books of accounts in order to show availability of cash in the books on account by recording cash sales, so that it could deposit unaccounted cash in the bank accounts during the period of demonetization. Accordingly, he took the view that the cash deposit of Rs. 3.50 crores is unexplained and liable to be taxed u/s. 69A of the Act. Accordingly, he assessed the above said amount as income of the assessee. The Ld.CIT(A) confirmed the addition made by the AO. Hence, the assessee has filed this appeal before the Tribunal.

4. The Ld.AR submitted that the mistake pointed out by the AO in reporting of cash deposit made in Deccan Merchants co-operative Bank Ltd in the return of income was a clerical mistake only, i.e, the actual deposits of Rs. 50,06,000/- was wrongly entered as Rs. 5,06,000/- by omitting one “zero”. He submitted that the assessee has correctly declared the deposit amount of Rs.50,06,000/- in the cash deposit declaration form filed with the Income tax department and hence there was no necessity for the assessee to report a wrong amount in the return of income. The Ld.AR further submitted that the assessee has also reported the cash deposit of Rs. 3 crores made with Saraswat Co-operative Bank Ltd., by way of a separate declaration, but it was omitted to be considered by the AO. Accordingly, the Ld.AR submitted that the AO should not have taken adverse view in view of one discrepancy noted by him. He submitted that these mistakes, any way, will not affect the determination of total income and hence, the AO should not have given much importance to it. He further submitted that the assessee has furnished all the details relating to cash sales before the AO and he has not found any fault with any of those documents. He submitted that the impugned cash deposits have been made out of cash balance available in the books of accounts, which was generated by way of cash sales. He further submitted that the assessee was having sufficient physical stock in hand at that point of time. Further, the demonetization period was having festivals likeh Dusserrah and Diwali. During that period, it is customary for the general public to purchase gold ornaments. Hence, there was spurt in the cash sales during the demonetization period. Further, the AO has accepted the cash sales and after having accepted the cash sales, there was no reason for the AO to suspect the cash balance generated out of such cash sales. Accordingly, he submitted that addition made by the AO u/s. 69A of the Act is liable to be deleted.

5. The Ld.DR, on the contrary, submitted that there is a huge increase in cash sales during the demonetization period when compared with the corresponding cash sales made in the immediately preceding year. Hence the assessing officer has raised doubt on the claim of cash sales. He further submitted that the assessee has not proved that it was having sufficient stock in its hands during that period to make cash sales. Accordingly, the Ld D.R submitted that the assessee has not furnished proper documents supporting the cash deposits made into the bank accounts. Accordingly, he submitted that the order passed by Ld.CIT(A) need not be interfered with.

6. In the rejoinder, the Ld.AR submitted that the assessee was having sufficient quantity of physical stock of gold, silver, diamonds and other stones. However, the details of physical stock of above items could not be furnished before the tax authorities by inadvertence. The Ld.AR submitted that the assessee is furnishing the details of stock summary before the Tribunal by way of additional evidences along with a petition requesting it to admit the additional evidences, as these details are essential to adjudicate the issue contested before the Tribunal. Accordingly, the Ld A.R prayed for admission of the additional evidences. He submitted that the stock summary would support the cash sales made by the assessee

7. We heard the parties and perused the record. It is the submission of the assessee that the impugned cash deposit of Rs. 3.50 crores have been made out of cash balance available in the books of accounts, which was generated out of cash sales made by it. We noticed that the assessee has furnished the details of cash ledger, cash sales ledger and cash deposits made into its bank accounts before the AO. However, the assessee did not furnish the details of physical stock available in its hands before him. Admittedly, the assessee could make cash sales only if it could show that

it was having sufficient quantity of physical stock. Hence the examination of availability of physical stock is essential to examine the claim of cash sales. Accordingly, we are of the view that the details of stock summary furnished by the assessee before the Tribunal by way of additional evidence are very much necessary to adjudicate the issue before us. Accordingly, we admit the same.

8. We noticed that the AO has rejected the claim of availability of cash in the books of accounts of the assessee, which was claimed to have been generated out of cash sales. We notice that the AO has, however, not rejected the books of accounts of the assessee and also did not bring any material on record to reject the said claim. In our view, if the AO had doubted the claim of availability of cash in the books of the assessee, which was claimed to have been generated out of cash sales, it is necessary for him to conduct proper enquiries to find out the veracity of the claim made by the assessee. Without conducting necessary enquiries, the AO should not take any adverse view. Since the AO has not conducted any enquiry, we are of the view that the AO has made the impugned addition of Rs. 3.05 crores u/s. 69A of the Act under suspicion, which is not permitted under the law.

9. At the same time, there is a lacunae on the part of the assessee also. We noticed that the assessee did not furnish details of physical stock before the AO, which is essential to prove the claim of cash sales. As noted earlier, the assessee could make cash sales only of gold, silver, precious stones etc., only if it was having sufficient quantity physical stock in its possession. Hence, in order to examine the claim of cash sales, it is imperative for the AO to examine the availability of physical stock also. We noticed that the details of stock summary have been furnished for the first time before the Tribunal in the form of additional evidence. Hence, we are

of the view that this issue needs to be examined afresh at the end of the AO. If the AO finds that the sales have been made out of physical stock available with the assessee and the cash balance has been generated out of the said cash sales, then no addition u/s. 69A will be called for. Accordingly, we set aside the order passed by the Ld.CIT(A) and restore this issue to the file of the AO for examining the same afresh in accordance with the directions given above, After providing adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.

10. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 31-12-2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date: 31-12-2024

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai