

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.368/Ind/2023
(Assessment Year: 2016-17)

Tirupati Iron India Pvt. Ltd. E-32, Liyaqat Market, New Kabadkhana (Appellant / Assessee)	Vs.	DCIT -4(1) Bittan Market Bhopal (Respondent/ Revenue)
PAN: AABCT6665J		
Assessee by	Shri Yashwant Sharma, AR	
Revenue by	Shri Sanjeev H. Bhagat, Sr. DR	
Date of Hearing	11.12.2024	
Date of Pronouncement	12.12.2024	

ORDER

Per Vijay Pal Rao, VP :

This appeal by assessee is directed against the order dated 26.05.2023 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2016-17.

2. There is a delay of 67 days in filing the present appeal. The assessee has filed an application for condonation of delay which is also supported by an affidavit.

2.1 We have heard Ld. AR as well as Ld. DR and carefully perused the contents of the application for condonation of delay as well as the affidavit filed by the assessee. The assessee has explained cause of delay as the impugned order of the CIT(A) come to the knowledge of the assessee only when giving effective order of the AO was physically served on the assessee on 6th September 2023. It is not disputed that the impugned order was not served on the assessee physically but it was only sent to the e-mail. Further it is also not clear that the notices issued by the CIT(A) as well as the impugned order were sent to the correct e-mail ID as given in form 36 or were sent to the e-mail ID registered with the department. Thus, in the facts and circumstances of the case we find no reason to disbelieve the cause of delay explained by the assessee and hence we are of the opinion that the assessee was having sufficient cause for delay of 67 days in filing the present appeal. Accordingly delay of 67 days in filing the present appeal is condoned.

3.The assessee has raised following grounds of appeal:

"1That, on the facts and in the circumstances of the case, the order of honourable CIT(A) is bad in law.

2.That, on the facts and in the circumstances of the case, the honourable CIT(A) failed in providing proper opportunity to the assessee and in making order ex-parte as no notice for fixations were received by the assessee, who came to know of the appellate order having been passed by honourable CIT(A) when appeal effect order of AO was physically served to the assessee on 6th September, 2023.

3.That, on the facts and circumstances of the case and in law, the Id. AO was unjustified in making and honourable CIT(A) in upholding the addition of Rs. 81,51,359/- as unexplained cash in hand ignoring the fact that it was only a human mistake in filing Income Tax Return wherein gross total of cash in hand Rs. 11,65,304/- and bank balance Rs. 81,51,357/-

aggregating to Rs. 93,16,662/- were inadvertently shown in the column of cash in hand only and Nil balances were shown in the bank column.

4. That, on the facts and circumstances of the case, the honourable CIT(A) failed in appreciating that the mistake was only a human mistake in filing the Income Tax Return, which is quite clear from the detailed breakup of cash and bank balance in the audit report vis-a-vis IT return, given by the Id. AO herself in the assessment order.

5. That, on the facts and circumstances of the case and in law, the Id. AO was unjustified in holding and honourable CIT(A) in upholding that the assessee inflated the cash in hand with a mala fide intention to show the same as accounted cash."

4. The assessee is a Private Limited Company and engaged in the business of manufacturing of Iron and Steel. The assessee filed its return of income for assessment year under consideration on 24.02.2017 declaring total income of Rs.45,02,750/-. During the course of scrutiny assessment the AO noted that the assessee has shown cash in hand of Rs.93,16,663/- in the return of income in comparison to Rs.4,656/- in assessment year 2015-16. The AO further noted that the assessee has deposited in bank account of Rs.9,00,000/- during the demonetization period in order to verify and examine the large cash in hand. The AO asked the assessee to justify the same vide notice u/s 142(1) issued on 29th September 2018. In reply the assessee explained that the cash in hand is from sale proceeds from business. The AO was not satisfied with the reply of the assessee and made an addition and further verified the details of breakup of cash balance shown in the balance sheet wherein cash in hand declared by the assessee at Rs.11,65,304/-. Accordingly, the AO has made addition of Rs.93,16,663/- as excess amount of cash in hand disclosed in the return of income in comparison to cash in hand reflected in the audited financial account at Rs.11,65,304/-.

The assessee challenged the action of the AO before the CIT(A). Before the CIT(A) the assessee explained that the AO has taken amount of cash in hand at Rs.93,16,663/-. Since there was no response to notice issued by the CIT(A) therefore, addition made by the AO was confirmed by the CIT(A) to the extent of Rs.81,51,359/- after reducing the addition of Rs.11,65,304/- as cash in hand shown in the financial statement.

5. Before Tribunal Ld. AR of the assessee has submitted that it was only Bonafide inadvertent human mistake to show the cash in hand in the return of income at Rs.93,16,663/- instead of cash in hand of Rs.11,65,305/- and rest of the amount was representing balance in the bank account of the assessee under current account as well as FDR, total amounting to Rs.81,51,358/-. Ld. AR has referred to the details reproduced by the AO in the assessment order itself showing cash in hand of Rs.11,65,304/-, PNB current account balance of Rs.22,47,118/- and PNB FDR balance of Rs.59,04,239/- total amounting to Rs.93,16,662/-. Thus, Ld. AR has submitted that in the return of income inadvertently the total sum of cash and cash equivalent balance as on 31.03.2016 was shown as cash in hand instead of showing separate balance under the head of cash in hand, current account and FDR respectively. Thus, Id. AR has submitted that the addition has been made by the AO merely because the total amount of cash and cash equivalent in hand was shown in the return of income as cash in hand. He has referred to the balance sheet and not on account of under note no.12 farming part of financial statement and submitted that there is no discrepancy in the total

amount of Rs.93,16,662/- comprising of cash in hand of Rs.11,65,305/-, PNB current account of Rs.22,47,118/- and PNB FDR of Rs.59,04,239/-. He has further submitted that when the assessee was having a cash in hand of Rs.11,65,304/- as on 31.03.2016 then the deposit of Rs.9,00,000/- cash in bank account during the demonetization period. Then the source of deposit of Rs.9,00,000/- cash in hand bank account during the demonetization period is duly explained from the opening balance of cash in hand itself. Thus, Id. AR has submitted that ignoring relevant facts duly available before the AO as well as the Ld. CIT(A) the addition confirmed by the CIT(A) is sustainable and liable to be deleted.

6. On the other hand, Id. DR has submitted that the AO asked the assessee to explain large cash in hand and in reply the assessee has stated that it is from the sales of the assessee but assessee has not pointed out the alleged mistake in declaring cash in hand of Rs.93,16,662/- in the return of income. Further the assessee has not responded to the notices issued by the CIT(A) and therefore, in absence of any explanation the Ld. CIT(A) has rightly confirmed the addition on this account. He has further contended a case belated return of income filed after demonetization. He has relied upon the order of the authorities below.

7. We have considered rival submissions as well as relevant material on record. The AO has made an addition of Rs.93,16,662/- on account of excess cash in hand as declared in the return of income

in comparison to the cash in hand shown in the audited financial statement at Rs.11,65,305/-. In the notice issued u/s 142(1) the AO has asked the assessee to explain the justification of keeping high cash in hand and did not confront the assessee about mismatch of cash in hand declared in the return income in comparison to the cash in hand reported in the audited financial statement. It is pertinent to note that in the balance sheet the assessee has shown cash and cash equivalent as on 31.03.2016 at Rs.93,16,662.69/-. The details of this balance of Rs.93,16,662.69 are given in note no.12 forming part of the financial statement placed at page no.10 as under:

Note-12: Cash & Sash Equavalent

Cash in hand	11,65,304.92	4636.17
<u>Balance with scheduled banks:</u>		
PNB current A/c	22,47,118.77	5,41,259.75
Kishna Mercantile Bank		5,050.00
BNB FDR	59,04,239.00	57,97,883.00
Total	93,16,662.69	63,48,828.92

7.1. These details were also reproduced by the AO in the assessment order at page no.4 & 5 as under:

Cash and cash equivalent		As at 31 st march 2016
	Cash in hand	Rs. 11,65,304/-
	Balances with scheduled Banks:	
	PNB Current A/c	22,47,118
	Krishna Mercantile Bank	-
	PNB FDR	59,04,239
	Total	93,16,662/-

1. However, as per return for A.Y. 2016-17 'Cash and Cash Equivalent' break up is –

Cash and cash equivalent		
	Balances with Bank	00
	Cheques, draft in hand	00
	Cash in hand	93,16,663/-
	Others	0



Shot on OnePlus

	Total Cash and cash equivalents (i+ii+iii+iv)	93,16,663/-
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7.2 Thus, all the details were available with the AO as reproduced in the assessment order itself showing that as per the audited financial statement the assessee was having cash in hand at Rs.11,65,304/- and the balance amount was only representing the PNB, current account and PNB FDR. Since the total cash and cash equivalent balance as on 31.03.2016 was Rs.93,16,662/-. Therefore, the possibility of inadvertent mistake declaring the cash in hand in the return of income at Rs.93,16,662/- instead of Rs.11,65,304/- cannot be ruled out. Further in the return of income the assessee has shown the balance with bank at nil which itself shows that this is only mistake on the part of the tax consultant at the time of filing the return of income. The assessee has specifically pointed out this factual mistake in the return of income in ground no.2 before the CIT(A) as represented in para no.3.1 of the CIT(A) as under:

"2. That, on the facts and circumstances of the case, the Id. AO erred in making addition of Rs. 93,16,663/- as unexplained cash in hand ignoring the fact that it was only a human mistake in filing Income Tax Return wherein gross total of cash in hand and bank balance aggregating to Rs.93,16,663/- were inadvertently shown in the column of cash in hand only and nil balances were shown in the bank column.

3. That, on the facts and circumstances of the case, the mistake was only a human mistake in filing Income Tax Return, is quite clear from the detailed break up of cash and bank balance in the audit report vis-a-vis IT Return, given by the Id. AO herself in the assessment order."

7.3 The CIT(A) has passed the impugned order ex-parte without even considering these details already available with the AO and also explained before the CIT(A) that due to inadvertent mistake the amount representing cash and cash equivalent in hands has been shown in the return of income as cash in hand. Thus, as evident from the record that the assessee has reported cash in hand as 31.03.2016 at Rs.11,65,304.92/-, PNB current account of Rs.22,47,118.77/- and PNB FDR of Rs.59,04,239 totaling amount to Rs.93,16,662.69/-. However, in the return of income the assessee has shown the entire amount of Rs.93,16,662.69 as cash in hand and nil amount was shown as balance in bank. Therefore, it is apparent mistake of declaring cash in hand in the return of income at total amount comprising of cash equivalent balance as on 31.03.2016. Accordingly in the facts and circumstances of the case the addition sustained by the CIT(A) is deleted.

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

Order pronounced in the open court on 12.12.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

sd/-
(VIJAY PAL RAO)
Vice President

Indore, _ 12.12.2024
Patel/Sr. PS

ITANo.368/Ind/2023
Tirupati Iron India Pvt. Ltd.

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore