

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

महनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.626/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

M/s JBA Rerolling Mills 56D, Mughalpur Street Tiruvannamalai-606 601.	बनम/ Vs.	ACIT Circle-1 Vellore.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AABFJ-6828-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri N. Arjunraj (CA)- Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	01-05-2024
घोषणा की तारीख / Date of Pronouncement	:	08-05-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 30-03-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 26-12-2019. The sole grievance of the assessee is confirmation of addition of Rs.72.11 Lacs.
2. The AR advanced arguments supporting the case of the assessee. The Ld. Sr. DR supported the orders of lower authorities. Having heard

rival submissions, the appeal is disposed-off as under. The assessee being resident firm is stated to be engaged in manufacturing and sale of Steel. The assessee reflected turnover of Rs.66.80 Crores during this year.

Assessment Proceedings

3.1 It transpired that during this year, the assessee deposited cash of Rs.1251.86 Lacs in its bank account. The amount deposited post-demonetization period was Rs.203.20 Lacs. The Ld. AO noted that the amount deposited in Specified Bank Notes (SBN) from 09-11-2016 to 30-12-2016 was Rs.169.59 Lacs. To verify the source of the same, certain documents and information was called from the assessee. The assessee filed cash summary for FYs 2015-16 and 2016-17. The assessee also furnished copy of cash books. The bank account was duly reflected by the assessee in the books of accounts.

3.2 After examination of data as furnished by the assessee, Ld. AO concluded that though cash sales in May, August, September and October, 2016 was high, however, in subsequent months viz. November and December, cash sales were very less. Therefore, there was an abnormality in this year. The monthly data of cash flow was also considered which has been extracted on page nos. 4 & 5 of the assessment order. It was, inter-alia, observed that opening cash for this year was Rs.3.94 Lacs which went up-to Rs.253.47 Lacs as on 31-05-2016. The same was on the rise and closing cash balance as on 08-11-2016 was Rs.218.20 Lacs. There was apparent abnormality in the huge cash-in-hand in this year. When compared with the assessee's financials, the genuineness of cash-in-hand of Rs.218.20 Lacs was under cloud as no prudent person would keep such huge cash-in-hand.

The Ld. AO strengthened the same on the observation that there were withdrawals from the bank. In these conditions, the assessee would not have kept such huge cash. Therefore Ld. AO alleged that the assessee had inflated cash-in-hand.

3.3 On the basis of these facts, it was alleged by Ld. AO that the assessee booked bogus sales in the months of August to October, 2016 to arrive at huge cash-in-hand. The same was created by inflating the cash sales with bogus sales and by bringing own undisclosed money in the form of cash sales, the receipts of which were in SBNs.

3.4 Finally, Ld. AO held that average cash-in-hand in the current year could not be higher than cash-in-hand for the preceding year as increased by incremental growth in business. The cash-in-hand as on 08-11-2015 as increased by maximum of 10%, would be Rs.97.48 Lacs as on 08-11-2016. Therefore, the difference of Rs.169.59 Lacs and Rs.97.48 Lacs i.e., Rs.72.11 Lacs was to be treated as unexplained money. The same was added to the income of the assessee.

Appellate Proceedings

4. During appellate proceedings, the assessee, inter-alia, submitted that turnover for AYs 2016-17 & 2017-18 was Rs.35.89 Crores and Rs.66.80 Crores respectively whereas cash-in-hand as on 08-11-2015 & 08-11-2016 was Rs.88.61 Lacs and Rs.169.59 Lacs respectively. The turnover and cash balance increased by 86.1% and 91.4% respectively which were commensurate with the volume of business done by the assessee. Further, the assessee declared turnover under VAT and CST and paid requisite taxes. The copies of orders passed under VAT & CST along with Audited financial statements were also furnished. It was submitted that books were audited u/s 44AB and the books of accounts

were accepted. Further, existence of cash balance was a matter of fact and it could not be estimated. Estimation of cash based on presumption and treating it as unexplained income would be untenable. However, Ld. CIT(A) chose to confirm the impugned addition against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee has carried out sale of steel articles during the year. The assessee's case was scrutinized to examine the source of cash deposited by it during demonetization period. During the course of assessment proceedings, the assessee furnished cash summary for FYs 2015-16 and 2016-17. The assessee also furnished copy of cash books. The bank account was duly reflected by the assessee in the books of accounts. However, Ld. AO made allegation of bogus sales by observing that though cash sales in May, August, September and October, 2016 was high, however, in subsequent months viz. November and December, cash sales were very less. Therefore, there was an abnormality in this year. Another observation was that opening cash for this year was Rs.3.94 Lacs which went up-to Rs.253.47 Lacs as on 31-05-2016. The same was on the rise and closing cash balance as on 08-11-2016 was Rs.218.20 Lacs which was abnormal. Therefore, genuineness of cash-in-hand was under suspicion. Finally, Ld. AO made an estimation of probable cash as on 08-11-2016 after assumption of incremental growth of 10%. It was held that average cash-in-hand in the current year could not be higher than cash-in-hand for the preceding year as increased by incremental growth in business. The said observation is clearly a fallacious one and bereft of any logic. The cash-in-hand held by the assessee is a matter of fact and

not a matter of estimation. The Ld. AO picked up cash-in-hand as on 08-11-2015 and increased the same by 10% to arrive at probable cash-in-hand as on 08-11-2016. The cash-in-hand, in our considered opinion, could not be estimated in such a way and the same is devoid of any merits.

6. It could also be seen that the sales turnover as achieved by the assessee has duly been declared in VAT returns which have been accepted by VAT authorities. The financial statements are subjected to Tax Audit u/s 44AB. The Ld. AO has neither rejected the books nor made any adverse comment on stock movement. No discrepancies in sales and purchase have been noted in the assessment order. The cash sales have duly been credited in the books of accounts and sales turnover has been offered to tax as revenue receipts. Adding the same again would amount to double taxation which is impermissible.

7. It could further be seen that the assessee has sufficient cash balance as on 08-11-2016 to make the impugned deposits in the bank account. The assessee has furnished cash summary. The cash-in-hand is duly supported by the books of accounts. The assessee has generated cash sales which have been utilized to make impugned cash deposits in the bank accounts. No single defect has been pointed out in the books or financial statement of the assessee. On these facts, it could very well be said that the assessee's claim was backed up by sufficient documentary evidences. The onus was on Ld. AO to rebut the same. However, the allegation of Ld. AO regarding bogus sales or high cash-in-hand is bereft of any concrete evidence, primary or corroborative as is evident from the assessment order. It is trite law that no addition could be made on the basis of mere suspicion, conjectures and

surmises. In the present case, the assessee has duly discharged the burden of establishing the source of cash deposit and the onus was on Ld. AO to disprove the same. However, except for mere allegation and few statistics, there is nothing on record to support the conclusions drawn by Ld. AO that the assessee's own unaccounted money was introduced and accommodated under bogus sales.

8. Finally, considering the entire facts and circumstances of the case, the impugned additions could not be sustained. Be deleting the same, we allow the appeal of the assessee.

9. The appeal stand allowed.

Order pronounced on 8th May, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 08-05-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF