

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH: BANGALORE**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 2041/Bang/2024
Assessment Year: 2017-18

Sushiladevi Parasmalji Jain, Prop : Saraswati Saree Centre, Javali Sal, Hubballi – 580 020. PAN – ACLPJ 4078 J	Vs.	The Income Tax Officer, Ward – 1(4), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vishal S Rao, C.A
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of hearing	:	06.02.2025
Date of Pronouncement	:	03.03.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 28/08/2024 vide DIN No. ITBA/NFAC/S/250/2024-25/1068079170(1) for the assessment year 2017-18.

2. The issue raised by the assessee in ground No. 1 is general in nature and does not require any separate adjudication. Likewise, the issues raised in ground Nos. 12 & 13 in relation to levy of interest u/s 234B & 234C of the Act are consequential in nature and do not require

any separate adjudication. Hence, the ground Nos. 1, 12 and 13 of the assessee's appeal are hereby dismissed as infructuous.

3. The issue raised by the assessee in ground Nos. 2 to 8 of its appeal are interconnected and pertains to the addition of Rs. 44,32,000/- by treating the cash deposit during the demonetization as unexplained money.

4. The relevant facts are that the assessee is an individual and engaged in the business of wholesale trading of saree through proprietary concern in the name and style of "Saraswati Saree Center". The assessee during the demonetization period i.e. between 9th November 2016 to 31st December 2016 made cash deposits of Rs. 44,32,000/- which included Rs. 30 Lakh in old currency and balance amount in new currency. The assessee during the assessment proceeding claimed the impugned cash deposit was made out of business transactions.

5. The AO through questionnaire issued u/s 142(1) of the Act, asked the assessee to furnish the details such cash sales, withdrawal and deposits during the demonetization as well as prior to the demonetization period. However, the AO found that the assessee failed to furnish, or file respond to the questionnaire. Hence, the AO in absence of required details treated the entire cash deposit of Rs. 44,32,000/- as unexplained/unaccounted money as per the provision of section 69A of the Act and added to the total income of the assessee.

6. The aggrieved assessee preferred an appeal before the learned CIT(A).

7. The assessee, before the learned CIT(A), submitted that during the year under dispute, the total aggregate sales amounted to Rs. 3,00,50,354/-, out of which cash sales was accounted for Rs. 2,04,30,828/- only. During the period from 01.04.2016 to 08.11.2016, she (assessee) received cash amounting to Rs. 1,50,79,675/- as part of sales realization. As of 08.11.2016, the closing cash balance stood at Rs. 31,30,306/-, which was subsequently deposited into the Karnataka Bank account during the demonetization period. Further, for the period from 09.11.2016 to 31.12.2016, the total cash sales amounted to Rs. 28,95,636/-, and out of this, a sum of Rs. 14,32,000/- was deposited in the bank account during said period in new denomination currency.

8. The assessee in support of her submission furnished cash deposit summary containing month wise detail of opening cash balance, cash from sales realization during the month, cash deposited during the month and closing balance for the moth. The said detail was provided from April 2016 to March 2017.

9. However, the learned CIT(A) found that the assessee during the assessment proceedings failed to furnish the details required by the AO. The details submitted during the appellate proceeding were in the nature of additional evidence which were submitted were without proper application of provision of rule 46A of the Income Tax Rules. Further, the learned CIT(A) held that the additional evidence furnished by the assessee were incomplete and not supporting the ground of appeal

raised. Hence the learned CIT(A) confirmed the addition made by the AO.

10. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before me.

11. The learned AR before us filed application under rule 29 of ITAT Rules 1963 to accept the extract of cash books of the year under consideration as additional evidence. The learned AR before us claimed that the cash book was not filed before the learned CIT(A) but other details furnished were sufficient to explain the source of cash deposit during the demonetization. Thus, the learned AR contended before us that the cash deposited in the bank account does not represent unexplained money under section 69A of the Act.

12. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

13. I have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee during the demonetization period i.e. between 9th November 2016 to 31st December 2016 made cash deposit of Rs. 44,32,000/- out of which Rs. 30 Lakh was deposited on 10th & 11th November 2016 in old demonetized currency whereas remaining amount of Rs. 14,32,000/- was deposited in the month of December 2016 in new currency.

13.1 The assessee during the assessment proceeding claimed that the cash deposit is out of business proceeds and in support of the claim

furnished the extract of audited financial statements, statement of income, bank statement, debtors, creditors ledger. However, the AO made the addition in absence of other detail such cash sales, cash deposit and withdrawal made during the demonetization and prior to demonetization.

13.2 During the appellate proceeding the assessee has furnished additional document such as audited financial statement of previous financial year, month wise of summary of cash sales, cash deposit and closing balance, copy of vat return etc. However, the learned CIT(A) not considered the detail provided by the assessee by holding that these were additional evidences filed without compliance of rule 46A of IT Rules.

13.3 From the summary of month wise cash, I note that the assessee has shown cash sales on an average of 15 to 16 lakh in the month of May 2016 to September 2016 and on average cash sale of Rs. 31 Lakh in the month of April and October 2016. Likewise, the assessee has made cash deposits consistently in every month from April 2016 to October 2016 in between 9.5 to 19.4 lakh every month and even made cash deposit of Rs. 9 Lakh between November 1 to 8.

13.4 Thus, from the above observation it is transpired that cash sales and deposit in bank out such sale proceeds is usual business of the assessee.

13.5 I further find that the above detail provided by the assessee was very crucial to the outcome of the issue but the learned CIT(A) without

considering such details held that assessee failed to explain the sources of the cash deposit. Further the assessee before us has also filed extract of cash book which was not submitted before the lower authorities. In our considered opinion, additional evidence is crucial in order to decide the dispute in appeal which requires consideration at the level of the AO. In holding so, I draw support and guidance from order of Ahmedabad Tribunal in case of Nareshbhai Ishwardas Patel vs. ITO reported in 155 taxmann.com 141. The relevant observation of the Tribunal is extracted as under:

Now the learned AR for the assessee before us filed the copy of abovementioned documentary evidence and pleaded to admit the same as additional evidence. At the outset, we find that these additional evidences are crucial evidence in order to decide the issue whether the loan taken by the assessee from Shri Suresh Patel was utilized for acquiring the land property or not and consequently the assessee should be allowed the claim of interest expenses as cost of improvement or not. Therefore, considering the importance of the additional evidence which has direct bearing on the outcome of the dispute, we hereby exercise the power conferred under rule 29 of Income-tax (Appellate Tribunal) Rule 1963 and admit the same.

13.6 In view of the above discussion and considering the nature of the evidence, I exercise the power conferred under rule 29 of the ITAT rule and accept the additional evidence. However, I note that the revenue authorities have not got the opportunity to verify these details. Therefore, for the sake of justice and fair play I hereby *set aside* the issue to the file of the AO for de-novo adjudication in the light of additional evidence furnished by the assessee and as per the law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes.

14. The issue raised by the assessee vide ground No. 9 of its appeal pertains to the addition of interest income of Rs. 91,623/-.

15. The AO during the assessment proceedings found that the assessee earned interest income of Rs. 69,623/- from the fixed deposit which was not offered to tax. Similarly, an amount of Rs. 22,000/- reflected in Form-26AS as interest from Shri Dalichand Amolakchand Kothari which was also not offered to tax. Hence the AO added the sum of Rs. 91,623/- (Rs. 69,623 + Rs. 22,000) to the total income of the assessee under the head income from other sources.

16. The aggrieved assessee preferred an appeal before the learned CIT(A) and submitted that impugned amount of interest income included in the profit and loss account under the indirect income head as "interest account". Thus, the same has already been included in the income offered to tax. However, the learned CIT(A) dismissed the ground of appeal without assigning any specific reasons.

17. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

18. The learned AR before us reiterated that the interest income was already included in the profit loss account and thereby same was offered to tax. Therefore, making the addition of the same under the head income from other sources will amount to double addition.

19. On the other hand, the learned DR vehemently supported the order of the authorities below.

20. I have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee has earned interest income on fixed deposits and from the party namely Shri Dalichand Amolakchand Kothari for an amount aggregating to Rs. 91,623/- only. The AO alleged that the impugned interest income was not offered to tax whereas the assessee before the learned CIT(A) as well as before us submitted that impugned interest has already been part of the profit and loss account under the head "Interest Account". In this regard, I perused the profit and loss of the assessee available on page 50 of paper book and found that the assessee on debit side of profit loss has shown interest account of Rs. 1,22,466/- only. I further perused the ledger copy of "Interest Account" available on page 94 of the paper book and on perusal of the same I notice that the assessee on debit side of the said ledger has claimed interest expenses of Rs. 3,03,400/- and on the credit side has shown interest income of Rs. 1,80,934/- which included the amount from Shri Dalichand Amolakchand Kothari for Rs. 22,020/- and interest on FD with Karnataka Bank for Rs. 69,623/-. Thus, the assessee after netting of interest expenses and interest income claimed an expenditure of Rs. Rs. 1,22,466/- only. From the above it is transpired that the interest income as disputed by the AO has already been offered to tax by the assessee by netting of the same against the interest expenditure. Therefore, making further, addition of the same under the head income from other sources will amount to double addition. It is also pertinent to highlight that the ledger copy of "interest account" was submitted first time before the learned CIT(A) but same was not considered by the learned CIT(A) by holding that same was in the nature of additional evidence filed without complying with provision of rule 46A of the IT rules. However, I for the sake of brevity,

cutting the unnecessary litigation and exercising the power conferred under rule 29A of the Act admit the same. Nevertheless, I note that the revenue authorities have not got the opportunity to verify these details. Therefore, for the sake of justice and fair play I hereby *set aside* the issue to the file of the AO for de-novo adjudication in the light of additional evidence furnished by the assessee and as per the law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes.

21. In the result, the appeal of the assessee is hereby partly allowed for statistical purposes.

Order pronounced in court on 3rd day of March, 2025

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 3rd March, 2025
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore