

**THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA No. 12/DDN/2024
(Assessment Year: 2017-18)

Shubham Traders, Sirmoli Barichina Almora, Uttarakhand 266 624	Vs.	ITO, Ward-2(3) (3), Almora,
(Appellant)		(Respondent)
PAN:AAMAS6590E		

Assessee by :	None
Revenue by:	Shri S. K. chaterjee, CIT DR
Date of Hearing	17/03/2025
Date of pronouncement	02/04/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 12/DDN/2024 for AY 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-5, Kolkata [hereinafter referred to as 'Id. CIT(A)', in short] in dated 24.01.2024 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2019 by the Assessing Officer, ITO, Ward-2(3)(3), Almora (hereinafter referred to as 'Id. AO').

2. The first issue to be decided in this appeal is as to whether the Id NFAC was justified in sustaining the addition made in the sum of Rs 6,46,000/- on account of cash deposits in the facts and circumstances of the instant case. The other issue contested by the assessee is as to whether the Id NFAC was justified in confirming the estimated addition of Rs 8,51,280/- in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee despite issuance of notice. We have heard the Ld DR and perused the materials available on record. The learned AO on verification of data relating to cash deposits made during the demonetization period available in AIMS module of ITBA, substantial cash deposits of Rs 37,50,950/- was found were noticed in the case of the assessee during the demonetization period. Since the assessee had not filed its return of income for the assessment year 17-18, the learned AO issued notice under section 142(1) of the Act for the assessment year 2017-18 on 18-12-2017 calling for return of income. No compliance was made by the assessee to the said notice. Therefore, proceedings under section 144 of the Act was initiated by the learned AO. Accordingly a notice under section 142(1) of the Act was issued to the assessee on 8-9-2019 and subsequently a show cause notice was issued on 9-9-2019 seeking explanation for the credits in the bank accounts. Further notice under section 133(6) of the Act was issued by the learned AO to Uttarakhand Gramin Bank, Almora where the assessee had maintained two accounts in the name of individual Shri Bhuwan Chandra Pandey, the Association of Persons (AOP) member and in the name of Shubham Traders (AOP). The bank account statements were received from the banks. On perusal of the said bank statements, it was found that assessee had deposited cash aggregating to Rs 1,75,52,425 and non-cash deposits of Rs 43,92,580/- during the financial year 2016-17 relevant to assessment year 2017-18. After several opportunities given to the assessee, finally on 16-10-2019, assessee attended the office with his advocate and the case was discussed. In his submission, assessee stated that it is an AOP deriving income from the business of sale and purchase of foreign liquor. The AOP was running wine shop at Danya, Almora.

4. The assessee had not filed its income tax return for the year under consideration. The assessee was asked reason for not filing the income tax

return even after doing the noticeable business and deducting tax collected at source of Rs 1,63,279/-. The assessee did not submit any satisfactory reply for the same. Required details in respect of allotment of the shop through which the business has taken place for the entire year were also called for by the learned AO by issuing notice under section 133(6) of the Act from the District Excise Office, Almora, in which it revealed that assessee had made total payments of Rs 1,18,49,766/- towards the allotment of the English wine shop in Dhanya, Almora for the financial year 2016-17. Further, as per Form 26AS of the AOP during the year under consideration, TCS of Rs 1,63,279/- has been deducted against the payments of Rs 1,63,27,596/-. Account statement of Shubham traders with Uttarakhand Gramin Bank, Almora was examined wherein payments made to the suppliers were noticed. Accordingly, assessee has made total cash deposits of Rs 1,60,52,425/- for the whole year and the aforesaid deposits has been transferred to the suppliers from whom the wine has been purchased as per the details of Form 26AS.

5. Apart from this, Shri Bhuwan Chandra Pandey, member and lion shareholder of the AOP also has overdraft account with the same branch of Rs 75 lakhs in which assessee had made deposits and transactions of Rs 48,19,580/- during the year under consideration. The Learned AO concluded that the assessee AOP was engaged in the business of sale and purchase of liquor. The assessee also furnished the agreement of AOP between five members of the AOP. As per the information received from the bank, the Learned AO noticed that assessee had made cash deposits of Rs 13,81,500/- in demonetization period in specified bank notes. The assessee submitted that it deals in liquor business which has major cash components and the sale proceeds were received in cash which were subsequently deposited in the bank account. Further, the assessee also

submitted that it had sufficient cash balance as on 8-11-2016 to make the cash deposits during the demonetization period.

6. The Learned AO observed that cash deposit of Rs 7,57,500/- as explained out of sales made by the assessee AOP and treated the remaining amount of Rs 6,24,000/- as unexplained money under section 69A read with section 115BBE of the Act and made an addition to the total income.

7. Since, the Learned AO had concluded that assessee had engaged in the business of running a liquor shop and they had also made cash deposits for making payments to the suppliers and that purchases were also duly subjected to tax collected at source, the Learned AO proceeded to estimate the net profit arising from such business. For this purpose, the Learned AO estimated the total purchases (based on outflow) to the extent of minimum Rs 2,81,77,362/- (1,18,49,766/- + 1,63,27,596/-). Rs 1,18,49,766/- represent total payments made by the assessee for allotment of English wine shop in Dhanya, Almora to District Excise Office. Further, a sum of Rs 1,63,27,596/- represent payments made by the assessee for purchase of liquor which was also duly subjected to deduction of tax collected at source. Since, the assessee had not produced any details of sales together with the sale bills, the net profit was sought to be determined on an estimated basis as a percentage of purchases. Total purchases was assumed by the Learned AO at Rs 2,90,00,000/- and from that figure, a sum of Rs 6,24,000/- being the addition made on account of cash deposits was reduced and net profit of the business was estimated at the rate of 3% by the Learned AO amounting to Rs 8,51,280/- (2,84,56,000 * 3%). Hence, the total additions made in the assessment are as under:-

a) Unexplained cash under section 69A read with section 115BBE of the Act
– Rs 6,24,000/-

b) Estimated net profit from business – Rs 8,51,280/-.

The assessment was completed determining total income of the assessee at Rs 14,75,280/- under section 144 of the Act on 31-12-2019. Before the Learned CITA, the assessee filed detailed written submissions and the Learned CITA upheld the action of the Learned AO in principle by confirming both the additions but finally directed the Learned AO to grant credit for tax collected at source of Rs 1,63,279/- as prepaid taxes and recompute the tax liability of the assessee accordingly. Aggrieved, the assessee is in appeal before us.

8. It is not in dispute that the assessee AOP had not filed its return of income for the assessment year 2017-18. The assessee had claimed that it had incurred loss in its liquor business. But this loss had to be substantiated by the assessee with the books of accounts by furnishing relevant documentary evidences before the Learned AO after filing its return of income. None was done by the assessee AOP in the instant case. Hence, the claim of the assessee that it had incurred loss in the liquor business cannot be accepted. In view of this, we hold that the Learned AO had adopted a reasonable basis based on the outflow of funds for which evidences are available as the business transaction of the assessee and from that, he had estimated the net profit of the business. The total outflow of funds for the purpose of business was estimated at Rs 2,90,00,000/- based on evidences available on record. We hold that the said sum of Rs 2.90 crores should be adopted and net profit at the rate of 3 % thereon should be brought to tax in the sum of Rs 8,57,000/-. However, the Learned AO had also made another addition separately in the sum of Rs 6,24,000/- on account of cash deposits made during the demonetization period. Since, the outflow approach has been adopted by the Learned AO in the instant case for determination of net profit , and all

the credits in the bank account were indeed accepted by the Learned AO as arising out of business , there cannot be any separate addition that could be made on account of cash deposits during the year. Moreover, the net profit from the business is being estimated based on the outflow of funds. Hence, the only addition that would survive is Rs 8,57,000/- being the net profit from the business on an estimated basis and cash deposit addition of Rs 6,24,000/- is hereby directed to be deleted. Accordingly, the grounds raised by the assessee are partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 02/04/2025.

-Sd/-

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 02/04/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi