

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.435/Ind/2024 (AY: 2017-18)

Hariom Cold Storage, Gram Dharawara Dhar (PAN: AAHFH5769G) (Appellant)	<u>बनाम/</u> Vs.	Income Tax Officer 4(4), Indore (Revenue)
Assessee by	Shri S.N. Joshi, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	06.05.2025	
Date of Pronouncement	13.05.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the "**Act**" for sake of **brevity**) before this Tribunal as and by way of Second appeal under the Act. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2023-24/1062462512(1) dated 12.03.2024 which was passed by the Ld. CIT(A) u/s 250 of the Act which is hereinafter referred to as the "**Impugned order**". The relevant Assessment Year is 2017-18 and the corresponding previous year period is from 01.04.2016 to 31.03.2017.

2.

FACTUAL MATRIX

2.1 That the assessee is a partnership firm and had filed return of income (ROI) u/s 139 of the Act for the Assessment Year 2016-18 on 15.09.2017 declaring total income at Rs. NIL. The ITR was thereafter processed u/s 143(1) of the Act.

2.2 That the case of the assessee was selected for complete scrutiny through CASS for the purpose of large cash deposits during the period of demonetization.

2.3 That a notice u/s 143(2) of the Act was issued on 27.08.2018 which was duly served.

2.4 That a notice u/s 142(1) of the Act was also issued on 29.05.2019. No reply was however filed by the assessee firm.

2.5 Further opportunities vide notices dated 03.07.2019 and 09.08.2019 u/s 142(1) were too given.

2.6 That the assessee firm finally submitted reply which was filed on 23.11.2019.

2.7 That during the proceedings, the information regarding cash deposit during the period of demonetization was got verified. That upon verification of said bank statements it was revealed that following amount(s) were deposited in cash during the period of demonetization in SBN the details of which are as under:-

Bank Name & Branch	Account Number	Total amount of credit in account
Bank of Baroda, Dhannad Branch, Depalpur	17610200000099	54,02,000/-

2.8 That with regard to the cash deposit it was submitted by the assessee as under:-

“The assessee is a partnership firm. The said firm engaged in preservation of potato and other agriculture produce of farmers in its cold storage. Hence assessee has received rent from farmer for preserved and stored their agriculture produce”.

2.9 The cash book of the assessee firm was perused and checked wherein certain anomalies were detected and therefore a

show cause notice dated 21.12.2019 was issued to the assessee firm. Contents of which are reproduced below:-

"On a perusal of the cash book submitted by you. It is seen that you have shown several entries of rent received in cash for potatoes stored in your cold storage. However, in this respect you have failed to produce a few Customers who have paid rent to you. Therefore, the cash book submitted by you is not reliable and is therefore proposed to be rejected. You are therefore requested to show cause as to why your books be not rejected and the cash deposited by you during demonetization period in SBN currency be not added back u/s 68 of the I.T. Act, 1961 as unexplained cash credit."

2.10 That the assessee firm was requested to submit reply by 24.12.2019 however the assessee has not furnished any reply to the aforesaid show cause notice.

2.11 The Ld. A.O therefore presumed that the assessee has nothing to say in the matter and the assessment is required to be finalised on the basis of material available on records and on merit.

2.12 The Ld. A.O in his assessment order held as under:-

" On perusal of records, it was noticed that the assessee is a firm running a cold storage. The assessee has deposited Rs.54,02,000/- in its bank account in SBN during the demonetization period. When the assessee was asked about the source of this amount, it was submitted by the assessee that it has received cash from farmers. On perusal of cash

book produced by the assessee, it was noticed that the assessee has shown to have received cash amounts from various farmers and cash balance has increased from Rs.67,072/- to Rs.54,02,000/- on 23.11.2016. This shows an abnormal increase in cash balance. Further, on perusal of cash book submitted by the assessee it is noticed that during the year under consideration from 01.04.2016 to the date of deposit during demonetization period the assessee has only deposited Rs.7,68,000/- into its bank account and balance cash received is kept idle with it. Now the assessee has only salary expenses of Rs.30,000/- which is required to be made in cash every month. There are no any other expenses which are required to be made in cash. Therefore, maintenance of such huge cash balance is beyond belief. Therefore, the cash book maintained by the assessee clearly appeared manipulated. However, with a view to verify whether the assessee has received such cash from the farmers it was requested to produce 5 farmers for verification. However, the assessee miserably failed to produce any farmer for verification. Therefore, it is very clear that the cash book has been manipulated to deposit the unaccounted cash available with the assessee and to deposit the same under the garb of receipt from farmers. Further, as held by the Hon'ble Supreme Court in the case of Smt Sumati Dayal v. CIT 214 ITR 801, preponderance of probability and human tendency and surrounding circumstances has to be applied to verify whether the transactions are real or not. In this case, applying the same ratio it can be concluded that the assessee was not required to maintain such a huge cash and also it is not probable that the farmers would have given this much amount to the assessee. Therefore, it is concluded that the assessee has manipulated its cash book for deposit of unaccounted money during the demonetization period. Since the cash book of the assessee is not found reliable, the books of accounts maintained by the assessee are rejected u/s.145(3) of the I.T. Act. Therefore, the amount of Rs.54,20,000/- deposited by the assessee is treated as unexplained cash credit u/s.68 of the I.T. Act and added to the total income of the assessee. Since the addition has been made u/s.68 of the I.T. Act, the tax is chargeable at the rates prescribed u/s.115BBE of the I.T.Act. Penalty proceedings u/s.271AAC are also initiated.

*The total income of the assessee is assessed/computed as under:
Total Income as per Return of income Rs.Nil*

<i>Add: unexplained cash credit u/s.68 as discussed above</i>	<u><i>Rs.54,02,000</i></u>
<i>Assessed Income</i>	<i>Rs.54,02,000"</i>

2.13 That the aforesaid assessment order of Ld. A.O bears No.ITBA/AST/S/143(3)/2019-20/1023079404(1) and that same is dated 25.12.2019 which is hereinafter referred to as the **"impugned assessment order"**.

2.14 That the assessee being aggrieved by the aforesaid **"impugned assessment order"** prefers first appeal before Ld. CIT(A) who by the **"impugned order"** has dismissed the 1st appeal of the assessee on reasons stated therein.

2.15 That the assessee being aggrieved by the **"impugned order"** has preferred this instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 against the "impugned order" which are as under:-

"1) That the 1st Appellate Authority has erred in Law and in confirming the Assessment order with rejected Evidence which produced under Rule 46 of Income Tax.

2. That the 1st Appellate Authority also erred not accept the related evidence of Cash Deposited in demonetization Period.

3) That the 1st Appellate Authority has further erred in confirmed the addition of Rs. 5402000/- which was deposited in Bank Account.

4) That thus the 1st Appeal Order so passed is quite illegal unjust Unwarranted Contrary to facts and deserve to be set aside.

5) That the Appellant further craves have to add alter and/or amend any of the forgoing grounds or when necessary."

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 06.05.2025 when the Ld. AR for and on behalf of the assessee appeared before us and interalia contended that the "**impugned order**" is illegal, bad in law and not proper. It is passed in violation of the principles of natural justice. The "**impugned order**" deserves to be set aside. The Ld. AR then attempted hard to convince this Tribunal that Ld. A.O wanted assessee to produce its customers/farmers but since it was the month of December farmers were preoccupied with agriculture operations. December is a seasonal month for farmers. It was contended that even Ld. A.O "**impugned assessment order**" was not meritorious as assessee firm could not produce farmers to justify

cash deposit due to genuine and reasonable cause (supra). It is because of this reason the assessee made an application for additional evidence under rule 46A but same was not considered and ex parte **“impugned assessment order”** was upheld by the CIT(A). The Ld. AR thus aired his grievance that farmers are the main customers of the assessee firm and during the month of December due to peak winter season in the agriculture sector they remain busy in the fields and this was the only cause why they could not be produced before Ld. A.O when assessment was being done. Due to such type of lacuna the only way left with the assessee was to file additional evidence under rule 46A of the Act with a view to assist the Ld. CIT(A) to arrive at a fair conclusion. The assessee later on secured affidavits of customers and other documents of customers and thus preferred an additional evidence application under rule 46A so that the lacuna which was bonafidely made could be rectified and CIT(A) could **“adjudicate and adjudge”** the 1st appeal meritoriously as is enshrined in law by virtue of Section 250(6) of the Act. But unfortunately the Ld. CIT(A) in the **“impugned order”** due to constraints by virtue of Rule 46A has rejected the

application of additional evidence. The Ld. AR contended that assessee has not acted willfully, unreasonably and deliberately by not furnishing any evidence of customers but circumstances as stated above (supra) was such that assessee was prevented by sufficient cause. In over all facts the Ld. CIT(A) should have admitted additional evidence application as ultimately meritorious orders are required to be passed u/s 250(6) of the Act. Per contra Ld. DR has left the issue to be decided by this Tribunal as per wisdom good conscience and in order to meet ends of justice.

4. **Observations, findings & conclusions.**

4.1 We now have to decide the legality, validity and the propriety of the **"Impugned Order"** basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused the records of the case.

4.3 We basis records of the case and after hearing and upon examining the contentions are of the considered opinion that the **"impugned order"** has just not examined the merits of the case as contemplated by law under Section 250(6) of the Act. Though the opportunities were afforded to the assessee but due to

reasons as stated above, assessee bonafidely could not utilize the opportunity given. Under these peculiar facts and circumstances of the case we set aside the **“impugned order”** and remand the case back to the file of Ld. A.O as the assessee in the paper book filed before us has shown sufficient material now basis which Ld. A.O can re-look into the case and pass order on merits so that computation of income is done lawfully. Assessee is directed to cooperate with the department and not to seek any adjournment.

Order

5.1 Impugned order is set aside as and by way of remand back on *denovo basis* back to the file of Ld. A.O to pass a fresh order on *denovo basis*.

5.2 Appeal allowed for statistical purpose.

Order pronounced in open court on 13.05.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 13/05/2025

Dev/Sr. PS

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

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore