# IN THE INCOME TAX APPELLATE TRIBUNAL
## (DELHI BENCH "A'' : NEW DELHI)

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITA No. 2563/Del/2024
Asstt. Year : 2017-18

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| Ayesha Steels (P) Ltd.,<br>F-319, Old Seema Puri,<br>Delhi – 110 095<br>**(PAN: AAFCA7445K)**<br>**(Appellant)** | vs. | ITO, Ward-3(4),<br>Civic Centre, Delhi<br><br>**(Respondent)** |

Appellant by : Shri Ruchesh Sinha, Adv.
Respondent by : Shri Ajay Kumar Arora, Sr. DR

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| Date of Hearing | 23.06.2025 |
| Date of Pronouncement | 27.06.2025 |

## ORDER

**PER MAHAVIR SINGH, VP:**

This appeal has been filed by the Assessee against the order dated 30.4.2024 passed by the NFAC, Delhi for the assessment year 2017-18.

2. Heard both the parties at length and perused the relevant records.

3. Brief facts in this case are that AO has passed the assessment order under section 143(3) of the Act for AY 2017-18 after making various additions in the complete scrutiny assessment conducted in the case of the assessee. The AO noted that there were substantial cash deposits made by the appellant during the demonetization period and cash deposits in SBN during demonetization amounted to Rs 1.22 crore besides other cash deposits of Rs 69.80 lakhs during the relevant period. The case was heard on different dates and various queries were raised to the appellant by the AO. The AO has pointed out in the assessment order that no cash

sales have been made in the earlier FY 2016-17, whereas in the instant year the appellant has claimed that the cash deposits of Rs 1.22 crore in 38 days (during demonetization) as compared to cash sales of only Rs 3.5 lakhs in the preceding months of relevant FY. It was claimed that the impugned cash receipts where on account of sale of scrap made to various parties and the relevant details have been reproduced in Para 5 of the assessment order. However, the AO noted that the appellant did not submit any cash book or ledger in support of this claim. The appellant had furnished list of 63 parties to whom cash sales ranging from Rs 1.70 lakhs to 1.99 lakhs were made, but the same did not carry verifiable address or PAN etc. No cash book, sale purchase voucher, stock register was submitted and the alleged cash sale was claimed to be on account of non MODVAT scrap sales in respect of which no TCS has been deducted on the ground that scrap sale is out of purchase of scrap but no documentary evidence had been furnished by the appellant. The AO also pointed out that the details furnished by the appellant did not show any history of such cash sales of this volume either in this year or in the preceding year, whereas the appellant is carrying out these operations since 29.05.2006. The list of 63 parties without any address or PAN was totally unverifiable as stated by the AO. The appellant had sought to explain this variation by stating that cash sale is on account of mixed metal scrap, non MODVAT scrap accumulated over a period of time and sold during the year. No documents like stock register etc., however, were submitted by the appellant to establish this contention before the AO. The A noted that the appellant is into the business of manufacturing of MS INGUTS from iron scrap, but it has failed to produce or furnish even the stock register. No cash book, purchase ledger, sale register, stock register was furnished before the AO and therefore the inventory of different items furnished was unsubstantiated. The VAT return was also not found sufficient by the AO and the opening cash amounts were also not established. Therefore, the AO made an addition of Rs 1,91,80,000/- under section 68 read with section 115BBE of the Act in the assessment order. In appeal Ld. CIT(A) noted that the documents

submitted by the appellant are prima facie not sufficient to discharge onus of the appellant that the entire cash deposits of Rs 1.22 crore in SBNs made during the demonetization were out of cash sales of non MODVAT scrap, etc. The documentary evidences submitted by the appellant to justify the claim of cash generated out of scrap sale are not sufficient and complete. Ld. CIT(A) further noted that the appellant has failed to prove that he was having such scrap lying with it since long and that the alleged sale of such scrap are genuine in nature and therefore such stand taken by the AO is found fully justified as regards the issue of unexplained cash deposits of Rs 1.22 crores in, SBNs during the demonization period in the relevant FY. Therefore, the addition made u/s 68 r.w.s. 115BBE of the Act was sustained by him. Aggrieved with the Ld. CIT(A)'s order, Assessee is in appeal before us.

4. Ld. Counsel for the assessee submitted that Assessee/Appellant Company is engaged in the business of manufacturing (MS INGOTS) and trading of iron & steel. In such process huge metal scarps is also been produced. During the A. Y 2017-18 the case of the assessee was selected for scrutiny proceedings. During the assessment proceedings it was observed by the Assessing Officer that during the demonetization period the assessee has deposited an amount of Rs. 1,22,00,000/- in its bank account. On being enquired the assessee stated that the same pertains to the "cash sales" made during the relevant period from sale of "metal scraps" and that the cash generated through cash sales, is duly depicted in the cash book. However, the Assessing Officer was of the view that: (a) The assessee has not placed on record any stock register; (b) has not placed records any cash book/sales ledger; (c) That the assessee has furnished the list of 63 entities to whom the cash sales has been made. However, the same is no properly verifiable. Primarily on these grounds the A.O has made the addition of Rs. 1,22,00,000/-. While doing so, the AO clearly ignored the replies filed by the assessee, containing various details. At this juncture, in regard to non-filing of the reply and placing the evidence on record, it was submitted that the fact of matter is that in response to show cause notice dated

14.12.2019 the A.R. tried to file the required reply along with required documents but the same could not be filed/uploaded as the concerned window on the income tax portal of the assessee was closed by the Faceless Assessing Officer (FAO). Thereafter on 17.12.2019, the assessee personally approached the Jurisdictional Assessing Officer (AO)for filing the relevant documents but the JAO has refused to accept the same. Thereafter, the assessee also tried the file the documents at ASK Counter at C.R.Building but they also refuse to take the reply along with the documents on the pretext that reply of assessment proceeding will be accepted only by FAO. Finally, on 18.12.2019 the assessee in support of the explanation, filed evidences, and sent the same through email. However, these were not considered at the time of framing of the assessment order, which was finalised only on Saturday 21.12.2019 at 07.27 P.M. i.e. three days after the filing of assesse reply. It was further pleaded that the assessee contended that the amount of cash deposit is generated from the cash sales of " metal scraps" and the said cash sales are duly recorded in the books of account. For substantiating its contentions, the appellant filed all the relevant documents before the CIT(A) viz, (a) cash book(kindly refer page no. 43-71 of the paper book), (b)cash sale invoices alongwith the complete list of the customer (duly mentioning the details of the metal scrap sold, the VAT levied on the same, the Vehicle number, etc), (kindly refer page no. 72-243 of the paper book) (c)VAT returns for the relevant quarter, assessment order passed under VAT and copy of the appellate order under the VAT proceeding (kindly refer page no. 244-291 of the paper book), (d) stock register in regard iron mix metal, iron scrap and slag kindly refer page no. 312-328 of the paper book)and (e) sales register in regard iron mix metal, iron scrap and slag kindly refer page no. 329-336 of the paper book). In regard to these documents the CIT(A) duly called a remand report from the Assessing Officer. The same was submitted by the Assessing Officer. The Ld. CIT (A), however have merely confirmed the addition made by the AO, without pointing out any discrepancy in the books of account of the appellant, without considering that the amount has already been offered under sales by the

assessee and hence there cannot be double taxation, without considering that before making addition the books of account of the assessee has not been rejected and not appreciating that the entire addition has been made on surmises and conjectures and deserve to be deleted.

5. Ld. DR relied upon the order of the authorities below.

6. We have heard both the parties and perused the records. We find that Amount of sales generated from metal scarp already offered under "sales figures", in the audited books of account and hence the same cannot be taxed again: It is not disputed by the lower authorities that in this case, the amount deposited in the bank account is duly offered for taxation and is already included under the total "sales" declared by the assessee, and hence, again the said amount cannot be considered for making the taxation, much less U/s 68 of the Income Tax Act. The same shall constitute making double addition in the case of the present assessee. In other words, it is a trite law that when the amount is already included under the sales figure the same cannot be taxed again. Books of account duly audited and the same has not been rejected. It is a trite law that when the amount is included in the sales and the Assessing Officer thinks otherwise, then he is required to reject the books of accounts. Once the turnover declared by the assessee is accepted by the Revenue, there can be no further additions. In this case admittedly, the books of accounts are not rejected. In other words, the addition can be made, only when the books of account of the assessee are rejected. We note that ITAT Vishakhapatnam Bench on identical issue in the case of ACIT v/s. Hirapanna Jewellers [2021] 128 taxmann.com 29/86 GST 300/50 GSTL 120 (Karnataka) held that the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was no justified. It is noted that the relevant documents to substantiate the cash sales has been provided by the assessee and no discrepancy or defects has been pointed out in the same. The assessee has already provided various documents to

substantiate the cash sales recorded by it which is not disputed. It is a trite law that unless some defects are pointed by the AO in the documents submitted, the same needs to be accepted. In this case, from the perusal of the reassessment order/ CIT(A) order it shall be clear that the same does not contain even a whisper that the document submitted by the Appellant was not genuine/ were defective. It is also pertinent to state that even during the course of the remand proceedings in the remand report, the Ld. AO has not pointed out any discrepancy in the various documents submitted by the assessee to substantiate its cash sales. The figures accepted under VAT/GST assessment. The same very figure of sales has been duly depicted in the VAT returns, which is duly accepted and assessment in this regard has already been made by the sales tax authorities. Hence, there cannot be two different treatments in regard to the same amount. The addition has been made and thereafter sustained only on surmises and conjectures. No adverse material/no independent enquiry made: The addition has been made only on the basis of surmises and conjectures. In this case, there is no adverse report/ material/document etc. to suggest that the appellant has taken some kind of accommodation entry or has routed its own money. No independent inquiry has been made by the lower authorities. It is a trite law that, in case the explanation cited by the assessee is not considered as tenable then the AO should specifically bring some material to refute the same. In this case, there is none. In view of above, in our view, there is sufficient explanation of source of cash deposit being deposited during the demonetization period, therefore, in our considered opinion, the addition in dispute deserve to be deleted. We hold and direct accordingly. So far as assessee's assessment u/s. 115 BBE of the Act is concerned, in view of Hon'ble Madras High Court in SMILE Microfinance Ltd. vs. ACIT in WP(MD) no. 2078 of 2020 & 1742 of 2020 dated 19.11.2024 (Mad.) has already settled the issue against the department that the law applies to the transaction on or after 01.04.2017 only.

7. The instant assesseee's appeal is allowed.

Order pronounced in the Open Court on 27.06.2025.

Sd/- Sd/-

**(AMITABH SHUKLA)**
**ACCOUNTANT MEMBER**

**(MAHAVIR SINGH)**
**VICE PRESIDENT**

***SRBhatnagar***

***Copy forwarded to: -***

1. Appellant
2. Respondent
3. DIT
4. CIT (A)
5. DR, ITAT

TRUE COPY By Order,

Assistant Registrar, ITAT,
Delhi Bench