

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No.123/RPR/2022**

**निर्धारण वर्ष / Assessment Year : 2017-18**

Rahul Cold Storage  
C/o. Rahul Cold Storage,  
Gunderdehi Road, Vill-Potiyadih  
Dhamtari (C.G.)-493 773  
PAN : AAMFR0082P

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward- Dhamtari (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prabhu Das Patel, CA  
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 19.09.2022

घोषणा की तारीख / Date of Pronouncement : 29.11.2022

**आदेश / ORDER****PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 12.05.2022, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 16.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts & circumstances of the case and in law, ld. CIT(A) has erred in sustaining the addition of Rs.46,55,000/- u/s.68 of the Act on account of unexplained cash deposit into bank.

2. The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing.”

2. Succinctly stated, the assessee firm which is engaged in the business of running a cold storage had filed its return of income for A.Y.2017-18 on 27.01.2018, declaring an income of Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of assessment proceedings, it was observed by the A.O that the assessee had during the demonetization period deposited an amount of Rs. 38.55 lac and Rs.8 lac in old demonetized

currency notes of Rs.500/- and Rs.1000/-, respectively, in its bank accounts with Axis Bank and Bank of Baroda. The details of the cash deposits made by the assessee during the demonetization period are as under:

| Sl. No.      | Name of the Bank | Account number  | Date of deposit | Total amount deposited (in Rs.) |
|--------------|------------------|-----------------|-----------------|---------------------------------|
| 1.           | Axis Bank Ltd.   | 910020017065122 | 10.11.2016      | 800000/-                        |
| 2.           |                  |                 | 10.11.2016      | 3055000/-                       |
| 3.           | Bank of Baroda   | 13460200011173  | 18.11.2016      | 800000/-                        |
| <b>Total</b> |                  |                 |                 | <b>Rs.46,55,000/-</b>           |

On being queried about the source of the aforesaid cash deposits, it was the claim of the assessee that the same were made out of the cash in hand that was at the relevant point of time available as its business receipts. The assessee in support of its aforesaid claim filed with the A.O copies of its cash book and bank statements a/w details of monthly cold storage rent receipts for the year under consideration. Although the A.O vide notice u/s.142(1) of the Act, dated 15.12.2019 called upon the assessee to produce all the documents, bills/vouchers, registers in support of his claim that the cash deposits of Rs.46.55 lacs (supra) were sourced out of its cold storage rental receipts, but the assessee failed to furnish the requisite details. Considering the aforesaid facts, the A.O observed that not only the assessee had failed

to substantiate that the cash deposits of Rs.46.55 lacs (supra) in question were made in the normal course of its business out of the cold storage rental receipts, but even otherwise the said cash deposits made in the bank accounts during the demonetization period were found to be abnormally high as in comparison to those made in the preceding period. It was observed by the A.O that unlike the substantial cash deposits of Rs.46.55 lac (supra) made during the demonetization period the assessee had made cash deposits of only of Rs.14.47 lacs (approx.) during the pre-demonetization period falling in the year under consideration. Apart from that, it was noticed by the A.O that the assessee had only made a cash deposit of Rs. 50,000/- in the immediately preceding year, i.e, A.Y.2016-17. Also, it was observed by the A.O that after the demonetization period the assessee had made a cash deposit of Rs. 2100/- only in its bank accounts over the period 01.01.2017 to 31.03.2017. On the basis of his aforesaid observations, the A.O was of the view that the cash deposits of Rs. 46.55 lac (supra) made by the assessee during the demonetization period were not sourced from its cold storage rental receipts. Accordingly, the A.O rejected the aforesaid claim of the assessee and held the entire amount of Rs.46.55 lacs (supra) as its unexplained cash deposit u/s.68 of the Act. On the basis of his aforesaid deliberations, the A.O vide order

passed u/s.143(3), dated 16.12.2018 assessed the income of the assessee firm at Rs. 46,55,000/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

6. I have heard the ld. Authorized Representatives of both the parties and perused the orders of the lower authorities and the material available on record.

7. At the very outset of the hearing of the appeal the Ld. Authorized Representative (for short 'AR') took me through an application filed by the assessee for admission of additional evidence u/s. 29 of the Income Tax Appellate Tribunal Rules, 1963. On a perusal of the said application, it transpires that the assessee had placed on record copies of the cold storage rent receipts for the year under consideration, Page 1 to 151 of APB. The Ld. A.R referring to the aforesaid documents submitted, that as the same would substantiate the availability of the cash in hand with the assessee out of the rental receipts generated in the normal course of its business of running of cold storage during the year under consideration, therefore, the same would have a strong

bearing on the adjudication of the core issue involved in the present case. The ld. A.R on being queried that as to why the said documents were not produced before the lower authorities, submitted, that the observation to the said effect of the lower authorities were absolutely incorrect and perverse. Elaborating on his said contention, it was submitted by the ld. A.R that the assessee in the course of the assessment proceedings had vide its reply dated 20.08.2019 and 13.12.2019 submitted before the A.O that the cash deposits in question were made from its regular books of accounts, which alongwith bills/vouchers were available for verification. It was submitted by the ld. A.R that the A.O had only as on 15.12.2019 (i.e Sunday) at 4:12 p.m called upon the assessee to furnish the aforesaid details on 16.12.2019 by 12:00 p.m, and thereafter, without affording sufficient opportunity to the assessee to furnish the requisite details, therein, framed the assessment vide his order passed on 16.12.2019 (at 4:28 p.m). The Ld. A.R in order to fortify his aforesaid contention drew our attention to the submissions that were filed by the assessee before the CIT(Appeals) [Page 5-8 of CIT(A) order] wherein the aforesaid facts were mentioned. It was, thus, the claim of the ld. A.R that as the assessee was not afforded sufficient opportunity by the A.O who had hushed through the assessment proceedings, therefore, the aforesaid documents could not be filed before him. It was further submitted by

the ld. A.R that the aforesaid documents, viz. (i). letters dated 18.08.2019, 12.12.2019 filed with the A.O; (ii). cash book (compressed); (iii). details of cold storage rent received during the year etc., were uploaded by the assessee in the course of the proceedings before the first appellate authority, Page 11-17 of APB. It was averred by the ld. A.R that neither any opportunity was afforded to the assessee to place on record documents which would irrefutably evidence its aforesaid claim that the cash deposits in the bank accounts were sourced out of the cold storage rental receipts, nor the documents so filed have been properly appreciated by either of the lower authorities therefore, in the totality of the facts therein involved the copies of the rent receipts in all fairness may be admitted U/rule 29 of the Appellate Tribunal Rules, 1963.

8. I have given a thoughtful consideration and concur with the ld. A.R that the A.O had failed to afford a reasonable opportunity to the assessee to produce supporting documents, viz. cash book, rent receipts, registers etc. which would have supported its claim that the cash deposits in its bank accounts of Rs. 46.55 lac (supra) were made out of the assessee's duly accounted rental receipts of cold storage business. My aforesaid observation is fortified by the very fact that the A.O on 15.12.2019 (i.e. on Sunday) at 4:12 p.m allowing insufficient time to the assessee had not only called upon it to furnish the aforesaid

details on 16.12.2019 by 12:00 p.m, but thereafter had hushed through the matter and framed the assessment vide his order passed on 16.12.209 (at 4:28 p.m). Also, I find that as stated by the Ld. AR, and rightly so, the assessee had in the course of the proceedings before the CIT(Appeals) uploaded the cash books, rent details etc.

9. Considering the totality of the facts involved in the present case, I am of the considered view that the assessee was not afforded sufficient opportunity by the A.O to substantiate its claim that the cash deposits of Rs. 46.55 lac (supra) were sourced out of its cold storage rental receipts. On the basis of my aforesaid observations, I am of the considered view that the copies of the rent receipts that have been filed as additional evidence before me, which corroborates the assessee's claim and would have a strong bearing on the adjudication of the issue involved in the present appeal, merits admission.

10. As observed by me hereinabove, the issue involved in the present appeal hinges around the sustainability of the explanation of the assessee firm, that the amount of Rs.46.55 lacs (supra) deposited in cash in its bank accounts during the demonetization period was sourced out of its duly accounted cold storage rent receipts. As observed by me hereinabove, though the assessee in the course of the assessment proceedings had claimed that the amount of Rs.46.55 lacs



(supra) was deposited out of the cash in hand which was available with it out of its cold storage rentals received in the normal course of its business of running a cold storage, however, the A.O had rejected the said claim, for the reason that the assessee could not substantiate the same on the basis of any supporting documentary evidence. Accordingly, the A.O had held the amount of Rs.46.55 lac (supra) as an unexplained cash credit u/s.68 of the Act. The A.O while concluding as hereinabove, had also drawn support from the fact that the cash deposits made by the assessee in its bank accounts in the immediately preceding year, as well as those made during the post demonetization period, were substantially lower than those made during the demonetization period. It was observed by the A.O that as against the cash deposits of Rs.46.55 lacs (supra) made by the assessee during the demonetization period the assessee had made cash deposits of Rs.14.47 lac during the pre-demonetization period pertaining to the year under consideration while for those made in the immediately preceding year i.e. A.Y.2016-17 was a miniscule amount of Rs.50,000/-. Also, it was observed by the A.O that the assessee during the post demonetization period i.e. 01.01.2017 to 31.03.2017 pertaining to the year under consideration, had made a cash deposit of only Rs.2,100/-. On a conjoint perusal of the aforesaid facts, i.e., (i) failure on the part of the assessee to substantiate its claim that the

cash deposits of Rs. 46.55 lac (supra) were made out of the rental receipts that were received in the normal course of its business of running a cold storage; and (ii) that the amount of cash deposits made by the assessee during the period preceding and succeeding the demonetization period did not reveal a similar pattern, the A.O. had held the amount of Rs. 46.55 lac (supra) as an unexplained cash credit in the hands of the assessee.

11. On appeal, the CIT(Appeals) finding favor with the view taken by the A.O had upheld the addition.

12. Having given a thoughtful consideration to the issue in hand, I find certain peculiar facts attending to the case of the present assessee before me. As observed hereinabove, it was the claim of the assessee that the cash deposits of Rs.46.55 lacs (supra) made in its bank accounts during the demonetization period were sourced out of its business receipts, i.e., cold storage rentals that were duly recorded in its books of account. On the contrary, the A.O for the aforesaid reasons had rejected the claim of the assessee and had held the entire amount of Rs.46.55 lacs (supra) as an unexplained cash credit u/s.68 of the Act. Ostensibly, the A.O had though rejected the assessee's claim that the cash deposit of Rs.46.55 lacs (supra) was sourced out of its business receipts, but on the other hand he had accepted its returned

income, and thus without rejecting the books of account of the assessee had framed the assessment vide his order passed u/s.143(3), dated 16.12.2019. In sum and substance, the A.O though had rejected the assessee's claim that the cash deposits of Rs.46.55 lacs (supra) were sourced out of the cold storage rental receipts for the year under consideration, but acting contrary to his aforesaid observation had at the same time accepted its book results, which, in fact, supports the assessee's claim. On the basis of the aforesaid facts, I am unable to comprehend that now when the assessee's explanation that the cash deposits of Rs.46.55 lac (supra) were sourced out of its duly accounted cold storage rent receipts was not accepted by the A.O, then, on what basis he had accepted its book results and framed the assessment. In case, the view taken by the A.O is approved, then the same would lead to an incongruous situation, wherein the A.O while framing assessment had rejected the assessee's claim that the cash deposits of Rs.46.55 lacs (supra) in its duly accounted bank accounts was made out of the cash in hand as was available with it out of the cold storage rent receipts, but to the contrary, while framing the assessment had simultaneously subscribed to its claim by accepting the disclosed cold storage rent receipts out of which the cash deposits in question were claimed by the assessee to have been sourced. The A.O could not be allowed to blow hot and cold at the same time. If the assessee's claim

that the cash deposits in question were made out of its duly disclosed cold storage rent receipts was not to be accepted, then, the A.O was obligated to have rejected the books of account of the assessee, for the reason, that by not doing so he had on the one hand held the cash deposits to have been sourced out of an unexplained source, while for at the same time by accepting its books of account had accepted its claim that the cash deposits in duly accounted bank accounts were sourced out of the duly disclosed source of the assessee firm. At this stage, it may be observed that the fact that the bank accounts in question in which the cash deposits were made by the assessee during the demonetization period formed part of its books of account can safely be gathered from a perusal of the assessee's balance sheet, Page 20 to 22 of APB. Considering the aforesaid facts, I am of a strong conviction that now when the bank accounts in question, viz.(i) A/c. No.910020017065122 with Axis Bank Ltd.; and (ii) A/c. No.13460200011173 with the Bank of Baroda had both duly been accounted for by the assessee in its books of account for the year under consideration, therefore, the A.O by not rejecting the said books of account had clearly accepted that the cash deposited by the assessee firm during the year under consideration in the said bank accounts was out of its disclosed sources.

13. Considering the aforesaid facts, I am of the view that as the treating of the cash deposit of Rs.46.55 lac (supra) as an unexplained cash credit u/s.68 of the Act by the A.O in itself militates against the acceptance of the book results of the assessee by him, therefore, there can be no justification in upholding the addition so made by him. I, thus, on the basis of my aforesaid observations vacate the addition of Rs.46.55 lac (supra) made by the A.O u/s.68 of the Act. Thus, the **Ground of appeal No. 1** raised by the assessee is allowed in terms of the aforesaid observations.

14. **Ground of appeal No. 2** being general in nature is dismissed as not pressed.

15. In the result, appeal of the assessee is allowed in terms of my aforesaid observations.

Order pronounced in open court on 29<sup>th</sup> day of November, 2022.

Sd/-

**(रवीश सूद / RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 29<sup>th</sup> November, 2022

\*\*\*SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच,  
रायपुर / DR, ITAT, “SMC” Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur