

आयकर अपीलिय अधिकरण, 'ए (एस एम सी)' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A (SMC)' BENCH, CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **650/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

Mohamed Thajudeen Abuthahir,
17, Railway Road,
Sirkali – 609 110.
Tamilnadu.

The Income tax Officer,
v. Ward-2,
Nagapattinam.

[PAN: AFDPA-4979-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N. Arjun Raj, CA

प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 03.08.2023

घोषणा की तारीख/Date of Pronouncement : 23.08.2023

आदेश /ORDER

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 10.03.2023 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

"1. The order of the NFAC, Delhi dated 10.03.2023 vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1050622622(1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The NFAC erred in sustaining the addition of Rs.38,40,000/- being the cash deposits during demonetisation period as

unexplained money in terms of 69A of the Act read with Section 1 ISBBE of the Act in the computation of taxable total income without assigning proper reasons and justification.

3. The NFAC failed to appreciate that the provisions of Section 69A of the Act had no application to the present facts and in circumstances of the case and further ought to have appreciated that the provisions of Section IISBBE of the Act had no application to the present case and in circumstances of the case, thereby negating the findings in relation thereto.

4. The NFAC failed to appreciate that the pre-requisite conditions required for making an addition in terms of Section 69A of the Act were absent in the present case and in circumstances.

5. The NFAC failed to appreciate that the source for the cash deposits was explained at every stage of the proceedings and ought to have appreciated that the rejection of explanation for sustaining the addition at para 11 of the impugned order was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

6. The NFAC failed to appreciate that the finding of inflation of the closing cash balance by the Assessing Officer was wholly unjustified and ought to have appreciated that the suspicion coupled with erroneous factual findings in para 11 of the impugned order would vitiate the action to sustain the disputed addition.

7. The NFAC failed to appreciate that the entire re-computation of taxable total income on various facets was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

8. The NFAC, Delhi failed to appreciate that process / procedure made available for conducting faceless appeal was not followed and ought to have appreciated that the non-adherence to procedure for conducting faceless appeal regime would vitiate the impugned order on various facets.

9. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

3. At the outset, I find that there is a delay of 15 days in filing of appeal before the Tribunal for which a petition for condonation of delay has been filed explaining reasons for delay in filing of appeal. The Id. Counsel for the assessee, referring to dates and events submitted that, the appellate order has been received by the assessee on 10.03.2023 and the appellant ought to have filed appeal on or before 09.05.2023. However, the appellant could not file the appeal within the stipulated time due to ill-health of his mother, who underwent series of treatments in as much as unexpected situation in the family would constitute reasonable cause for the belated filing of the appeal which needs to be condoned. The Id. DR fairly agreed that the delay may be condoned.

4. I have heard both the parties and considered relevant reasons given by the appellant for condonation of delay and after considering the reasons, I find that the reasons given by the appellant comes under reasonable cause provided under the Act for condonation of delay and thus, delay in filing of appeal is condoned and appeal filed by the assessee is admitted for adjudication.

5. The brief facts of the case are that, the appellant is engaged in the business of retail trading of readymade garments under the name of style of M/s. National Readymade at Sirkali. The appellant has filed his return of income for the assessment year 2017-18 and admitted a total income of Rs. 6,12,480/-. The case was selected for limited scrutiny to verify large cash deposits during demonetization period. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash deposits of Rs. 38,40,000/- during demonetization period to his bank account maintained with Indian Bank and State Bank of India. Therefore, the Assessing Officer called upon the assessee to explain the nature and source for cash deposits. In response, the assessee submitted that cash deposits found in bank account is out of business receipts for the year and the same has been reflected in books of accounts maintained for that year. The appellant further submitted that, it is not possible to file day to day cash balance and on average basis cannot be compared with sales because in this line of business sales varies from festival season to other season. The assessee had also filed copy of day book as per which the cash balance as on 09.11.2016 was at Rs. 38,31,842/-. During the course of

assessment proceedings, the AO summoned the assessee u/s. 131 of the Act and recorded statement of oath. The AO on the basis of information submitted by the assessee, including statement of oath recorded from the assessee, opined that although the assessee claims to have deposited cash into bank account out of cash in hand, but such claim has not been substantiated because when the assessee is having sufficient cash balance, why he could not pay credits outstanding in the books of accounts. The AO has analyzed the current assets and current liabilities of the assessee for two financial years and finally concluded that there is a sudden increase in sales for the impugned assessment year when compared to earlier financial year and thus, opined that the assessee has jacked up sales during demonetization period to cover up cash deposits to bank account and thus, rejected arguments of the assessee and made additions of Rs. 38,40,000/- u/s. 69A of the Act and taxed at 60% as per provisions of section 115BBE of the Act.

6. The assessee carried the matter in appeal before the first appellate authority and reiterated his submissions made before the AO. The CIT(A), NFAC vide their order dated 10.03.2023,

for the reasons stated therein rejected arguments of the assessee and sustained additions made towards cash deposits u/s. 69A of the Act. The relevant findings of the Id. CIT(A) are as under:

"11. I have considered the written submission of the appellant and the order of AO. The appellant was examined on oath u/s 131 on 24.12.2019 wherein he was asked to reconcile trade credit of Rs.59,51,266/- with closing stock of only Rs.15,14,117/- and appellant was also requested to produce Sale/ Purchases/ Stock registers and invoices. Similarly, he was confronted with heavy trade credits of Rs.59,51,266/- whereas total purchases shown were only Rs.1,40,34,014/- and in A.Y. 2018-19, claimed trade credits of Rs.96,46,528/- whereas total purchases were Rs.1,93,79,633/- only. The appellant said he will consult auditor and offer his explanation on 27.12.2019. The trade debtors were negligible but huge trade creditors, which were not settled and the AO hence, correctly concluded that sales figures have been boosted up to justify cash deposits made during the year and especially the fact that in the last 20 days of Oct, 2016, there were admitted sales of Rs.47.84 Lakhs. The appellant has admitted that he personally maintains the accounts and still he could not justify the stand adopted in support of justification or huge cash deposits during the demonetization period. The appellant has given vague reason citing Diwali and other festivals of Muslims and Christians and no such similar position existed in other assessment years. The appellant could not prove the authenticity of trade credits and when appellant was not having any debtors, there should not be any problem for payments for purchase but still credits were standing for long periods. Further, now the appellant has come up with additional new justification that he was hard pressed for payment as he had invested in residential property, but this also remains unsubstantiated. Hence, under the given circumstances, the AO was justified in making disallowance u/s 69A.

1. The Hon'ble Delhi High Court decision in the case of Ravinder Kumar Vs ITO (2020] 118 taxmann.com 166 (Delhi)/(2020] 273 Taxman 369 (Delhi) wherein it was held that Where assessee had failed to produce any material to

authenticate his contention that cash deposits in his account were on account of sales being made by him from Kirana business, tax authorities were justified in making addition of unexplained cash entries in bank account in hands of assessee.

1. The Hon'ble Supreme Court in the case of Sanjay Kapur Vs ACIT [2022] 138 taxmann. com 207 (SC) wherein it was held that High Court upheld reassessment in case where assessee had made a deposit of cash in bank during demonetization period, which was reflected in his return of income, but no supporting evidences were available to prove source of such deposit leading to reason to believe' that income otherwise chargeable to tax had escaped assessment; SLP filed against High Court's judgment dismissed as COME DEPARTMER withdrawn.

1. The Hon'ble Supreme Court in the case of Roshan Di Hatti v. CIT [1992] 2 SCC 378 wherein it was held that If the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

1. The Hon'ble Delhi High Court in the case of CIT Vs Arun Malhotra (2014] 47 taxmann.com 385 (Delhi)/(2014] 363 ITR 195 (Delhi) wherein it was held that Where Assessing Officer having found that transaction of purchase and sale were bogus, made addition under section 69A, Tribunal was not justified in deleting addition without going into evidence on record.

1. The Hon'ble Rajasthan High Court in the case of Clarity Gold (P.) Ltd. Vs PCIT [2019] 102 taxmann.com 421 (Rajasthan) wherein it was held that where addition made by Assessing Officer to respect section 69A in income under assessee's of bogus purchases was confirmed by Tribunal taking a view that either bills were manipulated so as to increase stock or sales had been reduced, said finding being a finding of fact, no substantial question of law arose therefrom.

12. In the result, it is held that under the given situation, the entire cash receipts of Rs.38,40,000/- made during demonetization period remained unexplained and hence, the appeal is dismissed."

7. The Id. Counsel for the assessee, referring to financial statements of the assessee for the year ending 31.03.2017, submitted that the allegation of the AO that there is a sudden spike in sales when compared to earlier year is incorrect. Further, the analysis of current assets and current liabilities by the AO also incorrect because as alleged by the AO, there is no substantial change in the current asset and current liabilities. The assessee had explained reasons for increase in sales during demonetization period and as per the assessee, November and December, 2016 are festival seasons where there was huge demand for sale of readymade garments. The assessee had also filed day book to prove available cash balance as on 08.11.2016, which is sufficient to explain cash deposits to bank. The AO and CIT(A) ignored all evidences filed by the assessee and made additions. He further made an alternate submission, in case some estimation is needed to be made on cash deposits, the same needs to be estimated as business income and normal rate of tax needs to be applied.

8. The Id. DR, on the other hand supporting the order of the Id. CIT(A) submitted that, there is a sudden increase in sales for the impugned assessment year when compared to earlier

period, which is noticed by the AO, where the sales has also increased at 60% for the impugned assessment year. The assessee could not explain reasons for huge increase in sales. Therefore, the Assessing Officer came to the conclusion that the assessee has jacked up sales to cover up cash deposits and thus, rejected arguments of the assessee and made additions u/s. 69A of the Act and their order should be upheld.

9. I have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that the assessee is in the business of retail trading of readymade garments. The assessee has deposited a sum of Rs. 38,40,000/- during demonetization period to his bank account maintained with Indian Bank and State Bank of India. The assessee explained that source for cash deposits is out of business receipts which is available in the books of accounts as on the date of demonetization. To support his argument, the assessee furnished a copy of day book as per which the closing cash balance as on 09.11.2016 was at Rs. 38,31,842/-. The Assessing Officer, rejected the explanation furnished by the assessee and according to the Assessing Officer, the assessee

has jacked up sales to cover up cash deposits during demonetization period.

10. I have carefully considered reasons given by the Assessing Officer to make additions towards cash deposits u/s. 69A of the Act, in light of various evidences filed by the assessee and we ourselves do not fully subscribe to the reasons given by the Assessing Officer for the simple reason that increase in sales alone is not a criteria to take an adverse inference against the assessee, when the assessee has explained the reasons for increase in sales. Therefore, the conclusion drawn by the Assessing Officer on the basis of increase in sales alone is not correct. Further, the Assessing Officer never disputed the fact that, the assessee has furnished day book and as per day book the cash balance as on 09.11.2016 was at Rs. 38,31,842/-, which is sufficient to explain source for cash deposit during demonetization period. Further, the analysis of balance sheet and current assets and current liabilities by the Assessing Officer to draw adverse inference is also not relevant to decide whether cash deposits during demonetization period is explained out of known source or not. Therefore, in our considered view, the Assessing

Officer is completely erred in rejecting arguments of the assessee towards source for cash deposits.

11. Having said so, let us come back to the arguments of the assessee. The assessee has filed financial statements of his business for the impugned assessment year and corresponding earlier financial year. On perusal of financial statement of the assessee, we find that the sales for earlier financial year was about roughly more than one crore. If you take average daily sales, it works out roughly about Rs. 30,000/- to 35,000/- per day. We further, noted that the assessee claims to have achieved sales at Rs. 1.65 crores for the impugned assessment year. Although, the assessee's total sales was at Rs. 1.65 crores, there a difference month on month sales. Therefore, if you go by average sales, which roughly works out to Rs. 50,000/- to Rs. 55,000/- per day. If you take the average sales per day, the assessee is claiming to maintain about 70 days cash balance in hand. We further noted that, the assessee is claiming huge trade payables in its books of accounts. When the assessee is having sufficient cash balance of Rs. 38.41 lakhs, then why he could not paid trade payables is not properly explained. Therefore, from the analysis of

financial figures of the assessee, it appears that the assessee has shown higher sales during demonetization period to cover up the cash deposits to bank account. Therefore, I am of the considered view that, the explanation of the assessee that source for cash deposits is out of business receipts and cash in hand available before the date of demonetization is not correct. Since, neither the assessee nor the AO has conclusively proved their case with necessary evidences and reasons, I am of the considered view that, the only possible way out is to estimate the source for cash deposits, considering the facts and circumstances of this case. Since, the assessee has furnished certain evidences to prove availability of cash balance and considering the nature of the business of the assessee, I am of the considered view that there is every possibility for the assessee to keep some cash balance in hand to meet day to day requirements. Therefore, taking into account all facts and circumstances of the case, I direct the AO to consider a sum of Rs. 25,00,000/- as cash balance in hand available with the assessee as on the date of demonetization, which is available for explaining source for cash deposit. In other words, I direct the AO to allow relief to the assessee to the extent of Rs 25 lakhs out of total cash

deposits of Rs. 38,40,000/- and the balance sum of Rs. 13,40,000/- is treated as unexplained. In so far as, rate of tax is concerned, since the assessee is having only one source of income from business and claims that source for cash deposits is out of sales of the year, we direct the AO to treat addition as income from business and tax at normal rates instead of 60 % as per provisions of section 115BBE of the Act.

12. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 23rd August, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF