



आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवरथी, लेखा सदस्य
के समक्ष
Before

SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 1142/KOL/2024
Assessment Year: 2017-18

Dinesh Saha.....Appellant
[PAN: EKVPS 4847 C]

Vs.

ITO, Ward-3(1), Malda.....Respondent

Appearances:

Assessee represented by: *Miraj D. Shah, AR.*

Department represented by: *A. Kundu, CIT DR.*

Date of concluding the hearing : September 26th, 2024

Date of pronouncing the order : November 18th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case, vide order u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act'), the Assessing Officer (hereinafter referred to as ld. 'AO') made the following additions:

- Rs. 5,47,443/- on account of enhancement in profit, on estimate basis.
- Rs. 30,01,129/- on account of unverified sundry creditors, for which the said addition has been made u/s 68 of the Act.

c) Rs. 56,45,000/- on account of cash deposited during the demonetization period, for which the provisions of Section 69A of the Act have been invoked.

It is seen that the ld. AO has mentioned in several places in the assessment order that his persistent efforts for eliciting appropriate response from the assessee and also a direction to produce books of accounts and relevant vouchers, were only partially complied with to the extent that some written response was sent on 4th & 5th December, 2019.

1.1. Even before the ld. CIT(A), the assessee could not present his case and the fact of no response to as many as five notices is recorded in para 5 of the impugned order. Needless to say, the ld. CIT(A) confirmed the order of the ld. AO.

1.2. Aggrieved with the action of authorities below, the appellant is before us through the following grounds of appeal:

“1. That the Order passed u/s 250 is bad in law as well as on facts of the case.

2. That the Hon’ble CIT(A) erred in law as well as in facts by confirming the action of the Ld. AO of passing an arbitrary and high-pitched ex-parte order without allowing sufficient and reasonable opportunity of hearing to the appellant assessee.

3. That the Hon’ble CIT(A) erred in law as well as in facts by confirming the action of the Ld. Assessing Officer in making an arbitrary addition of Rs.56,45,000/- which was deposited in the disclosed Bank Account during the F.Y. 2016-17 as unexplained investment u/s 69.

4. That the Hon’ble CIT(A) erred in law as well as in facts by confirming the action of the Ld. Assessing Officer in making an addition creditors amounted to Rs.30,01,129/- as un-explained cash credit u/s 68.

5. That the Hon’ble CIT(A) erred in law as well as in facts by confirming the action of the Ld. Assessing Officer in making an addition of Rs.5,47,443/- which is the difference between Gross profit @1.37% of turnover and net profit declared by assessee.

6. That the appellant craves to leave, add or amend any of the grounds during the course of appellate proceedings.”

2. Before us, the ld. A/R argued that once the gross profit/net profit has been enhanced through an estimation, that too without rejecting the books of

accounts, then no other addition would be possible, especially when it comes to turnover of business. For this purpose, and to emphasize his argument the ld. A/R mentioned at the Bar that he was not pressing ground no. 5 which was pertaining to the enhancement of net profit on estimate. The ld. A/R also relied on several orders of ITAT and an order of the Hon'ble Delhi High Court in the case of *CIT vs. Ritu Anurag Agarwal* reported in *ITA No. 325/2008* order dated 22.07.2009 to canvas the point that no addition u/s 68 of the Act could be made on account of trade creditors when the books of accounts have not been rejected. Relying on the ITAT orders, it has been averred that once regular books of accounts have maintained then on mere suspicion, cash deposited during the demonetization period could not be subject to the rigours of Section 68 of the Act.

2.1. The ld. D/R vehemently asserted that the assessee did not produce any books of accounts or vouchers before the ld. AO or ld. CIT(A) and therefore, any effort to prove the genuineness of the transactions at the stage of hearings before the Hon'ble ITAT would not be proper since the primary responsibility of producing the books of accounts etc. before the ld. AO were not fulfilled by the assessee.

3. We have carefully considered the rival submissions and also gone through the authorities relied upon and the orders of the ld. AO/ld. CIT(A). While in principle, it is acceptable that once the turnover of business has not been disturbed and some addition has been made by adopting a higher figure of net profit on estimate then there may not be any occasion to make any further addition on account of trade creditors or even cash deposited during the demonetization period. However, it is evident from a close reading of the orders of the authorities below that the books of accounts and vouchers were never produced and therefore, the ld. AO was effectively navigating in darkness and thereby chose to make the impugned additions. The authorities relied upon by the ld. A/R reveal that in all of them the books of accounts and other attendant details were before the AOs in those cases and thereby the Revenue's appeals did not succeed on the issues before the said authorities. Even at the expense of repetition, it needs to be emphasized that the ld. AO

should examine the books of accounts and attendant documents to see if the trade creditors have been duly accounted for in the turnover of business and also the cash deposited during the demonetization period could be correlated with the cash book maintained by the assessee. For these reasons, this matter is remanded back to the file of the Id. AO for affording a fresh opportunity to the assessee, who would do well to present the books of accounts etc. and ensure that a proper presentation is made so that the Id. AO can exercise his judgment in arriving at a true and correct nature of the taxable income. With these remarks, the matter is remanded back to the file of the Ld. AO.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 18th November, 2024.

Sd/-

[Sanjay Garg]
Judicial Member

Sd/-

[Sanjay Awasthi]
Accountant Member

Dated: 18.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Dinesh Saha, Bhaluka Bazar, Malda, West Bengal, 732125.**
2. **ITO, Ward-3(1), Malda.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata