

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 927/Del/2023
(Assessment Year: 2017-18)**

ACIT, Circle 10(1), New Delhi.	Vs.	M/s Himachal Fibres Limited, Shop No. 1, Village –Lal Kalan adjacent to Yogendera Worsted Chandigarh Rod, Ludhiana- 141001
PAN No: AAACH0871P		
APPELLANT		RESPONDENT

Revenue by : Shri Vivek Kumar Upadhyay, Sr. DR
Assessee by : Shri Gaurav Jain, Adv. and
Ms. Shweta Bansal, CA

Date of Hearing : 04.09.2023
Date of Pronouncement : 11.09.2023

ORDER

PER N.K. BILLAIYA, AM

This appeal by Revenue is preferred against the order dated 02.02.2023 by NFAC, Delhi, pertaining to AY 2017-18.

2. The solitary grievance of the Revenue is that, the CIT(A) has erred in deleting the addition of Rs. 3,41,86,500/- made by the AO on account of cash deposits during demonetization period.

3. Representatives of both the parties were heard at length. The case records carefully perused and the relevant documentary evidences brought on record duly consider in the light of the Rule 18(6) of the ITAT Rules, 1962.

4. Briefly stated the facts of the case are that the assessee filed its return of income on 06.11.2017 electronically declaring loss of Rs. 66,41,640/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4.1 During the course of scrutiny assessment proceedings, the AO noticed that there were cash deposits during the demonetization period. After analyzing the cash deposits during the demonetization period vis-à-vis during the same period in the immediately preceding year, the AO came to his own conclusion that there was an increase of 643% and came to the conclusion that the excess amount of cash deposit during the demonetization period totaling to Rs. 3,41,86,500/- is the income of the assessee U/s 68 of the Act and added the same to the returned income / loss of the assessee.

5. The assessee challenged the assessment before the CIT(A). It was contended by the assessee that it has furnished complete details of sales / receipts and justification of cash generated and deposited during the relevant years with comparative details of purchases, sales and stock position. The assessee also submitted a copy of VAT returns. After considering the facts and the submissions, the CIT(A) deleted the impugned additions. The relevant finding reads as under:

7.2 The appellant is engaged in the business of trading and manufacturing of different types of fibers and yarns. The case of the appellant was selected for

scrutiny based on cash deposits made during the demonetization period. The Assessing Officer did not accept the submission made by the appellant that the source of cash deposits is from the cash sales of the appellant. The appellant has submitted the details of sales/ receipts and purchase/ payments for the year under consideration as also the comparison and justification of cash generated and deposited during the relevant years. The appellant has also submitted the comparative details of purchases, sales, and stock position during the relevant period. The appellant had also submitted copies of VAT returns along with the reconciliation of turnover. However, the Assessing Officer was not satisfied with the details submitted by the appellant and has made the addition of Rs. 3,41,86,500/- u/s 68 of the IT Act, 1961. The provisions of Section 68 can be applicable where any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source of the same or the explanation offered by the assessee is not satisfactory in the opinion of the Assessing Officer. In the instant case, the Assessing Officer did not believe in the explanation filed by the assessee in respect of the Cash Deposits made by the assessee. But the Assessing Officer has not discharged the onus of proving how the submission made by the assessee is not satisfactory. The case of the Assessing Officer is on a very weak footing and is based on conjectures and surmises. If the Assessing Officer is not satisfied with the submission made by the assessee then the burden lies on him to point out evidenceto support his decision. The Assessing Officer has not discharged the onus/ The AO has not made out a I case based on any concrete findings. Moreover, the AO has not evenrejected the books of accounts of the assessee. The appellant has also relied on various case laws which are squarely applicable in the case of the assessee. Respectfully following the same, Grounds 1 to 3 of the appeal are, therefore Allowed."

5.1 Before us, the DR strongly supported the finding of the AO and read the operative part of the assessment order.

5.2 Per contra, the counsel for the assessee reiterated what has been stated before the lower authorities.

6. We have given a thoughtful consideration to the orders of the authorities below.

It would be pertinent to understand the cash deposited by the assessee during the FYs 2015-16 and 2016-17 and the same can be understood from the following:

(v) A chart detailing the cash sales executed as well as cash deposited by the Appellant during the financial year 2015-16 vis-à-vis 2016-17 is provided hereunder:

Particulars	AY 2016-17	AY 2017-18	Increase
<i>Total Sales</i>	<i>47,54,72,571/-</i>	<i>55,86,27,006/-</i>	<i>8,31,54,435.00</i>
<i>Cash Sales</i>	<i>3,02,37,771/-</i>	<i>5,97,25,252/-</i>	<i>2,94,87,481.00</i>
<i>Cash Sales during the Period 1st April to 8th November</i>	<i>29,69,415/-</i>	<i>5,82,65,102</i>	
<i>Cash sales During the Period 9th November to 31st December</i>	<i>48,73,805/-</i>	<i>5,61,560/-</i>	
<i>Period 1st January to 31st March</i>	<i>2,23,94,551/-</i>	<i>8,98,590/-</i>	
<i>Total Cash Deposited</i>	<i>1,65,95,500/-</i>	<i>4,98,64,500/-</i>	
<i>Period 1st April to 8th November</i>	<i>9,98,500/-</i>	<i>1,56,78,000/-</i>	
<i>Period 9th November to 31st December</i>	<i>46,00,000/-</i>	<i>3,41,86,500/-</i>	
<i>Period 1st January to 31st March</i>	<i>1,09,97,000/-</i>	<i>Nil</i>	

6.1 A perusal of the above shows that cash sale is a regular feature of the assessee business. It can be seen that the cash sales in FY 2015-16 was 3.02 crores which increased to 5.97 crores in FY 2016-17. The total turnover in FY 2015-16 was Rs. 47.54 crores which jumped to 55.86 crores with an increase of Rs. 8.31 crores. The increase turnover had increase in cash sales from 3.02 crores to 5.97 crores.

6.2 Keeping these facts in mind, we find that the AO did not point out any defects in the books of account nor discrepancies were found in the stock, sales and purchases. The VAT returns have been accepted by the authorities and there is not even a whisper in respect of revised VAT return to show that the assessee manipulated its books of account to show inflated cash sales during the demonetization period to justify the cash deposit. In fact there is not even a single finding by the AO that the purchases were inflated to show inflated sales to cover up the cash deposit in the bank during the demonetization period.

7. It was observed that the AO did not point out any defects in the books of account, no discrepancies were found in the stocks, sales and purchases. The AO's conclusion is that there are huge deposits in the bank account during demonetization period and the assessee could not explain such deposits. The assessee has amply demonstrated with evidences that the cash sales and the cash deposits during FYs 2015-16 and 2016-17 were almost same and there is only a minimal increase in cash deposits during the FY 2016-17 relevant to the AY 2017-18. The Ld. CIT(A) has passed a well reasoned order considering all the submissions of the assessee and the averments of the AO.

7.1 We further observed that the Vishakhapatnam Bench of the Tribunal in the case of ACIT vs. Hirapanna Jewellers (189 ITD 608) held as under: -

"Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the dosing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence, (para 7)

In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey

the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country, "(para 7.2)

In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case', we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (supra) and the Hon'bte Gujarat High Court in the case of Visha/ Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CU(A) and the same is upheld, (para 9)"

7.2 In the case of Smt. Charu Aggarwal vs. CIT (140 taxmann.com 588) the Chandigarh Tribunal held as under: -

"10.3 In the instant case the assessee maintained the proper books of account in regular course of business which were duly audited by the independent Chartered Accountant under section 44AB of the Act, all the sales & purchases and stocks were recorded in the books of account which had not been doubted by the AO. The sales shown by the assessee had been accepted by VAT/ Sales Tax Department, the book result shown by the assessee were in the same line as had been accepted by the Department in the preceding years, the cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted, even during the course of search just after the dosing of the year under consideration, neither excess nor shortage of stock was found in the stock register maintained by the assessee, the identity of the purchasers to whom cash sales had been made was disclosed in the sale bills where the name, address and PAN was mentioned. It is also not a case that there was sudden spurt in the sale only in the month of October 2016 as the chart furnished by the assessee before the Ld. CIT(A) clearly revealed that the cash sales were on higher side in another months of different preceding years. The AO made the addition on the basis of difference in the cash sales from 01-10-2016 to 29-10-2016, only on this basis that the said difference was there in

the computer and the pen-drive found from the residential premises of the part time accountant of the assessee but no opportunity to cross examine the said accountant was given to the assessee and moreover, no specific defect was pointed out in the proper books of account maintained by the assessee in the regular course of business and nothing is brought on record to substantiate that the sales from 01-10-2016 to 29-10-2016 were not made, out of the existing stock available with the assessee. In the present case the assessee explained that the exhibitions were held in every year and the sales were normally higher in certain month and that in the month of October 2016 the cash sales was on the higher side as lots of festivals like Diwali, Dhanteras, Bhaiya Duj and Karwa Chauth etc. fell in that period. The said explanation cannot be brushed aside considering the trend of the society in India wherein people make the purchases of jewellery during the festive season.

10.4 On a similar issue the ITAT Chandigarh Third Member Bench in the case of Bansal Rice Mills (supra) held that " since the sales proceeds have already been accounted for in the trading account no addition could be sustained even if the said deposits could be treated as bogus sales as complete stock tally was there".

10.5 In the present case also 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 not justified.

10.8 Similarly the Hon'ble Patna High Court in the case of Lakshmi Rice Mills (supra) held as under:

"It is a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more| in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law. What has to be disclosed and established is the source of the 'income or the receipt of money, not the source of the receipt of the high denomination notes which were legal tender at the relevant time."

10.9 Further sales made by the assessee to cover the cash deposited in the bank post demonetization, was sufficient source of the cash deposited i.e; the sales from the existing stock available with the assessee and was well explained, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

10.11 In the present case also the opening stock, purchases & sales and dosing stock, declared by the assessee has not been doubted, the sales were made by the assessee out of the opening stock and purchases and the resultant dosing stock has been accepted, the safes had not been disturbed either by the AO or by the sales tax/VA T Department and even there was no difference in the

quantum figures of the stock at the time of search on 12/04/2017, therefore, the sales made by the assessee out of the existing stock were sufficient to explain the deposit of cash (obtained from realization of the sales) in the bank account and cannot be treated as undisclosed income of the assessee.

10.13 In the present case also the cash deposited post demonetization by the assessee was out of the cash sales which had been accepted by the Sales Tax/VAT Department and not doubted by the AO, there was sufficient stock available with the assessee to make cash sales and there was festive season in the month of October 2016 prior to the making of the cash deposit in the bank account out of the sales. So, respectfully following the aforesaid referred to orders by the various Hon'ble High Courts and the Coordinate Benches of the ITAT, we are of the view that the impugned addition made by the AO and sustained by the Ld. CIT(A) was not justified, accordingly the same is deleted."

7.3 In the case of Anantpur Kalpana vs. ITO (130 taxmann.com 141) the Bangalore Bench of the Tribunal held as under: -

"9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of Associated Transport (P.) Ltd. (supra) on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of Hirapanna Jewellers (supra) on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted."

7.4 We further observe that the decision of the Delhi Tribunal in the case of Agson Global Pvt. Ltd. vs. ACIT (supra) has also been affirmed by the Delhi High Court in the case of PCIT vs. Agson Global Pvt. Ltd. (441 ITR 550), wherein the Hon'ble High Court at para 17.6 held as under: -

"17.6 Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record—which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs. 73.13 crores, under section 68 of the Act."

8. Considering the facts of the case in totality, in the light of judicial decisions discussed here in above, we do not find any merit in the impugned addition and the same has been rightly deleted by the CIT(A) by proper appreciation of facts, therefore, we decline to interfere with the finding of the CIT(A). Appeal filed by Revenue is dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 11.09.2023

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 11 /09/2023.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	4.09.2023
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	