

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

ITA No. 213/Mum/2024

(Assessment Year: 2017-18)

Anil Champalal Jain
Room No.26, 22/24,
Singapur Building,
Champagali X Lane,
Kalbadevi Road,
Mumbai-400 002

(Appellant)

Vs. ITO, Ward 23(1)(6)
6th Floor, Piramal Chambers,
Lalbaug, Mumbai-400 012

(Respondent)

PAN No. AAQPJ9608B

Assessee by : Shri Jeetender C. Lal, AR
Revenue by : Shri R.R. Makwana, DR

Date of hearing: 10.06.2024
Date of pronouncement : 09.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 213/Mum/2024 is filed by Mr. Anil Champalal Jain (assessee / appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2017-18 dated 16th November, 2023, wherein the appeal filed by the assessee against the assessment order dated 27.12.2019 passed under Section 143(3) of the Income-tax Act, 1961 (the Act), was dismissed.

02. The assessee aggrieved and is in appeal before us raising following grounds:-

"1. In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in concluding that the learned AO rejected the books of accounts of the appellant.

2. In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that the accounts of the appellant were audited by a qualified Chartered Accountant under the provisions 44AB of the Income-tax where the Auditor has certified that the proper books of accounts were maintained by the appellant.

3. In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.33,00,000/- being cash deposited in the bank accounts during the period specified under Specified Bank Notes (Cessation of Liabilities) Act, 2017

4. In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that the appellant has been selling goods on cash basis through the year and has deposited cash on various dates.

5. In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the cash sales effected by the appellant is reflected in the



Profit and Loss Account and thus in the net profit or loss during the year based on which the total income is computed.

6. In the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in not verifying from the records available to him as to the conclusions of the learned AO including his observation that there was a credit balance in the cash book - "Further, on 23.11.2016, cash of Rs.9,00,000/- & Rs.2,00,000/ was deposited resulting in credit balance of Rs.19,49,247/-."

7. The appellant prays leave to add to, alter, amend or delete any of the above grounds of appeal."

03. Brief facts of the case shows that the assessee is an individual proprietor of M/s Satawat Textile engaged in the business of trading in cloths. The assessee filed his return of income on 7th November, 2017, a total income of ₹4,93,740/-. The case of the assessee was selected for scrutiny for verification of cash deposit during demonetization period. It is found that assessee has deposited in his current bank account ₹34,13,774/-, out of which ₹33 lacs were deposited during demonetization period. The assessee was asked to explain but assessee did not explain. The learned Assessing Officer noted that the assessee hardly has any cash sales further, the cash deposited by the assessee were transferred to his sister concern, M/s Satawat Textile. Part of this sum was transferred to the assessee's own account. In absence of

any information the assessment order under Section 143(3) of the Act was passed on 27th December, 2019. By making an addition of ₹33 lacs under Section 69A read with section 115BBE of the Act determining the total income of ₹37,93,735/-.

04. Aggrieved assessee preferred the appeal before the learned CIT (A). Assessee was given four different opportunities but assessee submitted part of the details. However, the detail submitted by the assessee was with respect to the month wise details of sales and purchases in credit and cash. The assessee submitted that ₹33,99,332/- is cash sales of the assessee. The total sales of the assessee are more than Rs. 4.85 crores. The assessee also submitted a chart and a cash flow statement and thereby stated that sales have been reflected in the books of account and cash deposited is part of the business operation of the assessee. The learned CIT (A) rejected the contentions of the assessee stating that the cash book of the assessee shows cash sales only upto 9th November, 2016 and thereafter there is no cash sales thus, the cash book and the cash flow statement is manipulated. He further held that merely because cash sales are shown in the profit and loss account as the books of account are rejected the addition is rightly made under Section 69A of the Act. The appeal of the assessee was dismissed.



05. The assessee is in appeal before us. The learned Authorized Representative submitted a Paper Book containing 85 pages, the submission made before the learned CIT (A) was reiterated. It was submitted that the cash deposit of ₹33 lacs is part of the sales already shown in the books of account and tax has been paid on such income. He submits that facts have been wrongly recorded by the learned CIT (A) that books of account of the assessee are rejected. He submits that books are not rejected. He further stated that books of account of the assessee are audited and assessee has shown the net profit 1.38% for this year compared to 1.66% in earlier year. He further submitted that this year the gross profit shown by the assessee is 7.56%, whereas in earlier year it was 10.16%. He further referred to cash book for F.Y. 2016-17 to show that day to day cash book is maintained. He further referred to the bank statement of Kotak Mahindra Bank and submitted that assessee has deposited cash in his bank account as per funds available in the cash book. Therefore, it was stated that the addition made by the learned Authorized Representative confirmed by the learned CIT (A) is not correct.
06. The learned Departmental Representative vehemently supported the order of the learned lower authorities.
07. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. The fact shows that the assessee is a dealer in fabrics and has



recorded sales in cash and credit both. For the year the assessee has cash sales of ₹33,57,000/- out of which ₹33 lacs were deposited in his bank account with Kotak Mahindra Bank. To support source of cash deposited the assessee has produced the details of cash sales, cash book, etc. before the learned Assessing Officer to support that the amount of cash deposited in the bank account on four different occasions on 21st November, 2016, totaling to ₹33 lacs is out of the sale proceeds which are disclosed as sales in the trading account. The allegation of the learned Assessing Officer was that after demonetization the assessee does not have any cash sales but prior to that ₹33,57,000/- is stated to be cash sales. We agree with that in absence of cash sales post demonetization of even a single rupee might be a case of suspicion but that cannot be the basis to disregard the sale of ₹33.57 lacs in cash prior to that without making any enquiry. When the sales invoices on cash sales, the books of account are available with the learned Assessing Officer, he should have made an enquiry to disprove the cash sales prior to demonetization. This exercise has not been done. It is also true that cash sales are also part of the trading result offered for taxation by the assessee which is not disputed. The mere allegation that books of account are manipulated without its rejection or without bringing on record any positive evidence, the addition could not have been made of ₹33 lacs on account of cash deposit. Mere cash deposit or cash sales, without pointing out any latent, patent and



glaring defect in books of accounts, books of accounts cannot be rejected. Ld OA has to show that cash sales is not coupled with delivery of goods, or on that assessee did not have stock to sale. The allegation of the learned Assessing Officer that after deposit of the cash, part of the money has been transferred to the sisters concern i.e. M/s Satawat Textile and part of the money to the assessee's own account does not help the case of the Revenue in proving that the cash sales recorded by the assessee is bogus. In view of the above facts, we reverse the orders of the lower authorities and allow ground no.3 of the appeal directing the learned Assessing Officer to delete the addition of ₹33 lacs.

08. All other grounds of appeal are not required to be adjudicated.
09. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.07.2024.

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:09.07.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai