

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.2842/Del/2023, A.Y. 2017-18

Income Tax Officer 1408, 14 th Floor, Civic Centre, J.L.Nehru Marg, New Delhi	Vs.	Appliances Forever, WZ 276C 2 nd Floor, Inderpuri, New Delhi-110012 PAN: ABDFA9733A
(Appellant)		(Respondent)

Respondent by	Sh. Kanv Bali, Sr. DR
Appellant by	Sh. Neeraj Mangla, CA

Date of Hearing	20/05/2024
Date of Pronouncement	12/07/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM:

The instant appeal of the Assessment Year [In short, the 'AY'] 2017-18 preferred by the Revenue is against the order, dated 11.08.2023, of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In Short 'the CIT(A)'].

2. The relevant facts of the case giving rise to this appeal are that the assessee, electrical goods trader, filed its Income Tax Return (In short, the 'ITR') on 31.10.2017 declaring income of Rs.4,700/-. The case was scrutinized and the consequential assessment was completed at income of Rs.65,58,040/- under section 143(3) of the Income Tax Act, 1961 (In short 'the Act'). The Ld. Assessing Officer (In short, the 'AO')

held the cash sales aggregating to Rs.65,53,340/- deposited in the bank during the course of demonetization period non-genuine and taxed it under section 69A r.w.s. 115BBE of the Act. Aggrieved, the assessee preferred appeal before the CIT(A) and succeed there. The revenue challenged the order of the Ld. CIT(A) on the following grounds: -

“1. On the facts and circumstances of the case the Ld. CIT(A) erred in law in deleting the addition of Rs.65,53,340/-, made by A.O. on account of unexplained money u/s 69A of the IT Act.

2. On the facts and circumstances of the case the Ld. CIT(A) erred in allowing the appeal of the assessee without controverting the discrepancies highlighted by the A.O. in Para 2.2 of Assessment order regarding abnormality in cash sales restricted to only a few days before and after the demonetization period.

3. The appellant reserves right to add, amend or alter the grounds of appeal on or, before the date of the disposal.”

3. The Ld. Sr. Departmental Representative (In short, the ‘Sr. DR’) vehemently argued the case emphasizing the details highlighted in para 2.2 of the assessment order wherein it was mentioned that the cash sales of Rs.65,53,340/-had taken place on various days during the period 05.10.2016 to 19.10.2016 and 02.01.2016 to 18.01.2017 and there was no cash sales prior to 05.10.2016 when the respondent/assessee was having imported goods worth Rs.2.68 Crores as stock-in-trade in September, 2016. The Ld. AO also doubted the cash sales on the reasoning that the sales taken place during October had not been deposited within the reasonable time of 02-05 days before 08.11.2016 i.e. the date of demonetization as normal prudent man would deposit cash sales within the reasonable time period after cash sales. The AO also

noted that the cash deposit in the bank account during 1st April to 8th November, 2016 was only Rs. 2,000/-. Revision of VAT returns was also questioned by the AO to infer that the cash sales were non-genuine.

4. For proper appreciation of facts, the Ld. Sr. DR drew our attention to paras 2.2 onwards of the assessment order. The same is reproduced as under:-

“2.2 The quantum of the cash sales stated to have been achieved during the year was Rs.58,62,991 while the details furnished thereof depicted the cash sales achieved during the year was around Rs.65,53,340. Interestingly, these cash sales were achieved on nine days only in the month of October 2016 i.e. 05-10-2016, 06-10-2016, 07-10-2016, 18-10-2016, 19- 10-2016, 02-01-2017, 16-01-2017, 17-01-2017 and 18-01-2017 during the entire financial year. Further, the assessee has also not brought on record as to why there were no cash sales prior to 05-10-2016 though the assessee had enough imports valuing to the extent of Rs.2.68 crores as at Sep 2016. Even assuming for a moment that the assessee had achieved cash sales in the month of October, 2016, the cash deposited during the period 01- 04-2016 to 08-11-2016 was only Rs.2,000. The assessee did not bring anything on record as to why the so-called cash sales achieved aggregating to Rs.48,88,217 during the 9 days were not deposited in the bank on the respective day of sale.

2.3 When the assessee has failed to prove that in his normal business or otherwise, he was possessed of so much money, it is to be held that the money by virtue of credit entries or in the shape of cash deposits represents the earning of the assessee during the year from undisclosed sources within the meaning of Section 69A of the Act. Section 69A of the Act deals with money, etc. owned by the assessee and found in possession including in the bank accounts of the assessee which remained unexplained. The relevant portion of the same is reproduced herein under:

“Section 69A -.....

In the instant case, the assessee is found to be the owner of the money appearing in its bank account maintained with HDFC Bank and ICICI Bank but has failed to offer any acceptable and cogent explanation

regarding the source of such cash deposits appearing in the bank accounts. The scheme of Section 69A of the Act would show that in cases where the nature and source of acquisition of money, etc. owned by the assessee is not explained at all, or not satisfactorily explained, then the value of such money is deemed to be the income of the assessee. This provision of the Act treats unexplained money as deemed income where the nature and source of cash deposits in the banks remains not explained or satisfactorily explained. No doubt, the assessee has huge cash deposits in his bank accounts but the nature and source of such credits and cash deposits were not at all explained. Hence, the limbs of Section 69A of the Act stands qualified in the case of the assessee i.e. the assessee was found to be owner of the money and the source remained unidentifiable. Reliance is placed on the decisions of the Hon'ble Supreme Court dated 27-03-1963 in the case of SmtSrilekha Banerjee and Others reported in 1964 AIR 697 (SC) wherein it was held that, the source of money not having been satisfactorily proved, the Revenue was justified in holding the same as assessable income of the assessee from undisclosed sources. Reliance is also placed on the decision of the Hon'ble Apex Court in the case of Chuharmal Vs. CIT (1988) reported in 172 ITR 250 in which similar issue was adjudicated in favour of the Revenue.

2.4. To bring more clarity of facts on record, the assessee was asked to appear for his personal deposition and the summon issued u/s 131 of the Act to one of the partners for this purpose but was not complied with by him. The assessee has not responded to the notices issued u/s 142(1) of the Act satisfactorily and also to the show cause issued during the proceeding. As the assessee failed to offer any explanation about the nature and source of cash deposits appearing in the banks as detailed above, the sum of Rs.65,53,340 stated to have been achieved through cash sales is deemed as unexplained money within the meaning of Section 69A of the Act and the same is taxed at the special rate as per the provisions of Section 115BBE of the Act.”

5. The Authorized Representative (in short 'AR') submitted paper book running into 719 pages containing ITR, audited financials, 3CD report, audit report, original& revised VAT returns, retail invoices, etc. and submissions filed before the AO and Ld. CIT(A). The Ld. AR submitted that the cases cited in the assessment order were factually different than that of the present case. He also placed reliance on various

decision of the Tribunal including decisions of the coordinate benches. Copies of such decisions were also submitted by the Ld. AR.

5.1 The Ld. AR contended that the AO had not doubted any purchase, stock-in-trade, book results, etc. It was submitted that the entire purchases were imports only after paying custom duty. The Custom Authority had not doubted any import. It was further reiterated that the books of account had not been rejected by the AO; therefore, doubting sales were not justified at all. It has been contended that this is the first year of the assessee and therefore, there was no cash sales prior to the commencement of business/receipt of imported goods. The initial import was in Sept., 2016 and sales had taken place thereafter against the specific orders and in cash. Cash sales taken place in first week of Oct., 2016 after receipt of the first imported lot. The Ld. AR contended that the tax effect of Rs.50,63,907/- shown in Form 36 (Appeal Memo) on income of Rs. 65,53,470/- needed to be cross-checked for maintainability of this appeal as per the Circular No.3/2018 dated 11.07.2018 read with the Circular No.17/2019 dated 08.08.2019. To this, the Ld. Sr. DR submitted that the tax effect was above the threshold limit for filing appeal as per the Circular No.3/2018 dated 11.07.2018 read with the Circular No.17/2019 dated 08.08.2019.

5.2 It was further submitted that the cash sales had taken place in January, 2017 and afterward also. Therefore, the AO's conclusion that cash sales had not taken place after the demonetization period was factually incorrect. With the help of original & revised VAT returns, the

Ld. AR demonstrated that there was no substantial change in the turnover in the revised return in 3rd Quarter of FY 2016-17. In revised VAT returns, some clerical errors/mistake, etc. were rectified. The Ld. AR further argued that the AO had taxed the sales once as a regular sale shown in P & L Account and again the same under section 69A of the Act, which tantamount to double taxation being contrary to the law and accounting principles. He questioned the AO's finding treating cash sales shown in the P & L account as genuine and taxing the business income embedded in such sales and again taxing such sales as unexplained deposits.

5.3 Before us, the Ld. AR submitted that the cash deposits were out of sales made by the respondent/assessee. He further submitted that the details of the deposits in bank account along with sales register and VAT returns were also filed before the AO and the CIT(A). However, the AO brushing aside all these documents including sale vouchers/retail invoices containing all required details therein placed at page no. 306 to 719 of the paper book held that the cash sales were non-genuine. All these sales were shown in books of account and VAT returns also. The sales as per the sales registers tallied with the VAT returns. He submitted that most of the sales were to identifiable parties except the cash sales made in October, 2016 and January, 2017.

6. We have heard both the parties and have perused the material available on the record. The Ld. PCIT is requested to get tax effect cross-checked for maintainability of this appeal as per the Circular No.3/2018

dated 11.07.2018 read with the Circular No.17/2019 dated 08.08.2019. In case the tax effect is below Rs.50,00,000/-. Then this appeal has to be held as non-maintainable and dispose of accordingly as dismissed. Otherwise also, we are deciding this appeal on merit also.

6.1 We find force in the arguments/contentions/ submission of the Ld. AR. that

- (i) the reasons for revising the VAT returns were justified,
- (ii) cash sales cannot take place before import/commencement of business in Sept., 2016,
- (iii) Cash deposits prior to commencement of business in Sept., 2016 cannot take place. Hence, the AO's observation that cash deposit was only Rs.2,000/- from 01.04.2016 to 08.11.2016 loses relevance,
- (iv) the business man deposits sale consideration on respective dates of sales. It is normally deposited as when need arises. The needs of business determine it and
- (v) the AO cannot tax the receipts and income embedded therein together.

6.2 The issue before us is with respect to addition of Rs.65,53,340/- made on account of cash deposits during the demonetization period. It is an admitted fact that the respondent/assessee, engaged in the business of trading of Imported Electrical Goods, has made cash sales as well as credit sales. It has maintained sales vouchers and filed VAT return within the stipulated time period. The revision of VAT return has not affected the turn over shown in the original VAT return. Before us, revenue has not

placed any material on record to demonstrate that the details of cash sales shown by the respondent/assessee are fictitious/bogus. The purchases are entirely through imports. Further, the revenue has also failed to place any material on the record to demonstrate that the VAT returns of the relevant year have not been accepted by the VAT authority and the Custom authority has not accepted the imports/purchases. Hence, following the reasoning given in the co-ordinate Bench decision in the case of Ramesh Kochar, ITA No. 171/Del/2022 dated 26.04.2022, we hereby hold that this case is squarely covered by this decision of Ramesh Kochar (supra). Accordingly, we are of the considered view that the addition of Rs.65,53,340/- under section 69A of the Act is uncalled for and the CIT(A) is justified in deleting the same. Consequentially, we decline to interfere with the order of the Ld. CIT(A).

7. In the result the appeal of the Revenue stands dismissed.

Order pronounced in open Court on 12th July, 2024.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 12/07/2024
B.R., Sr. Ps.

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI