

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

**BEFORE,
SHRI DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1612/Del/2021
(ASSESSMENT YEAR 2017-18)**

M/s. Shivam Industries Radheshyam Sharma & Co. Chartered Accountants, 351, 3 rd Floor, Aggarwal Modern Bazar, Lawrence Road, Ind. Area, Delhi PAN : AARFS4845C (Appellant)	Vs.	ACIT, Central Circle- 6/CIT(A)-XXIV, New Delhi (Respondent)
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Appellant by	Sh. Nitin Gulati, Adv.
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	14/02/2023
Date of Pronouncement	27/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-24, New Delhi [“Ld. CIT(A)”, for short], dated 28/08/2021 for Assessment Year 2017-18.

2. Grounds taken in this appeal is as under:

“1. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts in confirming the additions of Rs. 8,00,000 /- on account of cash deposited during the de monetization during the year by recording incorrect facts and making irrelevant observations. Therefore, the additions made as such may be liable to be deleted.

2. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts in confirming the denial of the (i) documents placed on record, not considering past history of the appellant and confirming the addition on account of cash sales without denying sales and rejecting books of account by the Ld. AO and confirming additions of Rs. 8,00,000/- by recording incorrect facts and making irrelevant observations. Therefore, the additions made as such may be liable to be deleted.

3. That having regards to the facts and circumstances of the case, Ld. CIT(A) has grossly erred in law and on facts, in partially confirming the order framed by the Ld. AO u/s 143(3) in spite of the fact that the Ld. AO passed orders without considering the fact that cash sales(and/or payment to farmers/ consigners) is a regular part of the of the business of the appellant. Therefore, the assessment completed as such may be held ab-initio invalid.

4. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts, in partially confirming the order framed by the Ld. AO u/s. 143(3) and that too without considering the material on record and comparison sheet in totality; therefore, the additions made as such per Ground of Appeals No. 2 may be liable to be deleted.

5. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts, in partially confirming the order framed by the Ld. AO u/s. 143(3) and that too without giving an adequate opportunity of being heard, therefore, the additions made as such as per Grounds of Appeals No. 2 may be liable to be deleted.

6. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts, in partially confirming the order framed by the Ld. AO u/s 143(3) and that too without considering the fact that the partial relief is given by the Ld. CIT (A) on the same grounds and judgment made by the Ld. CIT on amount of relief is having no base; therefore, the additions made as such as per Grounds of Appeals No. 2 may be liable to be deleted.

7. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts, in partially confirming the action of the Ld. AO in spite of the fact that the Ld. AO has simply made the addition only on the basis mala fide intention and without rejecting sales and books of accounts.

8. That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts, in confirming the action of the Ld. AO despite the fact that on the facts and circumstances of the case and in law, the addition made by the Ld. AO is arbitrary and against the principles of natural justice and therefore, the addition made is liable to be deleted.

9. That the appellant, crave leave to amend, alter, add or delete any of the forgoing Ground of Appeal.”

3. Brief facts of the case are that, the return was filed u/s 139(1) declaring income at Rs. 84,77,110/- and the case of the assessee was selected for complete scrutiny through CASS. An assessment order came to be passed u/s 143(3) of the Act by making addition of Rs. 38,00,000/- u/s 68 of the Act vide Assessment Order dated 31/12/2019. As against the Assessment Order dated 31/12/2019, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 28/08/2021 sustained the addition of Rs. 8,00,000/- out of the total addition of Rs. 38,00,000/- made u/s 68 of the Act. Aggrieved by the order dated 28/08/2021 passed by the Ld. CIT(A), the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee vehemently submitted that the authorities below have not considered the past history of the assessee, not considered the document produced by the Assessee and the addition has been made which has been confirmed by the CIT(A) without disrupting the sales and without rejecting the books of accounts of the assessee and the authorities have not considered the material available on record.

5. Per contra, the Ld. Departmental Representative relying on the orders of the Ld. CIT(A) submitted that the Ld. CIT(A) has rightly sustained the partial addition out of the total addition made by the A.O., which is reasonable, therefore, sought for dismissal of the Appeal filed by the assessee.

6. We have heard both the parties and perused the material available on record. The Ld. A.O. while making the addition held that in-spite of showing huge cash deposits during the year under consideration, the assessee has not offered any valid explanation, and the onus of the Assessee to substantiate the source and nature of the cash deposit made during the period of demonization but the Assessee has failed to do so. Thus, the A.O. made addition of the said cash deposit of Rs. 38,00,000/- on account of unexplained cash receipt of the assessee. The ld. CIT(A) while sustaining the addition of Rs. 8,00,000/- held as under:-

“4.3.16 From analysis of above details furnished by the appellant, it is held that the Assessing Officer was not justified in adding back entire cash deposited of Rs. 38,00,000/-. Considering past trends of the appellant as well as the fact that the appellant was maintaining books of account which were duly audited and not rejected by the Assessing Officer, part of the cash deposited during

demonetization appears to be explained. The appellant had not revised VAT returns. The total cash deposits of the appellant upto December 2016 of Rs. 54,00,000/- are much lower than cash deposits upto December 2015 of Rs. 2,62,75,000/-. While turnover of the appellant has increased substantially compared to FY 2015-16, cash sales have declined substantially. From perusal of above monthly sales for FY 2016-17, it is held that cash sales and cash deposits upto 30.09.2016 stand explained on the basis of past trends and cash balance was only Rs. 4,83,641 as on 30.09.2016. In October 2015, cash sales were Rs. 50,50,000 out of which cash of Rs. 49,50,000 was deposited in the bank account and cash sales from 01.11.2015 to 08.11.2015 were Rs. 20,03,312. However, in October 2016, cash sales were Rs. 17,60,000 out of which cash of only Rs. 8,00,000 was deposited in the bank account and cash sales from 01.11.2016 to 08.11.2016 were Rs. 25,60,000. Considering past trends of the appellant of regularly depositing cash received in the bank account, unlike in October 2016, it is held that cash sales of Rs. 8,00,000 are unexplained and addition of Rs. 8,00,000 u/s 68 r.w.s 115BBE of Income Tax Act is hereby confirmed. In view of above facts as well as past trends of the appellant, it is held that balance cash deposited during demonetization period of Rs. 30,00,000 stands explained. Hence, Ground Nos. 3, 4, 5, 6, 7, 8 & 9 of the appeal are partly allowed.”

7. The Ld. CIT(A) while deciding the issue has specifically observed that the assessee was maintaining books of account which were duly audited and the said books of accounts were not rejected by the A.O. and further observed that the cash deposits of the assessee up to December, 2016 was Rs. 54,00,000/- are much

lower than the cash deposits up to December 2015 i.e. 2,62,75,000/-. The audited books of accounts of the assessee has not been rejected and the sales of the assessee has not been disturbed, then the Revenue Authorities are precluded from making any addition. Even after observing that the cash deposits of the Assessee was much lower than the previous year, the Ld. CIT(A) has not given any valid reason to sustain the addition of Rs. 8,00,000/-, thus, in our considered view, the order passed by the Ld. CIT(A) is found to be erroneous. Accordingly, the addition sustained by the Ld. CIT(A) is hereby deleted.

8. In the result, the Appeal filed by the assessee is allowed

Order pronounced in open Court on 27th February, 2024

Sd/-

(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 27/02/2024

B.R./R.N Sr. Ps.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

