

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.383/Del/2024
निर्धारणवर्ष/Assessment Year: 2017-18**

DURGA FIRE WORK C/o Sh. S.K. Gambhir, Adv., 429 3 rd Floor, Jagriti Enclave, Delhi.	बनाम Vs.	ITO, Ward-59(8), Vikas Bhawan, I.P. Estate, Delhi.
PAN No.AAAFD3178Q		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Sh. C.S. Anand, Adv.
Revenue by	Sh. Sanjay Tripathi, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	09.05.2024
उद्घोषणाकीतारीख/Pronouncement on	03.07.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Id.CIT(Appeals)-NFAC, Delhi dated 06.12.2023 for the AY 2017-18 in sustaining the addition of Rs.69,25,000/- made u/s 69A of the Act.

2. Brief facts are that assessee firm which is engaged in the business of trading in fireworks filed its return on 02.11.2017 declaring income of Rs.1,84,010/-. The case was selected for

scrutiny to examine the cash deposits made into bank account during demonetization period. In the course of assessment proceedings the assessee was asked to furnish the reconciliation of bank accounts and the cash deposits made and also to explain the source. In response to the notices the assessee in the course of assessment proceedings submitted that it is engaged in the business of trading of all types of fancy fireworks, crackers and sparkles, etc. which are mostly sold during the time of festivals i.e. Dussehra and Diwali, etc. It is submitted that in the financial year 2016-17 relevant to the assessment year 2017-18 which is under consideration Diwali was celebrated on 30.10.2016 and the assessee collected the payments from customers and also made cash sales in counter and subsequently arrange to deposit into bank. The assessee furnished copy of cash book in support of the submissions.

3. Not convinced with the submissions, the AO treated the cash deposits of Rs.69,25,000/- as an unexplained income u/s 69A of the Act observing that the assessee did not disclose the bank account in bank of India where cash deposits were made to the extent of Rs.69,25,000/- in the return of income filed. The AO also observed that the assessee neither furnish the stock summary nor furnished the bill and voucher in support of purchases. It is also the

observation of the AO that the assessee did not deposit the cash in hand in the bank account immediately but was deposited the cash collected much later to the date of demonetization. Therefore, the explanation of the assessee was not accepted. The assessee preferred appeal before the Ld.CIT(A) and the Ld.CIT(A) sustained the addition made by the AO u/s 69A of the Act.

4. Ld. Counsel for the assessee, at the outset, submits that addition u/s 69A of the Act cannot be made in respect of cash deposits recorded in the books of account. Ld. Counsel for the assessee referring to the provisions of Section 69A of the Act submits that this provision is applicable only where money, bullion, jewellery or valuable article is not recorded in the books of account. Ld. Counsel submits that the cash deposits made into bank account were recorded in the books of account of the assessee, the books were audited, Assessee has furnished tax audit report and, therefore, the addition cannot be made in respect of cash deposits which were recorded in the books of account u/s 69A of the Act.

5. The Ld. Counsel for the assessee further submits that the AO as well as the Ld.CIT(A) examined the cash book furnished by the assessee and found no discrepancies. Ld. Counsel submits that the

AO accepted the books of account, sales were not disturbed, purchases were not disturbed, closing and opening stock were not disturbed, no discrepancies were found in the books of account and, therefore, the addition made u/s 69A of the Act without rejecting the books of account is only on surmises and conjectures. The Id. Counsel for the assessee further referring to the statement of sales furnished in Paper Book submits that the assessee made sales of Rs.32,62,011/- to Zergar Gas out of which the assessee has released Rs.13,95,000/- on 04.11.2016 and 06.11.2016 which was deposited into bank account.

6. Ld. Counsel for the assessee further submits that the observation of the AO that the assessee has not disclosed the bank account is also not correct. Ld. Counsel referring to page 11 of the Paper Book which is the balance sheet, submitted that the assessee has shown balance in bank account in Bank of India, Palwal at Rs.14,59,414/- and this balance tallies with the bank statement as on 31.03.2017 appearing at page 17 of the Paper Book. The Ld. Counsel for the assessee submits that the entire cash deposits of Rs.69,25,000/- was out of the closing cash balance in hand available as on 08.11.2016 in its cash book and, therefore, there was no justification on the part of the AO to make addition u/s 69A of the

Act. Ld. Counsel for the assessee also placed reliance on the following decisions in support of the above submissions: -

1. *Shubham Industries Vs. ACIT (ITA No.1612/Del/2021) (Del);*
2. *Sobha Devi Dilipkumar Vs. ITO (160 taxmann.com 1249) (Vishakhapatnam);*
3. *Rachit Aggarwal (Prop.) Ashok Kumar Gupta & Company Vs. ITO (162 taxmann.com 49) (Chandigarh);*
4. *ITO Vs. M/s Zee Bangles Pvt. Ltd. (ITA No.815/Mum/2022 dated 18.07.2023) (Mum.);*

7. Ld. Counsel for the assessee further referring to the case law relied on by the Ld.CIT(A) submits that the case laws relied on by the Ld.CIT(A) are distinguishable on facts and not applicable to the facts of the assessee's case.

8. Ld. DR strongly supported the orders of the authorities below.

9. Heard rival submissions, perused the orders of the authorities below and the material placed before us. The legal issue raised by the assessee is whether the addition can be made u/s 69A of the Act in respect of cash deposits even though the same were recorded in the books of account. It is the contention of the Ld. Counsel for the assessee that assessee recorded the cash deposits made into bank account in its books of account and the same were audited and tax audit report was also furnished. On this legal issue, we find

that the Mumbai Tribunal in the case of ITO Vs. M/s Zee Bangles Pvt. Ltd. (supra) held as under:

“9. We also find that Id. CIT(A) has rightly held that Sec. 69 provides that in case the assessee is found to be owner of any money, bullion, jewellery or any other valuable article and same is not recorded in the books of account, it may be considered to be deemed income of the assessee in case he is not able to provide explanation or his explanation is not satisfactory in the opinion of the assessing officer. The same cannot be applied to the case of the assessee since the assessee has himself declared the amount of cash deposited in the return of income after duly entering the same in the books of account. Regarding applicability of the provision of section 69A of the Act we have perused the provisions of Section 69A of the Act which is reproduced as under:

“[69A Power to issue directions for blocking for public access of any information through any computer resource. -

(1) Where the Central Government or any of its officer specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.]”

It is clear that Sec. 69A of the Act is applied when the assessee is found to be owner of any money which is not recorded in the books of account. However, in the case of the assessee, it has maintained books of accounts duly audited in accordance with section 44AB of the Income Tax Act which was also furnished with the return of income filed by the assessee. The assessee has demonstrated from the purchase books, sale books cash book supported with relevant invoices that source of cash deposited was out of the cash sales made during the A.Y. relevant to the assessment year under consideration. The Id. Counsel has also placed reliance on a number of judicial pronouncements on the proposition that addition u/s 69A of the Act cannot be made i.e. Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC); Lakshmi Rice Mills Vs. CIT (1974) 97 ITR 258 (PAT); DCIT Vs. M/s Karthik Construction Co. ITA No. 2292/Mum/2016.

10. After considering the facts as discussed above, we find the AO has failed to justify in applying section 69A to the case of the assessee when the assessee itself declared the cash sales in its return of income duly recorded in the audited books of accounts maintained by the assessee. Therefore, the CIT(A) has correctly held that provision of Sec. 69A of the Act cannot be applied in respect of cash deposited which have been duly recorded in the books of account and had already been declared income in the return of income filed by the assessee. Therefore, the grounds of appeal of the revenue are dismissed.”

10. Similarly, in the case of Sobha Devi Dilipkumar Vs. ITO (supra) the Vishakhapatnam Bench of the Tribunal held as under:

“4. At the outset, the Ld. Authorized Representative submitted that the assessee being involved in money lending business, on the monies lent, the assessee has received an amount of Rs.3,63,609/- as interest income and the principal amount was given as loan during the previous year relevant to the assessment year 2017-18 to various persons and the same fact was recorded in the books of account which has been furnished before the Ld. Revenue Authorities. However, the assessee made cash deposits during the demonetization period and therefore the Ld. AO treated the amount of cash deposits as unexplained money u/s 69A of the Act. The Ld. AR further submitted that the assessee has disclosed the investments in the books of accounts and the computation of income which was offered for taxation and therefore the question of invoking the provisions of section 69A does not arise. The Ld. AR relied on the decision of this Bench of the Tribunal in the case of ITO v. Sri Tatiparti Satyanarayana in [IT Appeal No. 76 (Viz.) of 2021, dated 16-3-2022] to state that when the investments are disclosed by the assessee in the books of accounts, there is no application of the provisions of section 69A of the Act. The Ld. AR further submitted that the Ld. CIT(A)-NFAC, on similar set of facts, considered the assessee's son's case (Ankit Dilip Jain) but the Ld. CIT(A)-NFAC has not considered the assessee's case. Therefore, the Ld. AR pleaded that the addition made by the Ld. AO and confirmed by the Ld. CIT(A)-NFAC may be deleted.

5. On the other hand, the Ld. Departmental Representative submitted that the assessee has not filed any details before the Ld. AO and even before the Ld. CIT(A)-NFAC and therefore there is no infirmity in the orders of the Ld. Revenue Authorities and the same may be sustained.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed facts that the assessee has disclosed the investment in his books of account and also shown the same in the computation of income which was offered for taxation. Therefore, the

Ld. AR's contention that the provisions of section 69A are not applicable in the present case of the assessee as the cash deposits during the demonetization period are duly recorded in the assessee's books of accounts holds good. I have also considered the decision of the Division Bench of this Tribunal in the case of Sri Tatiparti Satyanarayana (supra) wherein the Tribunal held that the provisions of section 69 cannot be invoked when the assessee has disclosed investment in the books of account and in the computation of income which was offered for taxation. Considering the above facts and circumstances of the case, I find force in the arguments of the Ld. AR and accordingly I direct the Ld. AO to delete the addition made on account of unexplained money amounting to Rs.27,50,000/- since the provisions of section 69A are not applicable in the case of the assessee. It is ordered accordingly.”

11. We observe that even on a plain reading of the provisions of Section 69A of the Act it is very much clear that this provision can be invoked only “wherein any financial year the assessee is found to be the owner of the money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article or the explanation offered by the assessee is not in the opinion of the AO satisfactory, the money and the value of the bullion jewellery or other valuable article may be deemed to be the income of the assessee for such financial year”. Therefore,

it is very much clear from the provision of Section 69A of the Act if the assessee is found to be the owner of any money which is not recorded in the books of account the same may be added as deemed income u/s 69A of the Act if the assessee offers no explanation or the explanation offered by the assessee in the opinion of the AO is not satisfactory.

12. In the case on hand, the assessee made cash deposits into the bank account which is reflected in its balance sheet, the books were audited, the assessee has furnished the tax audit report and it was also the explanation of the assessee that out of cash deposit of Rs.69,25,000/-, Rs.13 lakhs was from out of the sales made to Zergar Gas and the other cash receipts were out of the cash sales during Diwali which happened to be on 30.10.2016 just a week before the demonetization which happened on 09.11.2016. Therefore, in our opinion this addition is liable to be deleted on this legal ground alone.

13. We further observed that the case laws relied on by the Ld.CIT(A) for the proposition that addition u/s 69A of the Act can be made in respect of cash deposits made into bank account and recorded in the books of accounts, appears to be misplaced. The case laws relied on by the Ld.CIT(A) are distinguishable on facts.

14. In the case of Manoj Kumar Jain it was a best judgment assessment where addition u/s 69A of the Act was made. The assessee could not produce the books of account and as a matter of fact has taken a plea that all the books and records were destroyed in fire. In the circumstances, the Tribunal remanded the matter to the AO to verify nature of amount of deposit.

15. In the case of MH Rane Vs. ITO which was relied on by the Ld.CIT(A) it was never the question before the Mumbai Tribunal that when the cash deposits were recorded in the books of accounts the provision of Section 69A of the Act are not applicable to cash deposits made into bank account.

16. In the case of Shravan Kumar Sharma the facts before the Hon'ble Gujarat High Court was that the assessee declared income from salary and interest and was found in possession of certain cash and the explanation of the assessee that the said cash belong to his business transactions could not be proved by the assessee. The question before the High Court was not with regard to whether the addition can be sustained u/s 69A of the Act when the cash deposits were recorded in the books of account by the assessee. The assessee also could not prove with any evidence to establish and substantiate his case that he was also in the business of trading

activities of art silk cloth. The assessee has never maintained any books of account.

17. Similarly, in the case of Bhagwan Dass D. Vachani Vs. ACIT the facts before the Hon'ble High Court of Gujarat was that the assessee (HUF) was found deposited cash in bank account and the assessee failed to establish any co-relation between the goods sold and the cash deposited into bank account. It is also the finding in this case that the assessee (HUF) never maintained any books of account. Thus, we find that the decisions relied on by the Ld.CIT(A) in sustaining the addition u/s 69 of the Act are distinguishable on facts and they do not have any relevance to the facts of the assessee's case.

18. We further observed that the AO except stating that the assessee has not furnished bills and vouchers for purchases he has not found fault with the books of account maintained by the assessee, the cash book, purchases, sales register, stocks, etc. The AO did not reject the books of accounts of the assessee. The contention of the assessee that it had received cash of Rs.13,95,000/- from Zegar Gas out of sales invoices of Rs.32,62,011/- raised from 13.06.2016 to 26.10.2016 was not disputed. It is not even the case of the authorities below that the

assessee has received cash after the demonetization on 09.11.2016. Whatever released by the assessee through sales was recorded in the cash book and the amount of cash deposited was the collections made till 07.11.2016 which fact was also admitted by the Ld.CIT(A) in his order and there has been no amount of cash collection by the assessee after demonetization period. It is not in dispute that the assessee is into the business of trading in fire crackers.

19. We further observed that the coordinate bench of the Tribunal in the case of M/s Shivam Industries Pvt. Ltd. Vs. ACIT the coordinate bench of the Tribunal held that when the audited books of account were not rejected and the sales of the assessee have not been disturbed the Revenue authorities are precluded from making any addition u/s 68 of the Act in respect of the cash deposits made into bank account during demonetization period.

20. In view of the above discussion, we are of the considered view that there cannot be any addition u/s 69A of the Act in respect of cash deposits made by the assessee into its bank account as unexplained income in the case of the assessee. Therefore, we reverse the findings of the Ld.CIT(A) and direct the AO to delete the addition made u/s 69A of the Act. Grounds raised by the assessee are allowed.

21. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 03/07/2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 03/07/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi