

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL**

**INDORE SMC BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.388/Ind/2023**  
**(Assessment Years:2017-18)**

Mohammad Ibraheem Khatri (Prop. Pakeeza Collection) 42, Sanjay Colony, Nagchoon Road Khandwa	Vs.	ITO-1 Khandwa
(Appellant / Assessee)		(Revenue)
<b>PAN: BHRPK3840B</b>		
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.02.2024	
Date of Pronouncement	21.02.2024	

**ORDER**

This appeal by the Assessee is directed against the order dated 14.08.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2017-18. The assessee has raised following grounds of appeal:

- 1. "That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deciding the appeal ex-parte without giving proper opportunity of being heard to the appellant.*
- 2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 5,00,000/- made by the Assessing Officer to the total income of*

*the appellant out of cash deposited in his bank accounts during the demonetization period by treating it as unexplained cash credit section 68 of the Income-Tax Act, 1961 and consequently charged tax at the rates prescribed under section 115BBE of the Income-Tax Act, 1961 without properly appreciating the facts of the case.*

**3.** *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 5,00,000/- made by the Assessing Officer to the total income of the appellant out of cash deposited in his bank accounts during the demonetization period by doubting the genuineness of sundry creditors without properly appreciating the facts of the case.*

**4.** *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Assessing Officer in computing the amount of tax liability by invoking the amended provisions of section 115BBE of Income-Tax Act, 1961 even when cash was deposited in the bank accounts of the appellant prior to 15-12-2016 i.e. prior to the date of obtaining assent from the President of India and hence, in any case, amended provisions of section 115BBE of Income-Tax Act, 1961 shall not be applicable to the facts of the present case.*

**5.** *The appellant reserves the right to add, alter and modify the grounds of appeal as taken by him.”*

2. The assessee is an individual and engaged in the business of textiles in the name and style of M/s Pakeeza Collections. The assessee filed his return of income for the year under consideration on 27.03.2018 declaring total income of Rs.4,02,723/-. During the scrutiny assessment the AO noted that the assessee has deposited cash of Rs.13,15,000/- during the demonetization period and out of sum of Rs.5,60,000/- in the form of SBN (Specified Bank Note) old demonetized

currency notes of denomination of Rs.1000/- & Rs.500/- in two parts i.e. Rs.5,00,000/- on 17.11.2016 and Rs.60,000/- on 24.11.2016. The AO has held that the deposit of cash of Rs.5,60,000/- during the demonetization period is abnormal in comparison to the deposit of cash by the assessee during the non-demonetization period for the year under consideration. Accordingly the AO has made addition of Rs.5,00,000/- as unexplained cash credit u/s 68 of the Act. The assessee challenged the action of the AO before the CIT(A) however, there was no representation on behalf of the assessee despite various notices issued by the CIT(A) and consequently the CIT(A) has confirmed the addition made by the AO while passing impugned order ex-parte.

3. Before the Tribunal Ld. AR of the assessee has submitted that the assessee has produced the cash books before the AO showing the availability of the cash in hand as well as the source of the deposit being cash sales during the year under consideration. He has also referred to the comparative balance sheet, profit and loss account for the year under consideration and proceeding years and submitted that there is no abnormal cash sales for the year under consideration but the cash sales shown by the assessee is in line with the past sales and thus Ld. AR has submitted that as on 17.11.2016 the assessee was having opening cash balance of Rs.15,73,723/- out of which only Rs.5,00,000/- was deposited in the bank account. Similarly on 24.11.2016 the assessee was having opening cash balance of Rs.11,52,585/- out of only Rs.60,000/- was deposited in the bank account. Therefore, when the availability

of the cash with the assessee at the time of deposit is supported by the cash book as well as cash sales of the assessee then doubting source of cash without bringing any contrary material on record by the AO is not justified. Thus the ld. AR has submitted that the addition made by the AO is not justified and the same may be deleted. He has also referred to the monthly cash sales details and submitted that there is no abnormality in the cash sales during the Month of November 2016 but the cash was available with the assessee being cumulative balance from the cash sales of the proceedings months i.e. April 2016 to October 2016. He has thus contended that when the assessee has explained source of cash deposit in the bank account with supporting evidence then the addition made by the AO is not sustainable and liable to be deleted.

4. On the other hand, ld. DR has relied upon the orders of the authorities below and submitted that explanation of the assessee was not found satisfactory as stated by the AO.

5. I have considered the rival submission as well as relevant material on record. The AO has noted the deposit of cash of Rs.13,15,000/- during the demonetization period in para 3 as under:

*“Assessee has deposited cash amounting to Rs. 13,15,000/- during demonetization period and out of this, assessee deposited total Rs. 5,60,000/- in form of SBN (old demonetized high value currency notes of denomination of Rs. 1000/- & Rs. 500/-) in two parts i.e. Rs. 5,00,000/- on 17.11.2016 and Rs. 60,000/- on 24.11.2016 in bank account bearing no. 2853201000306 in Canara Bank, Durgadbail, Hubli (Karnataka).”*

6. Thus, it is clear that out of the total deposit of Rs.13,15,000/- during the month of November 2016 only Rs.5,60,000/- was deposited in the old demonetization currency notes of denomination of Rs.1000/- and Rs.500/-. The assessee has produced relevant record showing cash balance as per the books of account and particularly as per the cash book but the AO has not accepted the said explanation of the assessee on the ground that during the demonetization period deposited in the bank account is abnormally higher than the deposit in the bank account during the non-demonetization period. Except the deposit in lumpsum amount of Rs.5,00,000/- which is the higher amount in comparison to the deposit made by the assessee frequently in small small amounts there was no other abnormality found by the AO. It is pertinent to note that once the demonetization is declared then the currency notes which are declared demonetized w.e.f 08.11.2016 were required to be deposited in the bank account within the specified period as notified by the Government of India or RBI. Therefore, the reason for making deposits of Rs.5,00,000/- in the specified bank notes declared as demonetized is not an abnormal act on the part of the assessee as there was a limited window for depositing of those currency notes in the bank account of the person holding such notes. The assessee has given details of monthly cash sales which are not disputed by the AO and are reproduced as under:

<b>S. No</b>	<b>Month</b>	<b>Cash sales [in Rs.]</b>	<b>Cumulative figure of cash sales [in Rs.]</b>
1	April, 2016	2,01,218	2,01,218
2	May, 2016	2,75,502	4,76,720

3	June, 2016	2,49,067	7,25,787
4	July, 2016	2,68,570	9,94,357
5	Aug, 2016	4,36,103	14,30,460
6	Sept, 2016	3,00,771	17,31,231
7	Oct, 2016	3,64,821	20,96,052
8	Nov, 2016 till 08-11-2016	1,61,003	22,57,055

7. Thus, the assessee has given the details of cash sales as extracted from the books of account and total amount of Rs.22,57,055/- was a cumulative figure of cash sales as on 08.11.2016 out of which the assessee made deposits in the bank account. The assessee has also given break-up of opening cash balances as on 17.11.2016 & 24.11.2016 as under:

S. No	Particulars	As on 17-11-2016	As on 24-11-2016
1	Opening cash balance	15,73,723	11,52,585
<b>Add</b>	On account of sales	12,942	13,832
<b>Less</b>	On account of Expenses	50	50
	Cash deposited in the bank account	5,00,000	60,000
	<b>Closing cash balance as on that date</b>	<b>10,86,615</b>	<b>11,06,367</b>

8. Thus, on these two date when Rs.5,00,000/- & Rs.60,000/- were deposited, the assessee was having more than sufficient cash balances out of the cash sales. Once the cash sales and availability of the cash with the assessee is duly supported by the books of account of the assessee then making deposit at one go in the circumstances after declaration of demonetization cannot be a reason for doubting the availability of cash with the assessee. Accordingly in the facts and circumstances of the case the addition made by the AO on

account of deposit in the bank account during the demonetization period is not justified and the same is deleted.

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

Order pronounced in the open court on 21.02.2024.

Sd/-

(VIJAY PAL RAO)

JUDICIAL MEMBER

Indore; दिनांक Dated : 21/02/2024

*Patel/Sr. P.S.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT  
(DR)/Guard file.

By order  
**Sr. Private Secretary**

**ITAT, Indore**