

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "SMC" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.3934/Del/2023  
[Assessment Year : 2017-18]**

Bharat Agro Industries, Devsar Mod, Opp. Delhi Police School, Loharu Road, Bhiwani, Haryana-127021. <b>PAN-AAMFB0628H</b>	vs	DCIT, Circle Bhiwani.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Gautam Jain, Adv., Shri Lalit Mohan, Adv. and Shri Parth Singhal, Adv.	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	21.02.2024	
<b>Date of Pronouncement</b>	23.02.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC") dated 10.11.2023 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

- 1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred both in law and, on facts in upholding the determination of income made by the learned Assistant Commissioner of Income Tax, Bhiwani of the appellant at Rs. 40,25,455/- as against declared income of Rs. 98,041/- by the appellant in an order of assessment dated 28.12.2019 u/s 143(3) of the Act.*
- 2. That assumption of jurisdiction by the learned Income Tax Officer, Ward-1, Bhiwani to issue notice u/s 143(2) of the Act for the instant Assessment year was illegal, invalid and void-ab-initio and therefore*

*consequently order of assessment for the instant assessment year is without jurisdiction and deserves to be quashed as such.*

3. *That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has erred both in law and on facts in upholding an addition made of Rs. 39,27,414/- representing alleged unexplained cash deposits in the bank account of the appellant during the period of demonetization and brought to tax under section 68 of the Act read with section 115BBE of the Act.*
- 3.1. *That, the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that the learned Assessing Officer having accepted the cash sales and taxed income thereon could not by any stretch of imagination either legally or logically hold that cash deposited is unexplained and taxable as income of the assessee u/s 68 of the Act.*
- 3.2. *That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that once the sales are duly recorded in the books of accounts and have been made out of stock available in the books of accounts then both logically and legally, such sales could not be separately assessed to tax as bogus sales and unexplained cash credit u/s 68 of the Act.*
- 3.3. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the addition by failing to appreciate that once books of accounts are correct and complete and therefore, the sales as recorded in the books of accounts out of stock available with the appellant could to be regarded as cash sales merely on statements without disregarding the factual matrix/evidence tendered by the appellant.*
- 3.4. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the purchases declared in the books of accounts were duly accepted then no subjective assumption and presumption could be made a basis to subjective assumption and*

*presumption could be made a basis to assume, allege and conclude that sales made out of such purchases were unexplained money under section 68 of the Act.*

3.5. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.*

4. *That without prejudice to the above and in the alternative, even otherwise, the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in holding that amount deposited in the bank by the appellant is taxable as income under section 68 of the Act and thereafter computed the demand in accordance with the rates specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.”*

2. The only effective ground raised by the assessee in this appeal is against the sustaining of addition of INR 39,27,414/- made by the Assessing Officer (“AO”) u/s 68 of the Income Tax Act, 1961 (“the Act”) r.w. section 115BBE of the Act.

3. Facts giving rise to the present appeal are that the assessee is engaged in the business manufacturing and trading of Guar, Guar dall, Guar Churi, Rui, Sarson, Sarson Oil, Khal Binola and Joe etc. The assessee had filed its return of income, declaring total income of INR 98,041/- on 30.10.2017. The case of the assessee was taken up for scrutiny assessment on the basis of cash deposited in the bank account during the demonetization period. In response to the notice, Ld. Authorized Representative (“AR”) of the assessee attended the proceedings. However, the reply of the assessee was not found acceptable by

the Assessing Authority and he proceeded to make addition of INR 39,27,414/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee vehemently argued that authorities below failed to appreciate the facts in right perspective. The accounts of the assessee were not rejected. The assessee has stated the source of cash deposits was out of sales. The Assessing Authority has not given finding regarding sales being bogus. The Assessing Authority had also accepted the stock as disclosed in DVAT. Therefore, the addition made and sustained by Ld.CIT(A) is not justified. Ld. Counsel for the assessee submitted that the AO however, accepted the opening balance for the month of October, 2016. He contended that the cash sales have been made subsequently as well. He drew my attention to the pages 85 to 86 of the Paper Book wherein as per page 85 of the Paper Book, the assessee had deposited cash amount of INR 1,16,00,000/- in the month of May, 2015; INR 36,50,000/- in the month of June, 2015; and INR 7,00,000/- in the month of August, 2015; as per page 86 of the Paper Book, the assessee had also deposited cash amount of INR 40,00,000/-; INR 55,00,000/-; and INR 14,00,000/- in the months of April, May and June, 2016 respectively. Further, the assessee has deposited cash of INR 32,00,000/- in the month of July, 2016; INR 95,50,000/- in the month of August, 2016; and

INR 42,00,000/- in the month of September, 2016. Therefore, the AO has not adverted upon the cash deposited by the assessee even prior to the impugned amount deposited during the demonetization period.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. I find that the AO did not accept the source of cash deposited in the month of October to November, 2016 on the basis that there was no historical basis for such deposits. Admittedly, the accounts of the assessee have been accepted by the lower authorities. Ld.CIT(A) has confirmed the finding of the AO without disturbing the book results. Under these facts and circumstances of the case, it can be safely inferred that the AO has accepted the sales of the assessee. The natural corollary would be that AO accepted the sales made in cash also. Hence, the source of cash deposits ought to have been treated as explained. Further, the AO has not commented on purchases. Undisputedly manufacturing and trading activity would be based on sale and purchase. If the purchases are treated as genuine and stock is also accepted then treating the sales as bogus is not logical. The Ld.CIT(A) sustained the finding of the AO by observing as under:-

*7.0. "I have gone through the assessment order and the submissions made by the AR of the appellant. Ground no.1 & 3 are relating to addition of cash credit of Rs.39,27,414/- u/s.68 of the Act. As seen from the details furnished by the appellant and the assessment*

order, the appellant is engaged in business of manufacturing and trading of Guar, Saron, Rui, Khal Binola etc. The contention of the AO in taxing the cash deposited by the appellant during the demonetisation period is that the appellant historically did not have voluminous cash sales and they were merely in the range of Rs.800 to Rs.80,000/- per month in aggregate. Therefore, the astronomically high figure of cash sales of Rs.14,00,000/- in October, 2016 and Rs.27,00,000/- in November, 2016 was not acceptable. The appellant did not furnish any evidence supporting such voluminous sales during the months of October, 2016 & November, 2016. Therefore, the AO took the opening cash balance on 01.10.2016 of Rs.10,32,480/- as the explained cash available with the appellant and balance cash deposited during demonetisation period of Rs.39,27,414/-(Rs.49,59,894/- total cash deposited during demonetisation period less Cash in hand as on 01.10.2016 of Rs.10,32,480/-) was treated as unexplained cash credit u/s.68 of the Act.

7.1 During appellate proceedings as well, the appellant had submitted the same information as submitted before the AO. However, the details submitted by the appellant do not give the convincing reasons for increase in cash sales in the months of October and November, 2016 as compared to the same months in the earlier or subsequent assessment years. The total cash deposited during the immediately preceding year (AY 2015-16) was Rs.1.72 crore as against that during the impugned AY the cash deposited is Rs.2.96 crores which is an increase of 71.57% which is quite huge. The appellant has stated that he has received cash from sundry debtors but he has not filed any confirmations from sundry debtors that they had paid the amounts to the appellant prior to the date of demonetisation. As per the RBI Guidelines issued after demonetisation, only selected banks and other establishments like hospitals, petrol stations, railways, state transport etc. were only allowed to accept the demonetised notes. The appellant is not falling

*in any of these categories notified by the RBI to accept the demonetised notes. The appellant could not accept the demonetised notes from the sundry debtors after the date of demonetisation. Therefore, the deposit made by the appellant of demonetised notes over and above the cash balance as on 01.10.2016 has to be treated as unexplained money/cash credit and therefore, the same has been rightly brought to tax by the AO. The addition made by the AO of Rs.39,27,414/- is sustained. Ground no.1 & 3 are dismissed.*

8. *Ground No.2 is relating to initiation of penalty u/s 270A of the Act. As the penalty is merely initiated and not levied, this ground is premature. Hence, ground No.2 is dismissed.”*

9. From the above, it is clear that the Ld.CIT(A) did not advert to submission that no error was found in the stock of the assessee. Once the assessee has recorded the sales in its books and there is no adverse finding qua stock and purchases are made. In my considered view, invoking the provision of section 68 of the Act, would not be justified. It is not case of inflated purchases but AO treated cash sales being bogus without disturbing the book results. I therefore, hold that authorities below have committed error in making impugned addition without bringing any adverse material in respect of purchases and stock of assessee. The impugned order is hereby, set aside and the AO is directed to delete the impugned addition. Thus, grounds raised by the assessee allowed.

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

Order pronounced in the open Court on 23<sup>rd</sup> February, 2024.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI