

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1606/Del/2023
Asstt. Year: 2017-18

Pilani Industrial Corporation Limited, Vidya Vihar, Pilani Rajasthan 333031 PAN AAACP5000C (Appellant)	Vs.	ACIT, Circle-21(2) Delhi. (Respondent)
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Assessee by:	Shri Amit Ganatra, CA Ms. Akahara Shukla, Advocate
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	18.04.2024
Date of pronouncement:	29.04.2024

ORDER

PER VIMAL KUMAR, JM

The assessee's appeal is against order dated 31.03.2023 of the Learned Commissioner of Income Tax (Appeals) dismissing the appeal of assessee against assessment order dated 28.12.2019 of the Assessing Officer regarding assessment of total income of Rs. 98,38,700/- for the assessment year 2017-18.

2. Brief facts of the case are that appellant assessee filed income tax return for the assessment year 2017-18 on 14th

October, 2017 declaring income of Rs. 32,89,510/-. The case was selected for scrutiny under CASS and notice dated 24.09.2018 under section 143(2) was issued. Learned ACIT ("AO") passed assessment order under section 143(3) of the Act made disallowance of Rs. 65,49,189/- under section 69A read with section 115BBE of the Act on allegation that assessee failed to establish that the cash deposited during demonetisation period was as part of the normal business receipts.

3. Assessee preferred an appeal before the Learned CIT(A) on 13.01.2020. Learned CIT(A) vide order dated 31.03.2023 upheld disallowance made by the AO.

4. Being aggrieved appellant assessee preferred present appeal.

5. Learned assessee's representative submitted that during assessment proceedings assessee vide letter dated 24.12.2019 explained that assessee was engaged in one of the businesses of running of a petrol pump which was the main source of cash sales that were deposited in the bank from time to time throughout the year. The AO required assessee to show cause as to why disallowance of difference between cash deposited AY 2016-17 and 2017-18 amounting to Rs. 3,10,82,894/- should not be treated as unexplained money especially as the annual turnover had decreased. The assessee responded vide submissions dated 27.12.2019 explaining that assessee's turn over also comprised of electric goods, stationery goods, cloths,

farm crops, miscellaneous goods and petrol pump the breakdown of turnover in the financial statements was reproduced. The assessee had tabulated the difference in a table. During the period co-related to the demonetization period showing the volume sold as well as the unit price at which it was sold was higher in AY 2017-18 when compared to the same period in AY 2016-17. Based on the average per unit price and quantity sold, the difference between the purchase and sale from the petrol pump made in AY 2016-17 and AY 2017-18 is tabulated below:-

Assessment Year	Quantity (litres)	Per unit price (INR)	Amount(INR)
Purchase			
AY 2016-17	37,42,990.60	57.45	21,50,60,750
AY 2017-18	41,12,619.50	62.40	25,66,52,001
Sales			
AY 2016-17	37,19,652.10	58.98	21,94,04,378
AY 2017-18	40,66,442.20	64.25	26,12,88,548

The assessee had further tabulated the difference arising out of difference in average per unit price for both years and difference in volume sold in each in the table below:-

Description	Amount(INR)
Difference arising only due to difference in average/unit price of petrol, speed petrol and diesel	37,29,298
Difference arising only due to	26,89,170

increase in volume of petrol, speed petrol and diesel sold	
Others (including lubricant sold etc.)	1,30,721
Addition made by the AO under Section 69A	65,49,189

6. The table showed that the quantity purchased during 2017-18 was higher than purchased in 2016-17. The said purchase for AY 2017-18 was made by higher price. Assessee submitted that its cash revenue in 2017-18 increased from AY 2016-17 because of increased per unit price for sale and increased volume sold. Notification dated 08.11.2016 of the Govt. of India declared that specified bank notes shall continue to be legal tender from 09.11.2016 to 2nd December, 2016 for purchase of petrol, diesel and gas at the stations operating under the authorisation of the Public Sector Oil Marketing Companies. So Assessing Officer was not justified in holding that no valid expenses regarding source of cash deposits was given by the assessee. Reliance was placed on Lalchand Bhagat Ambica Ram vs. CIT (1959) 77 ITR 288.

7. Learned Departmental Representative submitted that the assessment order and order in appeal are legal and sustainable. The appeal may be rejected.

8. From examination of record in light of abovesaid rival submissions, it is crystal clear that the Assessing Officer relied on figures given by the assessee on basis of cash deposits

amounting to Rs. 3,84,81,913/- during the course of demonetization period from 09.11.2016 to 31.12.2016 and observed that corresponding previous year the cash deposit out of sales was Rs. 3,19,32,724/- on basis of which cash deposits of Rs. 65,49,189/- was declared as not explained satisfactorily. It is a matter of fact that the above figures were taken from the table on the basis of statement of profit and loss by the assessee. The statements were duly verified by independent auditors report.

9. Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 has held that when entries in books of account in regard to cash balances were held to be genuine, there was no escape from conclusion that assessee had offered reasonable explanation as to source of all high denomination notes which it encashed on 19th January 1946 and it was not open to ITAT to accept genuineness of those books and accept assessee's explanation in part and reject same in regard to balance sum. It was observed that the ITAT in arriving its conclusion indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of facts which could not reasonably be entertained or finding was perverse which could not be sustained and Supreme Court was entitled to interfere with such findings and therefore the addition was deleted.

10. From perusal of above material fact especially treating the cash deposit as unexplained cash on basis of books of account without rejecting the same is legally not permissible as per ratio of judgment in Lalchand Bhagat Ambica Ram's case (supra).

Therefore, the impugned orders dated 18.12.2019 and 31.03.2023 are not legal and sustainable and deserve to be set aside.

11. No other point was argued.

12. In the result the appeal of the assessee is allowed. Both the impugned orders are set aside.

Order pronounced in the open court on 29th April, 2024.

sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 29 /04/2024

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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