

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 256/Asr/2022
Assessment Year: 2017-18

Sh. Balwinder Kumar
Nonica Jewellers Lal Bazar,
Near Jaggu Chowk,
Jalandhar 144 001

[PAN: AHZPB 9587D]

(Appellant)

V. Income Tax Officer,
Ward 3(1),
Jalandhar

(Respondent)

Appellant by Sh. Tarun Bansal, Adv.
Respondent by Ms. Priyanka Singla, Sr. D.R.

Date of Hearing : 22.12.2022
Date of Pronouncement : 31.01.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 24.11.2022 in respect of Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

- “1. That the Revenue wrongly ignored before making addition that there is no discrepancy in the statutory records, as maintained by appellant for sales-tax department and audited books of accounts like; **(a)** VAT-15(quarterly) **(b)** VAT-20(Audited-Annual Report) **(c)** cash- book (d) Ledger (e) Stock Register (inflow and outflow of stock) (f) Purchase Register (g) Sale Register **(h)** Sundry Creditors **(i)** Sundry Debtors

And further suo-motto derived the figure of Rs. 1,35,43,034/- out of total cash sales, as recorded in cash-book vs. sale bills vs. stock register, by comparison with receding previous year's total cash sales on surmises and conjectures/without tangible evidence, treated as unexplained income, and further ignored every year is an independent year and with increase in sale there is no loss of revenue, hence addition is bad-in-law.

2. *That the Revenue wrongly ignored before making addition that decrease/rejection in recorded cash sales by Rs.1,35,43,034/- require increase in closing stock by RS. 1,35,43,034 - 5,93,185 = Rs. 1,29,49,849/- being all purchases, direct expenses, opening stock and closing stock i.e; outflow and inflow of stock has been accepted, thus Trading a/c became unbalanced and further tantamount to double addition by Rs. 1,29,49,849/.*
3. *That the Revenue due to dwindling mind wrongly; partly rejected and partly accepted the same books of accounts, hence adopted pick and choose method, blown hot and cold and is bad-in-law.*
4. *That the Revenue has suo-motto calculated cash sales of Rs. 1,35,43,034/- as unexplained income out of recorded cash sales in cash - book, on surmises and conjectures ,without bringing any tangible evidence on record and then wrongly applied section 69A and 115BBE on it by treating as unexplained income / As not recorded in books , whereas the source is fully explained and all entries are fully recorded in books of accounts and applications of said sections are bad-in-law.*
5. *That the Revenue has not brought on record any tangible evidence, indicating cash deposit is not out of cash sales/cash book and has some other source of income before making addition and further there was no bar to deposit old notes in the bank up to 31- 12-2016 and addition on hypothesis of 'demonetization period' is bad-in-law.”*

3. At the outset, the Ld. Counsel submitted that during the course of scrutiny proceedings, the assessee explained before the AO that the cash deposits of Rs. 1,35,43,034/- made in its bank account pertains to cash sales made during the demonetization period. However, the AO was being not satisfied with the explanation of the assessee in respect of cash deposits of Rs. 1,35,43,034/- made in bank account during the demonetization period and alleged it to be an abnormal increase in cash sales which was not in trend with the immediately previous assessment year sales, and accordingly made addition to return income of the assessee.

4. The Id. CIT(A) has not appreciated the facts of the case and confirmed the order of the AO in one sentence decision as the abnormal increase in cash sales were not in trend with the last year sales. He does not notice any infirmity in the decision of the AO, and treated the aforesaid cash deposits as unexplained income of the assessee as per section 69A of the I. T. Act, 1961 to be taxed as per provisions of section 115BBE of the Income Tax Act, 1961.

5. The Ld AR argued that the Revenue Authorities are wrong making addition as there was no discrepancy pointed out in the statutory records,

as maintained by appellant for sales-tax department and audited books of accounts like; (a) VAT-15 (quarterly) (b) VAT- 20 (Audited-Annual Report) (c) cash- book (d) Ledger (e) Stock Register (inflow and outflow of stock) (f) Purchase Register (g) Sale Register (h) Sundry Creditors (i) Sundry Debtors. The counsel contended that the revenue authorities sue-motto derived the figure of Rs. 1,35,43,034/- out of total cash sales, as recorded in cash-book vs. sale bills vs. stock register, by comparison with preceding/previous year's total cash sales on surmises and conjectures, without any tangible evidence and treated the cash sales deposits in bank account as unexplained income. He further contended that every year is an independent year and with increase in sale there is no loss of revenue, hence addition is bad-in-law. The Ld. Counsel has filed a brief written note in support of its grounds of appeal which reads as under:

- 1) *the assessee filed books of account, Stock Register and all other record as mentioned in ground of appeal for verification to A.O and CIT(A) but no defect was ever pointed out by revenue and the said record is enclosed again for Hon'ble Bench's kind perusal, as per detail given in Paper book U/R 18 of Income Tax (Appellate Tribunal) Rules, 1963 at page 10 to 11. Proof of submissions of all documents along with synopsis to CIT(A) is also enclosed at page 365 to 375.*
- 2) *Revenue accepted the opening stock, closing stock, purchases, direct expenses, sundry debtors, sundry creditors, all VAT 15 returns and annual VAT 20 of the assessee and has not pinpointed any defect in any of the above said documents.*

- 3) *That Ld. A.O can't brush aside suo-motto statutory record of Sales-tax department like Vat-15 and vat-20 without pin pointing any defect in statutory records.*
- 4) *The Ld. A.O has calculated the said bogus sale on the basis of surmises and conjectures and he has not brought any evidence on record against the so called bogus sale and the addition is bad-in-law.*
- 5) *The Ld. A.O has suo-moto calculated the cash sales of Rs.1,35,43,034 as bogus sales, as per Para-3.7 of his order by taking average cash sales of Rs.1,46,451 for the period 01-10-16 to 08-11-16 without bringing any evidence on record and partly rejecting the books of accounts of the assessee and did calculation on the basis of his whims and fancies.*
- 6) *As per Para 3.8 of the order of A.O, the Ld. A.O accepted the GP ratio of assessee @ 4.38% . Ld. AO further suo-moto reduced the GP of 4.38% , out of so called bogus sales = Rs. 1,35,43,034 and the G.P. amount came to Rs. = (Rs. 1,35,43,034 x 4.38%) = RS. 5,93,185 which he has reduced from the returned income, as per internal page-6 of A.O's order.*

Further there in Para 3.8, in the last 3rd Line of the said Para, the Ld. A.O says,

"The Trading A/c is altered to extent and the books of accounts of the assessee are hereby rejected to this extent only u/s 145(3) of the Income Tax Act."

The Ld. A.O has blown hot and cold by partly rejecting the books of accounts and partly accepted the books of accounts, which is bad-in-law. As in Para 3.8 of the order A.O says he rejected the books of accounts, then he can't rely on the books of accounts like opening stock, closing stock, purchases, sundry debtors, sundry creditors, GP Ratio and expenses etc. etc., which are based on books of accounts only have been accepted.

CASE LAWS relied

A. *A.O has tried to sit on the chair of the assessee and tried to divide the sales, as per his choice into so called bogus sales and non-bogus sale:*

S. A. builders Ltd. Vs. CIT(A) - (2007)
288 ITR 1 (SC)
Copy enclosed at page 378 to 385

Held: it is for the assessee to take care his business exigency and assessee is on his free will to do business, as per his wisdom and his arm cannot be twisted to do the business, as per the choice of anybody else. In our case A.O tried to twist the arm of the assessee by twisting his sales and forgot that whatever he has done, he has done as per his business exigency and wisdom at any given time and no hypothesis can be applied by A.O just sitting on his chair.

B. When no difference in stock register found, purchases, sales and the stock are inter linked and are inseparable. Every purchase increases the stock and every sale decreases the stock and all matching with inflow and outflow of ere is no reason to disbelieve the sales:

ACIT vs. Hrapanna Jewellers, ITA no. 253/Vis/2020 dtd. 12-05-21
(ITAT, Visakhapatnam Bench)
Copy enclosed at page to 386 to 403
(Refer Para -7, 7.1, 7.2, 8 and 9)

C. Rationale - one cannot disallow bogus purchases and the same time treats the sale with same parties as genuine - the books of accounts are duly audited and no defect found, then no disallowance:

PCIT vs. Agson Global Pvt. Ltd., ITA no. 68/2021,
CM no. 93119/2021 dtd. 19-01-22, Delhi High Court.

(Refer Para vi, vii, viii at internal page -34 and 35, Para-15.9 at internal page - 38, Para-17.3 to 17.6 at internal page - 45 to 47, conclusion at Para-19 at internal page -50 and 51 . Only relevant Paras, as mentioned are enclosed at Page 404 to 411 being order is very lengthy running into 53 pages)”

6. The Ld. DR stands by the impugned order. However, he has not controverted the fact of cash sales and that of no discrepancy being

pointed out by the revenue authorities in the books of account, sales, purchases and stock maintained by the appellant.

7. Heard the rival contentions and perused the material on record and case law cited before us. Admittedly, it is an undisputed fact that authorities below had accepted the opening stock, closing stock, purchases, direct expenses, sundry debtors, sundry creditors, all VAT 15 returns and annual VAT 20 of the assessee and did not point out any defect in any of the aforesaid documentary evidences. The Ld. AR submitted that the assessee filed books of account, Stock Register and all other record for verification before the A.O and CIT(A) but they didn't point out any defect in the said record (APB, Pg.365 to 375). In our view, the AO can't brush aside suo-motto statutory record of Sales-tax department like Vat-15 and vat-20 without pin pointing any defect in the said records. In fact, the Ld. A.O has calculated Rs.1,35,43,034 as bogus sales, on the basis of surmises and conjectures. He ought to have brought on record any material evidence to hold the disputed cash sales as bogus sale.

8. It is evident that the Ld. A.O has accepted the GP ratio of assessee declared @ 4.38%. However, the AO suo-moto reduced the GP of 4.38%, out of disputed bogus sales of Rs.1,35,43,034 ($\text{Rs.1,35,43,034} \times 4.38\% =$

RS. 5,93,185) which has been reduced from the returned income, as per page, No. 6 of assessment order and rejects the books of accounts vide Para3.8 by observing as under:

"The Trading A/c is altered to extent and the books of accounts of the assessee are hereby rejected to this extent only u/s 145(3) of the Income Tax Act."

8.1 In our view, the Ld. A.O cannot blow hot and cold at the same time by partly rejecting the books of accounts and partly accepted the books of accounts, which is bad-in-law. If the AO rejected the books of accounts, then he can't rely on the same books of accounts for opening stock, closing stock, purchases, sundry debtors, sundry creditors, GP Ratio and expenses etc. etc., which are based on same books of accounts which have been accepted.

9. It is settled law that the A.O cannot sit on the chair of the assessee to decide the sales, as per his choice to categorize into so called bogus sales and non-bogus sale. In the case of 'S. A. builders Ltd. Vs. CIT(A)', (Supra) It is held that:

"it is for the assessee to take care his business exigency and assessee is on his free will to do business, as per his wisdom and his arm cannot be twisted to do the business, as per the choice of anybody else. In our case A.O tried to twist the arm of the assessee by twisting his sales and forgot that whatever he has done,

he has done as per his business exigency and wisdom at any given time and no hypothesis can be applied by A.O just sitting on his chair”.

10. The Visakhapatnam Tribunal in the case of ACIT Vs. Hirepanna Jewellers has observed that when no difference in stock register found, purchases, sales and the stock are inter linked and are inseparable. Every purchase increases the stock and every sale decreases the stock and all matching with inflow and outflow there is no reason to disbelieve the sales.

11. The Hon'ble Delhi High Court in the case of '*PCIT vs. Agson Global Pvt. Ltd*', (*Supra*) hold the rationale that one cannot disallow bogus purchases and the same time treats the sale with same parties as genuine - the books of accounts are duly audited and no defect found, then no disallowance.

12. Considering the factual matrix of the case, we hold that the cash deposits in bank represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to affect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 69A

or tax the same u/s 115BBE again. Accordingly, the addition of Rs.1,35,43,034/- is deleted.

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

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 31.01.2023.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order