

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

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 352/Ind/2024
Assessment Year : 2017-18

Dharmendra Doshi, 147-B, Sector-F, Sanwer Road Industrial Area, Indore (Assessee/Appellant)	<u>बनाम/</u> Vs.	ITO, 1(1), Indore. (Revenue/Respondent)
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PAN:AFSPD7034G

Assessee by	Shri Kunal Agrawal & Shri Harsh Choukse, CA
Revenue by	Shri Sanjeev H. Bhagat, Sr. DR
Date of Hearing	11.12.2024
Date of Pronouncement	20.01.2025

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 21.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 29.11.2019 passed by learned ITO-1(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on the grounds as mentioned in Appeal Memo (Form 36).

2. The background facts leading to present appeal are such that the assessee-individual is engaged in the business of trading of plastic scrap and old bottles in proprietorship concerned named "M/s Parsvnath Industries". For AY 2017-18, the assessee filed return declaring a total income of Rs. 6,51,510/- . The case of assessee was selected for scrutiny assessment for the reason of abnormal increase in cash deposited during demonetization period as compared to pre-demonetisation period. The AO issued statutory notices u/s 143(2)/142(1) from time to time which were complied by assessee. During scrutiny, the AO found that the assessee had made a total deposit of Rs. 42,52,500/- in bank accounts on different dates during demonetization period, the AO has extracted datewise details of such deposits in assessment-order. When the AO show-caused assessee to explain the sources of these deposits, the assessee made submissions. The AO considered assessee's submissions and accepted only a deposit of Rs. 985,000/- being the first deposit made by assessee on 10.11.2016 immediately after declaration of demonetization as explained and treated the rest of deposits of Rs. 32,67,500/- as unexplained cash credit u/s 68 and accordingly made addition. Aggrieved, the assessee carried matter in first-appeal but did not get any relief. Now, the assessee has come in next appeal before us.

3. Ld. AR for assessee firstly drew us to the relevant para of assessment-order passed by AO reading as under:

"5. Given the above, the explanation given by the assessee as regards the source of the cash cannot be accepted and it is held that the assessee has introduced his unaccounted cash during the period of demonetization in the books in the guise of cash sales and proceeds of debtor realization. Vide notice issued u/s 142(1) on 13-06-2019, assessee was asked to produce his books of accounts for verification on 19-06-2019. But he could produce the same. Thereafter again a notice u/s 142(1) issued on 26-06-2019 and assessee was asked to produce books of accounts for verification on 04-07-2019. But again the assessee has not produced the

same. Vide notice issued u/s 142(1) on 09-07-2019 assessee was again asked to produce his books of account but he did not produce. During the proceedings a, summon u/s 131 was issued to Sati Polyveave Ltd (Customer/debtor) but it could not attended. In these circumstances the books of accounts of the assessee cannot be said to be true and correct and hence liable to be rejected u/s 145 of the Income tax Act. Hence not being satisfied about the correctness of the books of account, I reject them by invoking the provisions of section 145(3). Considering the earlier years trend of average cash balance and facts of the case, only the cash of Rs 9,85,000/- deposited on the first instance i.e. 10.11.2016 (which is also almost equal to average cash balance normally seen) is treated as genuine and remaining amount i.e. Rs 32,67,500/- is treated as unexplained cash credit u/s 68 and is being taxed at special rate u/s 115BBE. Further penalty u/s 271AAC are being initiated separately in view of the additions being made u/s 68 read with 15BBE."

4. Thereafter, Ld. AR made detailed oral pleadings which are already submitted in the Written-Synopsis filed by him. For a ready reference, we re-produce below the Written-Synopsis:

"Ground No. 1 to 4 The said Grounds relates to the affirmation of the addition of Rs. 32.67 Lakhs by the Ld. CIT(A) as made by the Ld. AO as unexplained cash credits.

ASSESSMENT ORDER - COVERED IN PARA 4.3 & 5 AT PAGE 6-7 CIT APPEAL ORDER - COVERED IN PARA 5 AT PAGE 13 TO 14

- That, the appellant is proprietor of M/s Parshvanath Enterprises engaged in the business of trading of plastic scarp and old used/scrap bottles. The appellant case was selected for scrutiny under u/s 143(2) for the reason of "abnormal increase of cash deposit during demonetization Period compared to Pre demonetization Period".
- While framing the Assessment order the Ld. AO from the total cash deposit of Rs. 42.52 Lakhs during the demonetization gave allowance of Rs. 9.85 Lakhs as average cash balance and has made addition of Rs. 32,67,500/- by treating the balance amount as unexplained cash credit U/s 68 r.w.s 115BBE.

Our Contentions in brief in respect of addition of Rs. 32,67,500/- made u/s 68 of the Act:

1.1. During the Assessment proceedings, it was explained that the source of the cash deposit was closing cash balance of Rs. 44.33 Lakhs as on 08.11.2016 (Page 185 of the PB). This was accumulated majorly from cash withdrawals from the bank account and a very minor receipt from sale/debtor realization. During the pre-demonetization period, there was total net cash withdrawals of Rs. 1.24 Crores and receipts from debtor of Rs. 1.21 Lakhs. Kindly Refer Page no. 44 of the PB.

1.2. In support of its contentions, the appellant had submitted various documentary evidences as tabulated below: -

S.No.	Nature of Document	Page no. of the PB
1.	Bank Statement and Bank Book	45 to 141
2.	Cash book	170 to 198
3.	Pivot table summarizing the transactions into pre-demonetization and post demonetization period	211 to 213
4.	Ledger account along with Sale invoiced pertaining to Cash realization.	156 to 166

1.3. That, the Ld. AO & Ld. CIT(A) had doubted the availability of alleged huge amount of cash for which suitable justifications were given. It was explained that the appellant business model is cash based and as a normal business trend the cash purchases increases from August month due to arrival of Diwali.

1.4. In order to justify the same, the appellant had submitted month-wise Purchase summary for the A.Y 2017-18 and A.Y 2016-17 which explicitly proved the increase of purchases from the August month in Preceding Year too. (Kindly refer page no. 203 of the PB). Further list of creditors as on 8/11/2016 which also substantiated the total payable amount of Rs.45.81 lakhs which was in matching with the available cash balance on the same date. Kindly refer page no. 204 of the PB).

1.5. The Ld. AO & Ld. CIT(A) disapproved the above said contentions of the appellant without bringing on record any contrary evidence. And wrongly interpreted that the appellant has introduced unaccounted cash in the guise of cash sales and proceeds from debtors' realization. (Kindly refer Para-5, page-7 of the AO order, first four lines.) No observation whatsoever was made in the order to controvert the cash withdrawals made during the pre- demonetization period which was the main source for cash deposit and all the supporting documents were on record. The cash sales and debtor's realization were very minuscule part of the cash balance forming part on 08.11.2016.

1.6. The Ld. AO in its order has repetitively observed that the quantum of cash deposit is high in comparison to the earlier assessment year. But the appellant during the assessment proceedings clarified that the event of demonetization was of exceptional nature and where the currency notes of 500/1000 became useless and had to be deposited in bank account.

1.7. In case there was no demonetization, the total of cash deposit in AY 2017- 18 was Rs.43.32 lakhs viz-a-viz cash deposit of Rs.35.19 lakhs in A.Y.2016- 17 which is very much comparable. (Kindly refer para 2.3 of the reply at page no. 147 of the PB).

1.8. That, the contention of the appellant is genuine and not afterthought and can be substantiated from the response filed for inquiry conducted online named as "Cash Transaction 2016" (before initiation of Scrutiny proceedings) where it was also clarified that the source of cash deposit pertained from cash withdrawal from the Bank account. (Kindly refer page no. 142 to 145 of the PB).

1.9. The Ld. AO resorted to reject the books of accounts of the appellant u/s 145(3) and invoked section 68 of the act for which it is submitted that -

- That the Ld. AO failed to take cognizance of the submission of the appellant that the cash balance as on 08.11.2016 amounting to Rs.44.33 lakhs was substantially

covered by opening balance and cash withdrawals made to the tune of Rs.43.12 lakhs (approx. 98% of the cash balance as on 08.11.2016).

- Kindly refer to the Page no. 44 of the PB –

Particulars (Pre-demonetization Period from 01.04.2016 to 08.11.2016)	Amount (Rs.)
Opening Balance	7.13 Lakhs
Add: Cash withdrawals	154.49 lakhs
Less: Cash Deposit	(30.14 lakhs)
Less: Cash payments	(88.35 lakhs)
Balance forming part of cash balance as on 08.11.2016	43.13. lakhs

• More than adequate documentary evidences in the form of cash book, bank book, bank statements etc were submitted and are on record which proved the source from cash withdrawals and needed no further verification. The Ld. AO went into wrong direction by linking the cash deposit to unaccounted cash sale/debtor realization. Even the Ld. CIT(A) observed that Sales and purchase could not be verified ignoring the factum of cash withdrawals.

- Further, W.r.t the summon issued to Sati Polyweave Pvt Ltd., no fault of the appellant can be pointed out as it had furnished all the relevant documentary evidence in support of the said transaction which included copy of ledger and sale bills in which address and Indirect tax numbers were also reflected at Page no. 164-166 of the PB. Also, kindly refer the judgements relied 54-75 of the case law paper book.
- Without prejudice to the same, since the Ld. AO had rejected the books of accounts U/s 145(3), the provisions of Section 68 were not applicable. In this context, we place reliance on the judgments submitted at 29-53 of the case law paper book.

Therefore, in view of above-mentioned facts, circumstances and judicial pronouncements, we humbly Pray to the Hon'ble Bench to delete the impugned addition of Rs. 32,67,500/- u/s 68 r.w.s 115BBE of the Act, 1961."

5. Thus, precisely Ld. AR raised following contentions:

- (i) The assessee filed a detailed reply dated 16.05.2019 to AO (Paper-Book Page 41 to 44) explaining the deposits made in bank and sources thereof. Vide Para 11 of reply, the assessee submitted "Cash-flow Summaries" in three parts (i) for pre-demonetisation period from 01.04.2016 to 08.11.2016, (ii) for demonetization period from 09.11.2016 to 31.12.2016, and (iii) for post-demonetisation period from 01.01.2017 to 31.03.2017. These Cash-flow

Summaries which are made up from audited accounts of assessee, themselves show that there was an Opening Balance of Rs. 44.33 lakhs on 09.11.2016 at the start of demonetization and the sources of such Opening Balance were a minuscule receipt of just Rs. 1.21 lakhs from debtors and the balance cash of Rs. 43.13 lakhs came from cash balance of Rs. 7.13 lakhs as on 01.04.2016 (+) cash withdrawals of Rs. 154.49 lakhs from bank (-) cash deposits of Rs. 30.14 lakhs into bank (-) cash payments of Rs. 88.35 lakhs made to creditors. The Bank Statements in support of such Cash Summaries were also filed as Annexure-D to assessee's same reply dated 16.05.2019 (Paper-Book Page 45-141). Subsequently, the assessee also filed complete Cash-Book of financial year 2016-17 as Annexure-A-1 & A-2 to reply dated 03.07.2019 (Paper-Book Page 167 to 213) in response to AO's notice dated 26.06.2019. The entries in Cash-Book are in conformity with the Cash Summaries filed earlier to AO. Ld. AR submitted that the AO has wrongly disapproved assessee's submission by making an incorrect observation that the assessee introduced unaccounted cash in the guise of cash sales and proceeds from debtors' realization whereas the collection from debtors was just Rs. 1.21 lakhs. He submitted that the AO has not made any observation qua the Cash Withdrawals made by assessee from bank a/cs which was in fact a major source of Opening Balance on 09.11.2016 and utilized for deposit in demonetization period; the AO has wrongly attempted to link the deposits with cash sales/recovery from debtors which is not correct.

(ii) That, prior to initiation of scrutiny by AO, the assessee also filed an online response to Income-tax Department against "Cash Transaction 2016" drive to enquire about deposits made in demonetization (Paper-Book Page 142-145). In this response, the assessee clearly mentioned source of cash deposits from bank withdrawals and the assessee also filed details of datewise cash withdrawals made. Thus, the assessee's explanation that the cash withdrawn from bank a/cs was re-deposited is a consistent explanation at all level before lower authorities and also at present before this Bench, there is no change. Ld. AR submitted that the there are numerous decisions of appellate forums holding that once the deposits are explained from previous cash withdrawals of bank, no addition can be made. One such decision is ***Sudhirbhai Pravinkant Thaker Vs. ITO, Ward-5(1), Ahmedabad (2017) 88 taxmann.com 382 (Ahmedabad – Trib.).***

(iii) So far as justification of high cash availability before demonetisation period is concerned, Ld. AR submitted that there were high purchases in August,2016 to October,2016 months as is manifest from Purchase Register filed to AO (Paper-Book Page 203) before Diwali which is in line with trend of assessee's business as can been seen from corresponding figures of preceding financial year given in the same Purchase Register. Thus, there was much higher purchase and sales during pre-demonetisation period because of Diwali festival.

(iv) That, the AO has wrongly rejected audited books of account of assessee for two reasons. The first reason assigned by AO is factually wrong that the

assessee did not file Cash-Book on 04.07.2019 as required by notice dated 26.06.2019, the correct position is that the assessee filed Cash-Book alongwith reply dated 03.07.2019. The second reason assigned by AO is the non-compliance of summon u/s 131 by Sati Polyveave Ltd. (debtor of assessee). So far this second reason is concerned, Ld. AR submitted that there is no fault of assessee since the assessee has filed all documentary evidences in the shape of Ledger A/c and Sales Bills of concerned debtor as part of reply dated 19.06.2019 (Page 164-166 of Paper-Book). The Sales Bills clearly include Bill Nos., Name of debtor, VAT Registration No. of debtor, VAT charged @ 5%, Truck No. in which goods was transported, etc. Thus, the very rejection of books of account by AO is wrong and not acceptable.

(v) Without prejudice to above, the AO has on one hand rejected assessee's books of account and on other hand made addition u/s 68. This is legally not permissible. Ld. AR referred following decisions in which it has been vehemently held that once the AO has rejected books of assessee u/s 145, section 68 has not application and consequently no addition can be made u/s 68:

- (a) CIT Vs. Dulla Ram (2014) 42 taxmann.com 349 (Punjab & Haryana HC)
- (b) CIT Vs. K.M.N. Naidu (1996) 221 ITR 451 (Mad HC)
- (c) ACIT Vs. Shri S. Moorthy, ITA No. 3091/CHNY/2019 (ITAT, Chennai)
- (d) Sh. Collector Ram Sharma Vs. Deputy Commissioner of Income-tax 2016 (12) TMI 448 – ITAT, Jaipur

6. With these submissions, Ld. AR requested that the addition made by AO is neither sustainable on merit nor on legal provision of section 68. Therefore, the action of AO must be reversed and the impugned addition be deleted.

7. Per contra, Ld. DR for revenue made following submissions and claimed that the addition made by AO is very much correct, hence the same must be upheld:

- (i) The AO and CIT(A) both have mentioned that the assessee did not produce books of account. The assessee has not filed even "Cash Flow Statement", only Cash Summaries have been filed.
- (ii) When the assessee was already having cash balance, there was no point in making further withdrawals from bank so as to hold till 09.11.2016 and subsequently re-deposit during demonetization period.

8. We have considered rival submissions of both sides and carefully perused the documents held on record including orders of lower-authorities. The dispute in present case is qua the source of deposits made by assessee in bank a/cs during demonetization period. The assessee made total deposits of Rs. 42,52,500/- on various dates during demonetization period out of which the AO accepted first deposit of Rs. 9,85,000/- made on 10.11.2016 only and treated rest of the deposits aggregating to Rs. 32,67,500/- as unexplained cash credit u/s 68. The documents filed in Paper-Book to which our attention has been drawn as discussed in foregoing part of this order clearly shows that the assessee has filed Cash Summaries to AO alongwith reply-letter dated 16.05.2019 and subsequently Cash-Book also alongwith reply-letter dated 03.07.2019. The AO's noting that the assessee did not produce

books is thus not correct. Be that as it may, the audited Cash-Book of assessee shows opening balance of Rs. 44.33 lakhs as on 09.11.2016 and also contains the entries of deposits made subsequently in bank a/cs. The assessee has also filed Bank Statements to AO showing entries of cash withdrawals made by assessee which has built up opening cash balance of Rs. 44.33 lakhs on 09.11.2016. The collection from debtors, forming part of opening balance, is minuscule. Even for collection from one debtor M/s Sati Polyweave Ltd., the assessee has filed Ledger A/c and Sale Bills issued under VAT laws. The non-compliance of summon u/s 131 by the said debtor is not a fault of assessee and the assessee cannot be penalized for that. The higher amount of cash balance held by assessee as opening balance is also substantiated from the fact that there was high scale of business during August, 2016 to October, 2016 on account of Diwali festival. Thus, we find that the source of impugned deposits is sufficiently explained by assessee.

9. Even on legal side, we find merit in the submission made by Ld. AR that once the AO has rejected books of assessee u/s 145, the addition u/s 68 cannot be made. Their Lordship in ***CIT Vs. Dulla Ram (2014) 42 taxmann.com 349 (Punjab & Haryana HC)*** have approved this proposition in following terms:

"10. An Assessing Officer may, while considering a return of income, inspect the account books and, if satisfied, that account books do not reflect the true income of an assessee, reject the same. Account books once rejected, are ruled out of consideration and cannot be pressed into service whether by the assessee or the revenue. Thus, when account books are rejected, it would follow, as a necessary corollary, that entries in the account books whether suspicious or not cannot be relied by the revenue or the assessee. To hold otherwise, would, in essence, render account books valid for certain purposes and invalid for others, a course impermissible in law. The Assessing Officer rejected the account books in their entirety and thereafter proceeded to assess income by applying a flat rate of profit of 10%. After applying a flat rate of profit of 10%, the Assessing Officer added Rs.1,98,298/- to the income of the assessee on the basis of certain 'entries' deemed to be suspicious. The Commissioner of Income Tax (Appeals) as well as the Tribunal

have rightly held that as books of accounts were rejected in their entirety, the Assessing Officer could not rely upon any entry in the books of accounts for making an addition of Rs. 1,98,298/- . A bare reading of Section 68 of the Act would reveal that it would not apply to a situation where account books have not been rejected."

10. Therefore, in view of above discussion, we are of the considered view that the addition made by AO in present case is neither tenable on merit nor on legal provisions of section 68. Therefore, the AO is directed to delete the addition. The assessee succeeds in this appeal.

11. **Resultantly, this appeal is allowed.**

Order pronounced by putting up on notice board as per Rule 34 of ITAT
Rules, 1963 on 20/01/2025

Sd/-

Sd/-

(VIJAY PAL RAO)
VICE PRESIDENT

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 20/01/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order



Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore