

आयकरअपीलीयअधिकरण,चण्डीगढ़न्यायपीठ,चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'A', CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT
AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 13/Chd/2022

(Assessment Year: 2017-18)

Arun Garg, E-777, Phase-VII, Focal Point, Ludhiana.	बनाम	ITO, Ward-1(1), Ludhiana.
स्थायी लेखा सं./PAN NO: AGHPG3270H		

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Smt. PriyankaDhar, Sr. DR

सुनवाई की तारीख/Date of Hearing: 10.05.2022

उदघोषणा की तारीख/Date of Pronouncement: 05.08.2022

आदेश/ORDER

Per Sudhanshu Srivastava, JM:

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi vide order dated 06.12.2021 and pertains to Assessment Year (AY) 2017- 18.

2.0 The brief facts of the case are that the assessee is engaged in the business of manufacturing steel. The Return of income for the year under consideration was filed declaring income of Rs. 27,80,120/-. The case was

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selected for scrutiny under CASS for the following reason:

“Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period.”

2.1 As per the Annual Information Report (AIR), the assessee had deposited cash in two bank accounts (both with Union Bank of India) to the tune of Rs. 82,50,000/- between the period 09.11.2016 and 30.12.2016 and the assessee was required by the Assessing Officer (AO) to explain the same. Thereafter, after considering the submissions of the assessee in this regard, the assessment was completed at an income of Rs. 1,05,50,120/- after making addition on account of cash credits u/s 68 and 69A read with section 115BBE of the Income Tax Act, 1961 (hereinafter called ‘the Act’) to the tune of Rs. 77,70,000/-

2.2 Aggrieved, the assessee preferred appeal before the NFAC which was dismissed and now the assessee has approached this Tribunal challenging the dismissal of his

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appeal be the NFAC by raising the following grounds of appeal:

1. *That the Ld. CIT(A) has erred in confirming the order of the Assessing Officer in assessing the income at Rs. 1,05,50,120/- against the returned income of Rs. 27,80,120/- and, thereby, upholding the invoking of the provision of Section 115BBE on account of the alleged cash credits u/s 68a 69A of the Income Tax Act, 1961.*

2.(a) *That the Ld. CIT(A) has erred in confirming the addition of Rs. 1,20,000/- on account of the amount received from Sh. Deepak Sharma and Sh. Suresh Kumar u/s 68 of the Income Tax Act, 1961 to the taxable income of the assessee.*

2. (b) *That the Ld. CIT(A) has erred in not considering that the amount as received from the above two parties had been returned within a short period of time and, as such, the addition as confirmed by the worthy CIT(A) deserves to be deleted.*

3. (a) *That the Ld. CIT(A) has erred in confirming the addition of Rs. 28,00,000/- in respect of identifiable parties, who had made advance payments to the assessee, against the sales of bolts, made by the assessee to the same parties during the year under consideration.*

3. (b) *That the Ld. CIT (A) has erred in not considering the fact that such sales made to the parties are subjected to VAT and such sales to the parties have been credited in the sale account and such sales, have been accepted by the Assessing Officer and, thus, the addition of Rs. 28,00,000/- as confirmed by the CIT(A) deserved to be deleted.*

4. (a) *That the Ld. CIT(A) has erred in confirming the addition of Rs. 48,50,000/- on account of repayment of 'Housing Loan' for which the sources have been established and the identity, creditworthiness of*

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the persons had also been established and, thus, the addition as sustained to the tune of Rs. 48,50,0007- deserves to be deleted.

4. (b) That the Ld. CIT(A) has failed to appreciate that the financial help was taken from the family members, like father's real brother, assessee's real brother and, thus, the identity and creditworthiness of the parties have been proved beyond any iota of doubt, for which, the necessary confirmations had been filed.

5. That the confirmation of all the additions are against the facts & circumstances of the case and on surmises and the submission of the applicant along with the evidences furnished before the CIT(A) have been ignored summarily.

6. That the Ld. CIT (A) has erred in confirming the action of the Assessing Officer in invoking the provision of Section 115BBE of the Income Tax Act, 1961 on account of the additions has made by the Assessing Officer.

7. That the Ld. CIT (A) has ignored the detailed written submission along with the other evidences as furnished in the form of Paper Book and the judgments relied upon and, thus, the confirmation of all the additions is bad in law.

8. That the appellant craves leave to add, amend, or alter any of the above ground or grounds of appeal during the course of appellate proceedings.

3.0 It was contended by the Ld. Authorised Representative (AR) that the assessee has been maintaining regular books of accounts and which are subject to audit and that the Return was filed based on such audited books of account only. At the very outset, it was brought to the notice of the Bench, that though the

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Assessing Officer had made certain additions to the returned income on account of the amount received from certain related parties, sales had been made subsequently against the amounts so received during the very same year and thus the sales had been adjusted against the advances received from them. It was submitted that no adverse view had been drawn by the authorities below in this regard and the books of accounts had also not been rejected u/s 145(3) of the Act.

3.1 The Ld. AR submitted that regarding the addition of Rs. 1,20,000/- on account of amount received from one Sh. Deepak Sharma and Sh. Suresh Kumar added u/s 68 of the Act, the Assessing Officer has discussed this issue in Para 7 of the order and referred to cash receipts of Rs. 20,000/- per day from Sh. Deepak Sharma and from Sh. Suresh Kumar. It was submitted that this amount had been returned during the same year by way of cash in installments but before the Assessing Officer, no confirmations, no copy of accounts, no PAN Nos./ITRs detail were furnished leading to addition of Rs. 1,20,000/-. It was further submitted by the Ld. AR that the Ld. CIT (A) had upheld the addition because no confirmations had been filed from either of the parties. The Ld. AR further submitted that that since the assessee does not have any link/connection with these parties,

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 who had advanced the amount for sales to be made to them,
 therefore, the particulars of such parties were not available and it
 was stressed that the entries were genuine amount and the same
 deserved to be accepted.

3.2.0 With respect to Ground Nos. 3(a) and 3 (b), it was
 submitted that these grounds relate to confirmation of addition of
 Rs. 28 lacs in respect of advances received from
 related/identifiable and assessed parties, who had made certain
 advance payments on different dates from 1.4.2016 to
 18.10.2016 in small installments and, later on, sales were made
 to such parties and the advances so received were adjusted
 against the sales to such parties and for that, the Ld. AR relied
 upon the following documents as provided to the Assessing
 Officer/NFAC, Delhi:

S.No.	Name of the person	Amount received as advance against the sale	Evidences furnished before AO/CIT(A)
1.	Arun Garg & Sons HUF Prop. Anant Trading Co. (Assessee HUF)	10 lacs	At pages 53 to 69 of the 'Paper Book', consisting of confirmed copy of account

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			of the party, mentioning PAN Number, Sworn affidavit and evidence of filing their return of Income for Asstt. Year 2017-18 and complete cash summary of Anant Trading Co. for the financial year 2016-17 as per books.
2.	Varun Garg & Sons, HUF, Prop. M/s Sanchay Trading Co., who is real brother of assessee, in individual capacity.	9 Lacs	At pages 70 to 84 of the Paper Book, consisting of confirmed copy of account of the party concerned, mentioning PAN Number, Sworn affidavit, evidence of filing the return of income for Asstt. Year 2017-18 and detail of cash summary of Sanchay Trading

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			Co., for the year 2016-2017 as per his books.
3.	Pawan Kumar & Sons Prop. L.K. Mechanical Works (Chacha assessee)	Rs. 4,40,000/ -	At pages 85 to 100 of the Paper Book consisting of confirmed copy of account of the party concerned, mentioning PAN Number, Sworn affidavit and evidence of filing the return for the Asstt. Year 2016-17 and complete cash summary of L.K. Mechanical Works as his per books.
4.	Sh. Bajnath Gupta Prop. Ram & Co. (Nanaji of assessee).	4,60,000/ -	At pages 101 to 111 of the Paper Book, consisting of confirmed copy of account of the party, mentioning PAN Number, Sworn affidavit and evidence of filing

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			the return of Income for the year 2016-17, and complete cash summary of Ram & Co. as per his books.
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3.2.1 It was further argued by the Ld. AR that this issue has been dealt by the Assessing Officer at pages 4 & 5 of the assessment order and the Assessing Officer has not doubted anything in this regard and, accordingly, it was vehemently argued that the identity, credit worthiness and genuineness of the transactions, stand proved and even in the books of accounts of the assessee, no defects have been pointed out and even the affidavits of the parties concerned, duly attested, had been furnished and the said amounts, as received, had been adjusted against the sales made to the related parties and such sales having been accepted in the hands of the assessee and purchases also having been accepted in the hands of the related parties, there was no reason to make such addition.

3.2.2 It was brought to the attention of the Bench that the assessee is a registered VAT dealer and such sales, as made to the related parties, and purchases in the hands of related parties

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have been accepted. The opening stock, closing stock, purchases and sales in the year under consideration, as reflected in the audited trading account have also been accepted. It was further stressed that all the related parties are being assessed to tax and their sources have been explained and confirmed copies of account have also been furnished and, as such, confirmation of the addition was not justified.

3.2.3 It was further argued that the finding of the Assessing Officer that the transactions are to generate “fictitious cash” is not justified and the Ld. CIT(A)/NFAC, Delhi had failed to appreciate that since the sales to such parties have already been reflected in the trading account any further addition of same amount would amount to “double addition”. It was also submitted that the Assessing Officer/CIT(A) had failed to consider duly attested affidavits which was contrary to the binding judgment in the case of Mehta Parikh, reported in 30 ITR 181 wherein it has been held that the contents of the affidavit cannot be rejected if there is no adverse material on record and that this judgment has been followed by the Hon’ble Gujarat High Court in the case of ‘Glasslines Equipments Co. Ltd. Vs CIT’ reported in 170 CTR 470 holding that sworn affidavit is a sufficient proof, if no other contrary evidence is available on record.

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3.2.4 It was also argued vehemently, that both the Assessing Officer as well as the NFAC have ignored the documentary evidences but have not doubted any of the evidences so furnished but have only proceeded on mere suspicion which is not in accordance with settled law. Reliance was placed on the order of Chandigarh Bench of the ITAT in the case of 'Kalaneedhi Jewellers LLP' as reported in (2022) 96 ITR 66 (Chd.) wherein, there was issue of cash deposits in the regular bank account of assessee out of sales as reflected in the trading account and it was held that if the opening stock, purchases, sales and closing stock have not been doubted and the cash is received against such sales, then the addition cannot be said to be justified. It was pleaded that the whole basis of confirming the addition was on conjectures and surmises.

3.3.0 with respect to ground Nos. 4(a) & 4(b), it was submitted that the same are related to addition of Rs. 48,50,000/- deposited against housing loan in the name of the assessee and which was squared up during the year under consideration by way of "cash deposits" into the said account by the respective HUFs of self and other two brothers who had in turn deposited the cash in the Housing Loan account of the assessee from their proven sources by withdrawing the amount

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from their respective concerns, which were being assessed to tax.

3.3.1 It was brought to the notice of the Bench that the assessee had submitted a detailed reply which has been reproduced at page no. 7 to 9 of the assessment order and the sources of the payment have been doubted only because of the fact that the said HUFs were not the co-borrowers. It has been submitted that the three HUFs who have provided the funds are as under:

Arun Garg & Sons HUF	Rs. 14,00,000/-
Varun Garg & Sons HUF (brother HUF)	Rs. 14,50,000/-
Pawan Kumar & Sons HUF (brother HUF)	Rs.20,00,000/-
Total	Rs. 48,50,000/-

3.3.2 It was submitted by the Ld. AR that both during the course of assessment proceedings as well as in the proceedings before the NFAC, confirmed copies of all the three HUFs, affidavits of the Karta, their ITRs, copy of the cash summary had been filed and it was argued that the three ingredients i.e. the identity, creditworthiness and genuineness of the transactions having been established and only because of the fact that the said HUFs were not co-borrowers to the loan account, such evidences cannot be brushed-aside.

3.3.3 It was vehemently argued that the NFAC, after duly reproducing the submissions of the assessee, have only rejected

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this bona fide explanation and have confirmed the addition without giving any valid reasons.

3.3.4 It was further brought to our attention that even the invoking of the provisions of Section 115BBE was without any justification since the nature and source of the amount as deposited in the “Housing Loan” has been duly explained with documentary evidences .Reliance was placed on the judgment of the Hon’ble Apex Court in the case of Daulat Ram Rawat Mal reported in 87 ITR 349 wherein it was held that where the documentary evidences are brought on record, no oral evidences shall be entertained. It was argued that the addition as sustained by the NFAC was not justified.

4.0 In response, the Ld. CIT DR argued that as far as addition of Rs. 1,20,000/- was concerned, no confirmation or PAN had been provided in respect of the amount of Rs. 60,000/- each received from the two persons namely Sh. Deepak Sharma and Sh. Suresh Sharma and, as such, the NFAC was fully justified in sustaining the addition u/s 68 of the Income Tax Act, 1961.

4.1 Regarding the addition of Rs. 28 lacs in respect of four parties, as detailed in the order of the Assessing Officer at pages no. 4 to 6 of the order, it was argued that it is a fact on record

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that cash had been received from all the parties and only subsequently were sales been made and this itself casts a doubt in respect of these transactions with the related parties of the assessee for the reason that these parties have no capacity to advance such amounts to the assessee and further there is no history of such previous transactions with such related parties. It was argued that the NFAC has rightly confirmed the addition.

4.2 With regard to the sustaining of addition of Rs. 48,50,000/-, it was argued that it was “unexplained cash” in the demonetized currency and, therefore, the AO had rightly made the addition as the assessee had raised fictitious cash in the books of accounts.

5.0 In the rejoinder, the Ld. Authorized Representative submitted that the documentary evidences, as furnished, have been doubted only on suspicion and such documentary evidences as furnished were based on the basis of returns of income filed in all the cases and no defects have been pointed out by the Authorities below in respect of the withdrawals made by the respective related parties and that all such parties were regularly assessed to tax and, as such, the rejection of the bona fide explanation being only on surmises & conjectures cannot be sustained in view of the judgment of the Hon’ble Apex Court in

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the case of Omar Salay Mohammad Sait vs. CIT reported in 37 ITR 151.

6.0 We have heard the rival contentions and have also perused records as well as paper books filed by the assessee in support of his argument that requisite documentary evidences have been furnished.

6.1 As regards the first ground of appeal with regard to the addition of Rs. 1,20,000/-, on account of Rs. 60,000/- each received from Sh. Deepak Sharma and Sh. Suresh Kumar, we find that neither any confirmation nor any evidence of they being assessed to tax has been furnished and, as such, the identity, genuineness of the transactions and creditworthiness have not been proved and, therefore, we have no hesitation in confirming the said addition of Rs. 1,20,000. Thus, this ground of appeal is dismissed.

6.2.0 In respect of the additions of Rs. 28,00,000/- and Rs. 48,50,000/-, we find that all such parties who have advanced different amounts, as per the page nos. 6 & 7 of the assessment order, have filed confirmed copies of account mentioning their PAN, address, affidavits duly attested and evidence of filing their Tax Returns along with cash summary for the Financial Year 2016-17 which confirms the transactions of the assessee, both

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with regard to the advance amount paid by each of the related concerns which was subsequently adjusted against the sales made to these four parties and also, on account of the deposit of cash by each one of them on various dates towards the Housing Loan of the assessee to the tune of Rs. 48.50 lacs. Such evidences, as furnished, have not been doubted by the Assessing Officer and even the sales as made by the assessee to the four relates parties against the advance of Rs. 28 lacs received earlier, have not been doubted, nor purchases in the hands of such related parties have been doubted in their hands. Thus, the opening stock, purchases, sales and closing stock in the hands of the assessee have been accepted by the Assessing Officer and the books of accounts of the assessee have also not been rejected u/s 145(3) of the Act and as such the entries relating to the related parties in effect stand accepted and, as such, the confirmation of the two additions i.e. both in regard to the amount of Rs. 28 lacs and Rs. 48.50 lacs are not justified.

6.2.1 We have also gone through the order of the Chandigarh Bench of the ITAT in the case of “Kalaneedhi Jewellers” reported in (2022) 96 ITR Trib. 66 (Chd.) wherein, by relying upon the judgment of the Hon’ble Delhi High Court in the case of Agson Global Ltd. and PCIT vs. Akshit Kumar, the co-

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ordinate Bench in the same combination has deleted the addition

by observing as under:

“10.11 In the present case also the opening stock, purchases and sales and closing stock, declared by the assessee has not been doubted, the sales were made by the assessee out of the opening stock and purchases and the resultant closing stock has been accepted, the sales had not been disturbed either by the Assessing Officer or by the Sales Tax/VAT Department and even there was no difference in the quantum figures of the stock at the time of search on April 12, 2017, therefore, the sales made by the assessee out of the existing stock were sufficient to explain the deposit of cash (obtained from realization of the sales) in the bank account and cannot be treated as undisclosed income of the assessee.”

XXXX

“10.13 In the present case also the cash deposited post-demonetization by the assessee was out of the cash sales which had been accepted by the Sales Tax/VAT Department and not doubted by the Assessing Officer, there was sufficient stock available with the assessee to make cash sales and there was festive season in the month of October 2016 prior to the making of the cash deposit in the bank account out of the sales. So, respectfully following the aforesaid referred to orders by the various Hon'ble High Courts and the co-ordinate Benches of the Income-tax Appellate Tribunal, we are of

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the view that the impugned addition made by the Assessing Officer and sustained by the learned Commissioner of Income-tax (Appeals) was not justified, accordingly the same is deleted.”

6.2.2 Further, we also rely upon the order of the Vishakhapatnam Bench of the ITAT in the case of CIT vs. Hira Panna Jewellers reported in 96 ITR (Trib.) 128 wherein the findings were given as under:

“7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of account and there were no abnormal profits. In spite of conducting the survey the Assessing Officer did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of four hours, non-availability of KYC documents for sales, non-writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public, etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from November 9, 2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as the

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Tribune, the Hindu, etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country."

6.2.3 Similarly, in respect of the amount of Rs. 48.50 lacs, the three HUFs who have independent identity and are being assessed and carrying the business, they have out of their independent sources made the cash deposits in the housing loan and in this regard they have furnished the necessary proof in respect of the amount deposited in the Housing Loan accounts of the assessee and, thus, the source of source also stands justified and just because such parties were not co-borrowers, the addition as made by the AO and confirmed by the NFAC is not justified and therefore, we have no hesitation in deleting the same.

6.2.4 Since we have already deleted the additions of Rs. 28.00 lacs and 48.50 lacs the ground of appeal challenging the invoking of provision of Section 115BBE of the Act will not be applicable to the addition of Rs. 28.00 lacs and Rs. 48.50 lacs.

7.0 In the final result, the appeal of the assessee stands partly allowed.

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Order pronounced on 05.08.2022.

Sd/-
(N.K. SAINI)
Vice President
Dated : 05.08.2022
AG

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar