

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT
AND
SHRI MANISH AGARWAL, HON'BLE ACCOUNTANT MEMBER

ITA No. 2886/Del/2022
Assessment Year : 2017-18

Deepak Sharma,
T-9 & T-10, Plot No. 12,
MLU, Manish Plaza-III, Sector-10,
Dwarka, New Delhi – 75
(PAN: CUMPS5658G)
(Appellant)

vs. ACIT, Circle 43(1),
New Delhi

(Respondent)

Appellant by : Ms. Rano Jain, Adv. & Sh. Pranshu Singh, CA
And Ms. Sakshi Rustogi, Adv.
Respondent by : Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	19.03.2025
Date of Pronouncement	26.03.2025

ORDER

PER MAHAVIR SINGH, VP :

This appeal has been filed by the Assessee against the order dated 31.10.2022 passed by the NFAC, Delhi for the assessment year 2017-18. The only issue in this appeal is relating to confirming the addition made by the AO on account of cash deposits in bank account during the demonetization period of Rs. 8,57,44,000/- as unexplained cash credit u/s, 68 of the Act and taxed the same u/s. 115BBE of the Act.

2. Brief facts of the case are that assessee filed his return of income on 30.10.2017 at declared income at Rs. 1,12,19,390/-. The case of the assessee was selected for complete scrutiny and the reason for selection of the case for scrutiny was that there was an abnormal increase in cash deposit during demonetization as compared to average rate of cash deposits during pre-demonetization. The AO noticed that the average cash sales till the month of September 2016 was only Rs.5592375 as against the cash sales reported Rs. 4,75,57,726/- for the month of October 2016 which stood at Rs. 4,75,57,726/-. Similarly, for the corresponding month of October 2015, the cash sales was only Rs.22,46,992 and the average cash sales for the financial year 2015- 16 till September 2015 was only Rs. 12,58,477/-. AO also analysed the trend of cash sales and cash in hand as well. AO observed that during financial year 2015-16, assessee has

deposited cash of Rs 85,10,000/- during the course of the year. In contrast during the financial year 16-17 the cash in hand at the beginning of the year that is as on 1st April 2016 was only Rs. 30,92,943 which consistently swelled to Rs.5,24,58,454 till 31st October,2016 and further it increased to Rs.6,76,51,911 as on 9th September 2016. For the reasons stated above, the AO issued show cause notice dated 14th December 2019 recording the above facts giving the assessee an opportunity to explain the reason as to why the assessee should maintain such a huge cash in hand throughout the year and why the total cash deposit of Rs.8,57,44 000 should not be treated as income from undisclosed sources. In reply the assessee submitted that the cash sales during the period from 1st April 2015 to 31st July 2015 was Rs.4734711 from Dwarka Branch. The cash sales made during the period 1st August 2015 to 31st March 2016 from both Dwarka and Yusuf Sarai were 1 3166461. The cash sales during the period from 1st April 2016 to 31st October 2016 was 0811 11978 from Dwarka and Yusuf Sarai branches. The above figures clearly indicate that the assessee entered into huge amount of Cash sales transactions every year and the same has been considered as part of the total turnover. Assessing officer commented that the assessee did not submit supporting documents for the fact that the appellant had taken new premises at Yusuf Sarai New Delhi. In the absence of any conclusive proof of there being two shops during the financial year 2016 17 it is difficult to accept the contention of the assessee that increase in cash sales is due to the assessee having 2 shops. In respect of cash sales, the assessee could not satisfactorily explain the sudden hike during financial year 2016 17 as compared to financial year 2015 16. Thus, the response of the assessee is not satisfactory, and the assessee does not provide any credible reason for the huge cash sales and therefore the amount of 8,57,44,000, deposited during demonetization period, is being considered as the unexplained income of the assessee relevant for the assessment year and added to the total income as unexplained cash credits under section 68 of the Act. Aggrieved with the aforesaid action, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order has dismissed the appeal of the assessee by holding that since the assessee could not satisfactorily explain the extraordinary spike in the cash deposits in those months of demonetization period. Against the aforesaid, assessee is in appeal before us.

3. We have heard both the parties and perused the records. At the time of hearing, Ld. Counsel for the assessee submitted that once the purchases declared in the books of account were accepted, there is no basis to treat the sales made out of such purchases as unexplained cash credits taxable under section 68 of the Act. It was further submitted that the cash deposits which has already declared in the return of income as part of total sales and that it amounts to double taxation of the same amount. It was further submitted that even assuming that the additions were warranted under section 68 of the Act, the Ld. CIT(A) has erred both on facts and in law in

confirming the demand computed in accordance with rate specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016. Ld. DR relied upon the orders of the authorities below. We find that Ld. CIT(A) has not disputed the sales made which were duly disclosed in VAT return and also in books of accounts maintained by the assessee audited and also under section 44AB of the Act, no adverse inference could be drawn in respect of the declared sales by the assessee. We further note 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 assume, allege and conclude that sales made out of such purchases were unexplained cash credits taxable under section 68 of the Act. It is settled law that once the books of accounts, sales have been accepted, the same could not be regarded as unexplained credits. It is also noted that aforesaid sales as made by the assessee were supported by the availability of stock in the books of accounts whose availability is not disputed and is otherwise too supported by genuineness of creditors and also sales bills maintained. In view of the aforesaid peculiar facts and circumstances of the case, we are of the considered view that addition in dispute confirmed by the Ld. CIT(A) deserve to be deleted. We hold and direct accordingly. So far as assessee's assessment u/s. 115 BBE of the Act is concerned, Hon'ble Madras High Court in SMILE Microfinance Ltd. vs. ACIT in WP(MD) no. 2078 of 2020 & 1742 of 2020 dated 19.11.2024 (Mad.) has already settled the issue against the department that the law applies to the transaction on or after 01.04.2017 only. Ordered accordingly.

4. The instant assessee's appeal is allowed in the aforesaid terms.

Order pronounced on 24.03.2025.

SD/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

SD/-

(MAHAVIR SINGH)
VICE PRESIDENT

SRBhatnagar

Copy forwarded to: -

1. Appellant
2. Respondent
3. DIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Bench