

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

ITA No.358/Del/2023

[Assessment Year : 2017-18]

Metro Filling Station, 57.5 Km, NH 8, Binola, Gurgaon, Haryana-122050. PAN-AAUFM9340D		vs	Ito, Ward-2(5), Gurgaon.
APPELLANT			RESPONDENT
Appellant by	Shri Suraj Bhan Nain, Adv.		
Respondent by	Shri Om Parkash, Sr.DR		
Date of Hearing	02.08.2023		
Date of Pronouncement	07.08.2023		

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order of Ld. CIT(A), National faceless Appeal Centre (“NFAC”), Delhi dated 06.01.2023 for the assessment year 2017-18.

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

1. *“That having regard to the facts and circumstances of the case, the impugned assessment order passed by Ld. Assessing Officer u/s 143(3) of the Income Tax Act 1961 (the Act) and confirmed by the Ld. CIT(A) is bad both in law and on facts of the case.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition u/s 68 r.w.s 115BBE of the Act of Rs. 15,08,401/- on account of unexplained cash credit made by the Ld. Assessing Officer, without properly appreciating the facts of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition u/s 68 r.w.s 115BBE of Rs. 15,08,401/- on account of unexplained cash credit made by the Ld. Assessing Officer, without rejecting the books of accounts and without appreciating the fact that the said amount has been already included in the sales credited to Profit and Loss Account and, thus, resulted into double addition.*
 4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order which was passed against the principles of natural justice, especially when the said assessment order was passed on 28.12.2019 based on the alleged reply received from M/s R Sai Transport Company on 27.12.2019 (a date prior to passing of order) without providing the same and without giving any opportunity to the assessee to explain it.*
 5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the charge of interest u/s 234A, u/s 2348 and u/s 234C of the Act.*
 6. *That the appellant craves the leave to add, modify, amend, or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*
3. The effective ground in this appeal is against the sustaining of addition of INR 15,08,401/- made by the Assessing Officer (“AO”) on account of unexplained cash deposits.
4. Facts giving rise to the present appeal are that the assessee filed its return of income through e-mode on 30.10.2017, declaring total income of INR 1,94,910/-. The case was selected for compulsory scrutiny for the reasons large value of cash deposited. The assessee is running a petrol pump in the

name and style of petrol Metro filling station. During the course of assessment proceedings, the assessee was asked to explain the source of cash deposited in his bank accounts maintained with HDFC Bank & Axis Bank. In response to the notice, it was stated that the amount was deposited out of cash sales of petrol products. However, the AO on the basis of some inquiry, treated the sum of INR 15,08,401/- being unexplained and added the same into the income of the assessee. Thus, he framed the assessment vide assessment order dated 28.12.2019 u/s 143(3) of the Income Tax Act, 1961 ("the Act") and assessed the income of the assessee at INR 17,03,310/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

7. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that the authorities below failed to appreciate that the assessee's accounts are duly mentioned the sale and purchase of petroleum products from Government Undertaking and was duly audited for financial statement and VAT returns were also filed. The company also carried out inspection. No adverse reporting has been made either by the Auditor or by the company. He submitted that the authorities below have failed to appreciate that in this case, the purchases have been accepted by lower authorities. Hence, there is no justification in making the addition since nothing adverse was found in the books of accounts.

The purchases are duly verified moreover, no discrepancy was reported in the stocks

8. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) in para 6.3.2 of the impugned order, has decided the issue by observing as under:-

6.3.2. "I find that the appellant made a detailed discussion regarding the acceptance of sales and purchases by the AO of the petrol/ diesel inter-alia contending that the same was purchased from IOCL and It was duly shown in the Audited Financial Statements and VAT Returns and further the amount representing the debtors could not be added u/s. 68 of the Act as appellant's unexplained cash credit. I find that nowherein the submission made by the appellant, the appellant had explained how and why the sale claimed to have been made by the appellant to R Sai Transport Company on one date i.e. on 10/11/2016 amounting to Rs. 15,08,401/- which was denied by the said party as having been purchased, had been explained either before the AO or before the appellate authority. A plea can be taken by the appellant which has also been raised in the ground that due opportunity was not given to the appellant while making the addition of Rs. 15,08,401/- by the AO on account of unexplained cash credit u/s. 68 of the Act, However, when the appellant made a detailed submission referring to a number of judicial decisions relating to purchase and sales etc. inter-alia contending that in view of the said judicial decisions, the addition made in the case of the appellant was required to be deleted, it is not at all clear as to why the appellant made no discussion regarding the sales effected as claimed in the books to the said party namely M/s. R Sai Transport Company of Rs. 15,08,401/- on

10/11/2016. It was also not stated in the submission about not giving any cross examination etc. in this regard for the said sales of fuel claimed to have been made to the said party which the AO had denied of having not been sold by the appellant in pursuance to the admission of the said party. The appellant relied mostly on the judicial decisions without discussing the vital factual aspect as to why the said party had denied of not purchasing any fuel from the appellant. I therefore do not find any substance in the submission and contention of the appellant in this regard. On the other hand, due to admission of the said party M/s. R Sai Transport Company that though its sister concern namely M/s. R Sai Logistic India Pvt. Ltd. made purchases during the demonetization period of Rs. 1,40,000/-, it had not purchase any fuel from the appellant, I find that the AO had correctly treated the amount of Rs. 15,08,401/- as appellant's unexplained credits. The appellant contention that the same was the debtor cannot be considered in view of the facts that the very sales effected was not beyond question in view of the denial of the said party and therefore linking the same with debtor by the appellant for which the provisions of section 68 could not be applied, in my opinion, is not correct and justified as allegedly claimed by the appellant in the submission made as quoted above referring to the judicial decisions. I therefore hold that the AO was justified in making the addition of Rs. 15,08,401/- on account of unexplained cash credit u/s. 68 of the Act in the case of the appellant in the assessment order. No interference in this regard is called for. The addition so made is therefore confirmed. Ground Nos. 2 to 6 raised by the appellant are accordingly dismissed.”

10. We find that Ld. Sr. DR could not controvert the contentions of the assessee that the purchases have been accepted. The assessee's accounts are duly audited and book results have not been disturbed. Therefore, merely because the sales have been made in cash ought not to have been the basis for making the addition. Moreover, the business of the assessee was exempted in

respect of pecuniary limit despite of deposit of demonetize currency. It is not the case where the AO found any discrepancy related to stocks. If the sales were matched with purchases, in our view, no addition was called for. Therefore, we direct the AO to delete the impugned addition of INR15,08,401/-. Grounds raised by the assessee are thus, allowed.

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

Order pronounced in the open Court on 07th August, 2023.

Sd/-

(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI