

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH
'E': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No.3411/Del/2023
(ASSESSMENT YEAR 2017-18)

M/s Manglam Sales Corporation, 3870, G.B. Road, HauzQazi, North Delhi, Central Delhi, Delhi-110006 PAN:AAAFM9762D	Vs.	Income Tax Officer, Ward-46(1), Delhi
(Appellant)		(Respondent)

Assessee by	Shri Rushabh Mehta, FCA
Department by	Shri Krishna K. Ramawat, Sr. DR

Date of Hearing	18/11/2024
Date of Pronouncement	17/01/2025

ORDER

PER BENCH:

This appeal by Assessee is arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi in appeal No. CIT(A), Delhi-16/10620/2019-20 vide dated 29/09/2023. Assessment was framed by Income Tax Officer, Ward-46(1), Delhi for Asst. Year 2017-18u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 23/12/2019.

2. The first issue in this appeal of assessee as regards to the order of CIT(A) in confirming the action of the AO rejecting the books of accounts u/s 145(3) of the Act and estimating the Net Profit @ 5% without pointing out any major discrepancies in books of accounts. For this, assessee has raised the following ground No.1:-

“(a) The Id. CIT(Appeals) erred in facts and law in confirming the rejection of books of accounts u/s. 145(3) of the Act and estimating the Net Profit @ 5% of/Rs. 64,72,750/- (Rs. 1,24,50,750/- (Turnover as per books of accounts) - Rs. 59, 18,000/- (addition u/s. 69A of the Act)) without pointing out any major discrepancies in books of accounts and has been merely driven by his own suspicion and conjectures.

(b) The Id. CIT(Appeals) erred in facts and law in rejecting the books of accounts u/s. 145(3) of the Act on the ground that stock register was not mentioned in Clause 11 of Form 3CD, without appreciating the fact that quantitative details were duly mentioned in Clause 35 of Form 3CD.

(c) The Id. CIT(Appeals) erred in facts and law in not appreciating that there is no revision of sales/ purchases and any discrepancy found in the DVAT returns.

(d) Without prejudice to Ground No. 1(a) to 1(c), the Id. CIT(Appeals) erred in facts and law in estimating Net Profit @ 5%, which is exorbitantly high considering the fact that the appellant firm is engaged in the business of trading in ball bearings, etc.”

3. The brief facts of the case are that the assessee's case was selected for scrutiny assessment in CASS in the category of complete scrutiny including the issue of cash deposit made by assessee during demonetization period. During the course of assessment proceedings, the AO required the assessee to explain the source of cash deposit of Rs.59,78,000/- with supporting evidences in bank account maintained in Punjab National Bank (PNB) Asaf Ali Road Branch, Delhi-06 during demonetization period.

The assessee was also required to furnish complete books of accounts including cash book and stock register along with bills and vouchers to justify the purchase and expenses claimed during the year. In response thereto, the assessee uploaded part details i.e. cash books, some evidences of bill and vouchers. The AO during the course of assessment proceedings noticed from the part information that the assessee has shown total turnover i.e., purchases at Rs.1.37 Cr. as against sale of Rs.1.24 Cr. The AO noted that the GP ratio and NP ratio for the relevant year is at 7.76% and 2.62% respectively. The AO noted discrepancies in tax audit report but finally after analyzing the sales, he noted that the turnover during demonetization period has increased i.e., from October, 2016 to December, 2016 at 57,25,332/- in cash sales and total sale increased to Rs.75,64,020/-. The AO compared the sales from earlier years and noted that in Financial Year 2015-16 relevant to Asst. Year 2016-17, the turnover was only to the extent of Rs.35,10,513/- only. He noted that the cash sale in a period of less than two months is about 57.25 lacs which is highly abnormal. He also noted that some of the entries of cash sales are referred in his assessment order but that reference is missing. The AO finally in view of these discrepancies noted that the assessee could not explain the following:-

- “1. The status of stock taken in books of account as on 31/03/2017.*
- 2. Reason for drastic variation in cash sales during FY 2016-17(specially from 01/10/2016 to 26/11/2019)*
- 3. Reason for huge cash deposits within a period of 8 days i.e. 25/11/2016 to 03/12/2016.”*

In term of above, he drew inference that the cash deposit during demonetization period in the bank account from undisclosed sources is unexplained and also rejected the books of accounts u/s 145(3) of the Act for the reason that the assessee could not furnish relevant details or produced evidences in support of its claim of sales. Accordingly, the Assessing Officer framed assessment u/s 144(1) of the Act. The AO estimated the profit applying GP at 10% of total turnover of Rs.64,72,750/- i.e. Rs. 1,24,50,750/--Rs. 59,78,000/- and thereby, estimated the profit at Rs. 6,47,275/-. Apart from this, the AO made addition of unexplained money being cash deposit made during demonetization period of Rs.59.78,000/- u/s 69A of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. Before CIT(A), assessee contended that the complete details of sales including cash sales were filed before AO and also the details of purchases, sales and comparative chart was filed before the AO. It was contended that the AO has verified the sales made in cash and also compared the turnover of cash sales for the year under consideration as well as previous year. The assessee before the CIT(A) contended that in Financial Year 2015-16 relevant to Asst. Year 2016-17, the turnover was very less because of the initial year of assessee's business and total turnover was Rs.35.10 lacs. From this year assessee turn over increases and he filed the chart of comparative turn over before the CIT(A) and contended that in

future years, the turnover has increased almost three times what was in Asst. Year 2016 -17. In term of the above arguments, assessee contended before CIT(A) that once the assessee filed complete details of purchases and sales and comparative chart of the same, there is no reason for rejecting the books of accounts. Even the AO could not point out any discrepancies except presumption that the sales made by assessee are not commensurate with the turnover of earlier years. He practically disbelieved the cash sales but from the bill and vouchers produced before him it is clear that major sales were very much and same details were filed before the VAT Department. Even the VAT returns were filed before the AO during assessment proceedings and even before CIT(A) assessee also filed complete details.

5. The CIT(A) after considering the assessment order and submissions of the assessee noted that the observations made by the tax audit in the tax audit report in Column-5 of Form No.3CB wherein the Auditor has remarked as under:-

“During the year, it is not possible for us to verify all the transactions of the assessee due to voluminous Entries in the Book of Account and the transactions have been verified on Test-Check basis and explanation provided by Assessee.”

The CIT(A) noted that the assessee has not produced stock register and even in Form No.3CB, Clause 11(a), 11(b) and 11(c) does not mention about stock register and it is presumed that this stock register has not been mentioned. The CIT(A) finally disbelieved the sudden increasing of turnover from Rs.35,10,513/- to

Rs.1,24,50,750/-. He also noted about sudden increase in cash sales i.e. in Q-3 at Rs.57,25,332/- lac as against cash sale in Q1 & 2 at Rs.7,000/- and finally noted that there is huge difference between credit purchase in Q-3 is to the extent of 85,69,306/- as against credit sales of Rs.18.38 lacs. Therefore, CIT(A) uphold the action of the AO for rejection of books of accounts and estimated the net profit @ 5% as against the estimation made by AO @10% on the total turnover accepted by AO at Rs.6,47,275/-. Aggrieved, assessee is in appeal before Tribunal.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us Ld. Counsel for the assessee argued that the assessee before AO as well as filed complete details including the books of accounts and details of sales and purchases. Also filed comparative turnover quarter wise during the year which reads as under:-

Sr. No	Quarter	Cash Sales	Total Sales
1	April 16 to June 16	7,850	88,650
2	July 16 Sep 16	53,437	20,61,254
3	Oct 16 to Dec 16	57,25,332	75,64,020
4	Jan 17 to March 17	26,93,640	27,36,826

Before us, Learned Counsel for the assessee argued that there is variation in sales and purchases but there is in no sudden increase in turnover year after year and he filed the details of turnover and net profit and NP ratio as under:-

A.Y.	TURNOVER	NET PROFIT BEFORE	NP Ratio (%)
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		PARTNER'S PREMUNERATION & INTEREST	
2016-17	3,510,513	286.671	8.17%
2017-18	12,450,750	325,782	2.62%
2018-19	10,235,189	241,926	2.36%
2019-20	12,523,554	338.772	2.71%

From the above, Ld. Counsel for the assessee stated that in Financial Year 2015-16 relevant to Asst. Year 2016-17 turnover was Rs.35,00,000/- whereas in future years i.e., the year under consideration i.e.,2017-18, the turnover was Rs.1.24 Cr. and in Asst. Year 2017-18 turnover was Rs.1.02 Cr. and further in Financial Year 2018-19 turnover was at Rs.1.25 Cr. Ld. Counsel for the assessee drew our attention to the quarterly sales for Asst. Year 2016-17 and refers to VAT returns and relevant detail, which are reproduced in the order of CIT(A) in para 6.4 at page 20. The relevant details are as under:-

Detail of Quarterly Sales for FY 2016-17 with reference to DVAT returns									
							Row no.in DVAT return	Total Quarter Sales	Page no. DVAT return
	Cash Sale		Credit Sale		Total Sale				
	Sale	DVAT	Sale	DVAT	Sale	DVAT+CS T			
Local Q1	7,850	393	1,260	63	9,110	456	R5.2		1
Central Q1			79,540	1.591	79,540	1,591	R4.2	88,650	1
Local Q2	43,437	2,171	14,17,155	70,855	14,60,592	73,027	R5.2		3
Central Q2			6,00,662	12,013	6,00,662	12,013	R4.2	20,61,254	
Local Q3	57,25,332	2,86,267	2,85,821	14,291	60.11,153	3,00,558	R5.2		5

Central Q3			15,52,867	31,057	15,52,867	31,057	R4.2	75,64,020	
Local Q4	26,93,640	1,34,682			26,93,640	1,34,682	R5.2		7
Central Q4			43,186	864	43,186	864	R4.2	27,36,826	
	84,70,259	4,23,513	39,80,491	1,30,735	1,24,50,750	5,54,248		1,24,50,750	
Note: There are some rounding off difference of less than Rs. 10/- in each quarter									

Further the assessee also produced quarter wise purchase and reconciliation of the same with VAT returns, which is also reproduced on the same page of CIT(A) order and for ready reference, the same is being reproduced as under:-

Detail of Quarterly Purchase for FY 2016-17 with reference to DVAT returns								
	Cash Purchase	DVAT	Purchase	DVAT	Purchase	DVAT	Row no. in DVAT return	Page no. DVAT return
Local Q1			13,790	690	13,790	690	R6.2(2)	2
Local Q2			22,68,868	1,13,444	22,68,868	1,13,444	R6.2(2)	4
Local Q3			85,69,306	4,28,456	85,69,306	4,28,456	R6.2(2)	6
Local Q4	28,40,988	1,42,211			28,40,988	1,42,211	R6.2(2)	8
Total	28,40,988	1,42,211	1,08,51,964	5,42,590	1,36,92,952	6,84,801		
Note: There are some rounding off difference of less than Rs.10/- in each quarter								

In view of the above, Ld. Counsel for the assessee stated that the from the analysis of sales/purchases and deposit made by AO as

well as CIT(A) is purely of suspicion and nothing else. He argued that no doubt in earlier Financial Year turnover was as less i.e., Rs. 35,00,000/- as against in the present assessment year's turnover is 1.24 Cr.

8. On the other hand, Sr. DR relied on the assessment order and order of CIT(A).

9. We have heard rival contentions and gone through the facts and circumstances of the case. Admitted facts are that the assessee's turnover in this year as 1.24 Cr. but the AO while rejected the books of account disbelieved the sale made during demonetization period i.e., October, 2016 to Dec. 2016 amounting to Rs.57.25 lacs for the reason that there is increase in cash sales during demonetization period and credit purchase in same period. But the AO has not pointed out any deficiency in the cash sales or credit purchases except mere suspicion and surmises that there is a variation in turnover comparing from last year to this year and quarter wise cash sales also. This is merely suspicion described in the orders of AO as well as CIT(A) and for that reason only they have disbelieved the sales. The assessee before us filed complete details of purchases and sales including purchases & sales register. The assessee produced the comprehensive summary and purchase and sale made during October, 2016 to Dec. 2016 and no discrepancies was pointed out by either AO or CIT(A). The entire purchases and sales are duly reflected in the books of account,

there may be some discrepancies of not maintaining the stock register or in the audit report, the Chartered Accountant might have given some qualification but that does not lead to the fact that assessee has not carried out sales. The AO has not verified the parties from whom the assessee had made purchases on credit basis or sale made in cash. Admittedly the assessee has produced bills and vouchers and from the summary of purchase and sales made and duly reflected in the VAT returns clearly shows that assessee purchases are duly reflected in the books of accounts and the bills and vouchers and without verifying the bills and vouchers, sales cannot be denied so lightly and so cannot be disbelieved. At the best this can be a good reason for rejection of books of accounts but sales cannot be disbelieved. Hence, we are of the view that the assessee's sales as per bills and vouchers is at Rs.1.24 Cr. and even cash sales during October, 2016 to December, 2016 quarter during demonetization period has to be accepted. Accordingly, we assessed the sale at Rs.1.24 Cr. and estimate the profit rate at 5%. We accept the rejection of books of accounts but rejection of the turnover is without any basis. Despite the fact that the assessee before AO and CIT(A) has filed complete details of sales as well as purchases and there is no reason not to accept this sale of Rs. 1.24 Cr., which has been disclosed by assessee. In term of the above ground of assessee's appeal is partly allowed.

10. Coming to second issue of addition made by AO and confirmed by CIT(A) of cash deposit made during the

demonetization period of Rs.59,78,000/- u/s 69A of the Act as unexplained money. For this assessee has raised the following ground No.2:-

“2(a) The Ld. CIT(Appeals) erred in facts and law in sustaining the addition of cash deposited of Rs.59,78,000/- u/s 69A of the Act as unexplained money on his own assumptions, without appreciating the fact that the said cash deposited was not out of cash sales which are duly recorded in the books of accounts.

(b) the Ld. CIT(A) appeals failed to appreciate that once the books of accounts are rejected and profit is estimated; no separate addition can be made.

(c) The ld. CIT(Appeals) erred in facts and law in not appreciating that the cash sales have already been offered to tax and addition thereof again will lead to double taxation which is against the principles of law.”

11. The brief facts are that the Assessing Officer after rejecting the books of accounts and after disbelieving the cash sale of 1.24 Cr. during the year and particularly cash sales during demonetization period i.e. quarter of October, 2016 to December, 2026 of Rs.57.25 lacs, the cash sales utilized for the purposes of cash deposit in the bank account. Hence, the AO made addition and CIT(A) accepted the same. Since, while dealing with the above issue, we accepted the cash sales carried out by assessee, the cash deposit to the extent of Rs. 57.25 lac is also accepted as explained. The addition of balance cash of Rs.2,53,000/- is sustained. In term of the above, this issue of assessee's appeal is partly allowed.

11. The third issue raised by assessee is without prejudice to the restricting the overall additions to the extent of Rs.5% of G.P. For this assessee has raised following ground No.3:-

“3. Without prejudice to Ground No.1 & 2, the Ld. CIT(Appeals) ought to have restricted the overall additions to the extent of 5% of overall sales offered of Rs.1,24,50,750/- and reducing the same by the profit already offered in the return of income.”

Since, we have adjudicated the first issue and restricted the overall additions to the extent of 5% of overall sales offered for a sum of Rs.1,24,50,750, we refrain ourselves for adjudicating this ground being academic and without prejudice.

12. In the result, the appeal filed by Assessee is partly allowed.

Order pronounced on 17th January, 2025.

Sd/-

(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

Dated:17/01/2025

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

1.	Date of dictation of Tribunal Order....	24.12.2024
2.	Date on which the typed draft Tribunal Order is placed before the Dictation Member.....	26.12.2024
3.	Date on which the typed draft Tribunal Order is placed before the other Member.....	
4.	Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.....	
5.	Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement.....	
6.	Date on which the signed order comes back to the Sr. P.S./P.S.	
7.	Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website.....	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal Order.....	
9.	Date of killing off the disposed of files on the Judisis portal of ITAT by the Bench Cleark.....	
10.	Date on which the file goes to the Supervisor (Judicial)	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order.	
12.	Date of Dispatch of the Order.	