IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.198/Pat/2024
Assessment Year: 2017-18

ACIT, Circle-1, Patna……..……..……..……..……Appellant

vs.

Mohamad Israil Cold Storages Pvt. Ltd.....…..…..... Respondent
33KH, Chik Toli, Bazar Samiti,
Ara Bihar – 802301.
[PAN: AAGCM3392N]

Appearances by:
Shri Ashwani Kr. Singal, JCIT, appeared on behalf of the appellant.
Shri Nishant Maitin, CA, appeared on behalf of the Respondent.

Date of concluding the hearing : January 09, 2025
Date of pronouncing the order : January 17, 2025

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the revenue against the order dated 23.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2017-18 by declaring total income of Rs.15,87,600/-. The case of the assessee was selected for complete scrutiny for examination of cash deposits made during the period of demonetization. Accordingly, notices u/s 142(1) and 143(2) of the Act were issued and the assessee responded by submitting his ITR, computation of income, audit report, bank statements and other supporting documents through ITR portal. Upon reviewing the submissions, the Assessing Officer observed that the during the

financial year 2016-17, cash balance in the cashbook consistently was average between 12-14 lakhs till 01.11.2016. The Assessing Officer observed that total cash deposits in bank account during demonetization period i.e. 08.11.2016 to 31.12.2016 was Rs.1,13,96,000/-. As the assessee failed to produce supporting documents such as payment receipt, party wise invoices, party wise rent receipts, month wise receipt and expense details to justify the sudden increase in cash balance, the Assessing Officer concluded that the closing cash balance had been inflated during the demonetization period consistently. The Assessing Officer accordingly treated the amount of Rs.1,13,96,000/- deposited in bank account as unexplained money u/s 69A of the Act and added the same to the total income of the assessee and tax levied @60% u/s 115BBE of the Act. The relevant portion of the order of the Assessing Officer is reproduced as under:

> *"6. Perusal of submission of the assessee the details of cash deposit made during F.Y. 2016-17 as well as during demonetization period along with data available with this office is prepared such details are as under:*

Sl. No.	*Account No.*	*Bank Name*	*Cash deposit during F.Y. 2016-17*	*Cash deposit during demonetization period i.e. 09.11.2016 to 30.12.2016*
1	*0376271000002*	*Canara Bank*	*Rs.4,74,000/-*	*Rs 24,000/-*
2	*0376214000018*	*Canara Bank*	*Rs 4,24,000/-*	*Rs 24,000/-*
3	*0376214000004*	*Canara Bank*	*Rs 97,89,000/-*	*Rs 8,74,000/-*
4	*60376101073375*	*Canara Bank*	*Rs 14,90,000/-*	*Rs 4,50,000/-*
5	*0376886000001*	*Canara Bank*	*Rs 50,00,000/-*	*Rs 50,00,000/-*
6	*0376271000003*	*Canara Bank*	*Rs 58,85,000/-*	*Rs 50,24,000/-*
	Total		*Rs.2,30,62,000/-*	*Rs 1,13,96,000/-*

> *On perusal of cash book, it seems the assessee company manipulated its cash book, as evident from the fact that daily closing balance as per cashbook since 01.04.2016 till 01.11.2019 has been between 12-14 lakh on an average. But suddenly, just before the demonetization i.e. 02.11.2016 closing balance stated to increase substantially and*

interestingly no deposit was made to the bank till 08.11.2016. The receipt between 02.11.2016 and 08.11.2016 has been shown as 79,42,675/- and cash in hand as on 08.11.2016 was Rs.82,30,422/-. The receipt between the said period is highly inconsistent when compared to cash receipt during the entire year. Further, the assessee has not produced any other documents such as payment receipt invoice, party wise rent receipt detail and month wise receipt and expense details so that such a high closing balance can be justified. Clearly, the closing balance in cash book has been inflated to give it a look of a real one. Despite repeated notices, the assessee has not submitted any other document/papers to justify its claim regarding deposit of such an amount during the demonetization period.

9. In this regard it is relevant to mention that the onus lies with the assessee to prove the claims made by him to deposit cash to the amount of Rs. 1,13,96,000/- made during demonetization period. However, the assessee has failed to discharge that onus. In view of the above and on the basis of materials, documents available on record, the cash deposited to the amount of Rs. 1,13,96,000/- in assessee's bank accounts during the F.Y. 2016-17 relevant to A.Y. 2017-18, is unexplained. Hence, cash deposited by the assessee amounting to Rs. 1,13,96,000/- is deemed as unexplained money under section 69A of the Income Tax Act, 1961 and added to the total income of the assessee. Thus, the amount of Rs. 1,13,96,000/-/- is taxed under 155BBE of the Income Tax Act, 1961 at the rate of 60% with applicable surcharge and penalty."

3. Aggrieved by the above order, the assessee went in appeal before the ld. CIT(A) wherein the appeal of the assessee was allowed by the ld. CIT(A) observing as under:

"7.4 During the assessment proceedings, the books of account in particular the audit report along with bank statements, cash book and other documents were submitted to the A.O. However the A.O has not pointed out any discrepancy in the books of account. The appellant has shown the amount of disputed cash as trading receipts/repayment of advance which is recorded in the cash book and is not disputed by the A.O. Hence without rejecting the books of account the A.O has made the addition of the cash deposits which have been disclosed as receipts in the books. Hence there is merit in the contention of the appellant that the addition of the monies received cannot be done without rejecting the books namely the P&L account and the balance sheet. The exception to this would be of course where it is found that the money received is not recorded in the books and is from other sources. However this is not the case here and the A.O has not brought on record any finding in this regard. The appellant has also placed reliance on the decision of the Jurisdictional Patna High Court in the case of Laxmi Rice Mills vs CIT where it has been held that in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well

disclosed and it cannot amount to any secreted profits within the meaning of the law.

7.5 In view of the above, the addition of Rs 1,13,96,000/- u/s 69A of the Act is deleted and the Grounds of Appeal are Allowed."

4. Dissatisfied with the order of the ld. CIT(A), the revenue has come in appeal before us. The contention of the ld. DR is that the assessee did not furnish the requisite or supporting documents as sought by the Assessing Officer during the assessment proceeding and the ld. CIT(A) wrongly allowed the appeal of the assessee merely on the ground that the Assessing Officer did not reject the books of account, which is proper.

5. On the other hand, the ld. AR strongly objected to the above contention of the ld. DR. He stated that the assessee had submitted various documents such as audit report, balance sheet, profit & loss a/c, bank details in order to justify its claim before the Assessing Officer. However, the Assessing Officer did not consider the documents properly and did not find any discrepancies in the documents and even has not rejected the books of account. The contention of the ld. AR is that the Assessing Officer did not reject the books of account and had not found any discrepancy therein and the cash deposits were duly recorded/disclosed in the books of account as trade receipt/repayment of advance. He, therefore, stated that the action of the Assessing Officer treating the cash deposits as unexplained money, is not proper. In this respect, the ld. AR referred the decision of the Jurisdictional Patna High Court in the case of Laxmi Rice Mills vs CIT reported in 97 ITR 258 (Pat). He further stated the ld. CIT(A) has rightly allowed the appeal of the assessee and there is no infirmity in the order passed by the ld. CIT(A) and the same may be upheld.

6. We, after hearing the rival submissions and perusing the materials available on record, find that the assessee has submitted evidences

such as audited books of account including profit & loss a/c, cash book etc. during the assessment proceedings in order to substantiate its claim before the Assessing Officer. We note that the Assessing Officer did not reject the books of account and had not found any discrepancy in the documents submitted by the assessee. The cash deposits which were made during the demonetization period were duly recorded in books of account and properly disclosed as trade receipts by the assessee. We note that the amount deposited in bank account has already taxed and by adding the same amount u/s 69A of the Act, it will tantamount to double taxation, which is contrary to the law. We also find that without rejecting the books of account, the Assessing Officer's action treating the cash deposits as unexplained money, is not sustainable in the eyes of law. To buttress our findings, we rely on the decision of the Hon'ble Jurisdictional Patna High Court in the case of Laxmi Rice Mills vs CIT (supra), wherein, it has been held that 'in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law'. In the light of the above and respectfully following the judicial precedents, we do not find any infirmity in the order passed by the ld. CIT(A). Accordingly, the order of the ld. CIT(A) is upheld and the appeal of the revenue is dismissed.

7. In terms of the above, the appeal of the revenue is dismissed.

Kolkata, the 17th January, 2025.

Sd/-	Sd/-
[Sanjay Awasthi]	**[Sonjoy Sarma]**
Accountant Member	**Judicial Member**

Dated: 17.01.2025.
RS

Copy of the order forwarded to:

1. ACIT, Circle-1, Patna
2. Mohamad Israil Cold Storages Pvt. Ltd
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches