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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 165/2023 & CM APPL. 13408/2023**

AMAR NATH HARBANS LAL Appellant

Through: **Mr.Kapil Sharma and Mr.Sushil
Gaba, Advs.**

versus

INCOME TAX OFFICER, WARD 47(5) NEW DELHI

..... Respondent

Through: **Mr.Abhishek Maratha, Adv.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

09.02.2024

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1. Notice. Since the respondent is duly represented by Mr. Maratha, learned counsel, no further steps be taken for service upon the respondent.

2. We take note of the contention of learned counsel appearing for the appellant who submits that the authorities below have manifestly erred in proceeding on the basis that no explanation or material had been submitted in respect of the cash sales which were undertaken.

3. Our attention was specifically drawn to paragraph numbers 4,5 and 6 of the reply dated 06 December 2019 which was submitted before the Assessing Officer and which read as under:-

“4. This is for your kind information that assessee is an honest tax payer and was not having any unaccounted cash and not made any bogus cash sales. This is evident from the fact that the assessee had declared higher sales as mentioned under point No.2 above U/s 44 AD of the Income Tax Act 1961. This is a well established fact that



there was spike in the sales in the month of November before demonetization and the assessee had fully declared the same in the ITR for the concerned AY i.e. 2017-18.

5. The sales have been fully declared in the VAT Return also and same is being reconciled truly. You will appreciate the fact the assessee had filed the VAT return and didn't make any changes in the VAT return later on. This shows that the data and intent of the assessee was so accurate that no changes were required later on in the VAT return. I would like to mention here, had it been bogus sales there should be some changes in the VAT return later on as no adjustment is so perfect that it doesn't require any adjustment later on.

6. Cash book had been submitted online vide submission Dated 20-11-2019. Bills for the period November 2016 had been provided online vide submission Dated 08-11-2019. Reasons for huge deposit made in November and December are elaborated above. If anything else is required to complete the proceedings kindly let us know."

4. Despite the above, we find that the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] has observed as follows:-

"7. I have considered the facts and circumstances of the case, submissions of the appellant and material available on record. The only issue in this appeal is addition of Rs. 10,20,000/- being 30% of total cash deposit in the bank account during the demonetization period. The appellant has booked cash sales of Rs 32,21,092/- during the month of Nov 2016 as compared to cash sales of Rs 1,34,830/- during Nov 2015. Demonetization was declared on the eve of 8th Nov 2016, after which there was shortage of cash in the market. Hence, it can be said that the above cash sale have been made during 1.11.2016 to 08.11.2016. It is seen that there is sudden spike in purchase as well as cash sales during the month of Nov 2016. The appellant has been unable to explain the sudden spike in the sales during the month of Nov 2016. In absence of any satisfactory explanation, his claim cannot be accepted that the cash deposits made during the demonetization period were out of cash sales."

5. It is in the aforesaid backdrop that learned counsel for the appellant contends that the view taken by the Income Tax Appellate Tribunal ["**ITAT**"] is rendered clearly perverse.

6. We consequently admit the instant appeal on the following



question of law:-

(a) Whether the view taken by the ITAT while upholding the ad hoc addition of Rs. 10,20,000/- is liable to be characterised as perverse and thus unsustainable?

7. Let the appeal be called again on 06.05.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.
FEBRUARY 09, 2024/MJ