

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.680/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Ms.Asokan Meena,
12-Feb, Nakkiyar Street, Virugavur,
Villupuram.

v. The Income Tax Officer,
Ward-2,
Villupuram.

[PAN: CSFPM 9033 E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.Yeshwanth Kumar, CA
: Mr.Varuvooru Sreedhar,
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 20.10.2022

घोषणा की तारीख /Date of Pronouncement

: 02.11.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, dated 29.06.2022, and pertains to assessment year 2017-18.

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

The Appellant objects to the order of Commissioner of Income Tax (Appeals) partially allowing the Appeal of the Appellant against the Assessment Order for the Assessment year 2017-18 dated 29.06.2022

1. The Learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in partially upholding the assessment of Bank deposits u/s section 69A of the Income

:: 2 ::

Tax Act and taxing the same under section 115BBE of the Act restricting the addition to Rs.18,95,580 as against Rs.24,66,500 made in the Assessment order.

2. *The Learned Commissioner of Income Tax (Appeals) [CIT(A)] failed to appreciate the fact that addition of bank deposits u/s section 69A of the Income Tax (post demonetization) tantamount to addition of Appellant's sale proceeds which had already been offered to tax and admitted as Revenue receipts by. Revenue resulting in double taxation once as sale receipt and again as unexplained cash credit.*

3. *The Learned Commissioner of Income Tax (Appeals) [CIT(A)] failed to appreciate that the Appellant is a small trader filing VAT Returns and admitting income on presumptive basis u/s 44AD of the Act and quantum of deposits are commensurate to the Turnover admitted by the Appellant.*

The absence of proper books of accounts, breakup of parties for purchase and sales cannot be held against the Appellant in the absence of legal obligation to maintain the same.

4. *The Learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in truncing the income u/s.115BBE of the Act when CIT(A) himself had allowed set off of the business income of the Appellant against the addition towards cash deposits basically accepting the fact that it has emanated from business income and addition if any cannot be taxed u/s 115BBE as Appellant has no other source of income and that too when revenue itself had admitted that such deposits has emanated from business income albeit partially.*

5. *The Learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in making the addition u/s 69A of the Act when the essential ingredients namely explanation of the nature and source of deposit as put-forth by the Appellant had not been proved to be false or improbable and also erred in making the addition based on mere conjectures, surmises and suspicions.*

On these grounds and such other grounds that may be put-forth at the time of hearing, the Appellant prays that

(i) *Addition of cash deposits Rs.18,95,580 u/s.69A of the Act may be deleted.*

(ii) *The addition if any made, shall be taxed under normal and not under rates prescribed u/s.115BBE of the Act as the same has emanated from Business Income.*

3. The brief facts of the case are that the assessee is an individual and engaged in the business of purchase and sale of paddy, filed its return of income for the AY 2017-18 on 24.11.2017 admitting total income of Rs.5,70,920/-. The case has been selected for scrutiny under CASS to verify cash deposits during demonetization period. During the course of

:: 3 ::

assessment proceedings, the AO noticed that the assessee has made cash deposits of Rs.24,66,500/- into three bank accounts in Specified Bank Notes of Rs.500/- & Rs.1,000/- denominations. The assessee has explained source for cash deposits and argued that cash deposit is out of her business income. The AO did not accept the explanation of the assessee and according to the AO, the assessee could not establish cash sales made to various persons with their address and PAN. The AO had also analyzed sales declared by the assessee for FYs 2015-16 & 2016-17 and observed that the assessee has declared higher sales to cover up cash deposits made into bank account. Therefore, rejected the arguments of the assessee and made additions of Rs.24,66,500/- as unexplained money u/s.69A of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee contended that she had filed her return of income under provisions of Sec.44AD of the Act, on presumptive basis and thus, she need not to maintain books of accounts and other relevant details for her business activity. Therefore, the allegation of the AO that she could not substantiate cash sales with name and address of the sellers, is devoid of merit. She further contended that source for cash deposits is out of capital employed in the business, including amount payable to creditors.

:: 4 ::

5. The Ld.CIT(A), NFAC, Delhi, rejected the arguments of the assessee and sustained the additions made by the AO towards cash deposits on the ground that the assessee could not explain the reasons filing return for the assessment year in question u/s.44AD of the Act, when she had maintained books of accounts for the earlier assessment years. Therefore, opined that there is no error in the reasons given by the AO to make additions towards cash deposits u/s.69A of the Act. The relevant findings of the Ld.CIT(A) are as under:

7.2 Finding

a) *Appellant is in business of purchase and sale of paddy. All paddy is purchased from Agriculturists on credit basis. 100% of purchases made by Appellant is on credit. Appellant has not been able to provide the names and addresses of parties from whom purchases made or to whom the sales were made. For AY 2016-17, the Appellant had same business but return was filed in ITR-4 and all books of accounts were maintained. However, in the present AY the return was filed u/s 44AD and no books of accounts were maintained for reasons best known to Appellant.*

b) *As per the table outlined in Para 4 of the Assessment Order the details are as under:*

<i>Total Credit Purchases during AY. 2017-18</i>	<i>Rs.52,15,137/-</i>
<i>Total Cash Sales during AY. 2017-18</i>	<i>Rs.74,25,360/-</i>
<i>On comparison with AY 2016-17, the details are as under:</i>	
<i>Total Credit Purchases during AY. 2016-17</i>	<i>Rs.1,47,39,250/-</i>
<i>Total Cash Purchases during AY. 2016-17</i>	<i>Rs.4,87,500/-</i>
<i>Total cash sales during AY. 2016-17</i>	<i>Rs.59,08,400/-</i>

c) *The above facts show that Credit Purchases in AY. 2016-17 was Rs.1,47,39,250/- and cash sales during AY. 2016-17 was Rs.59,08,400/-. This shows that a substantial part of credit Purchases of AY. 2016-17 remained to be paid off till 01.04.2016 i.e. till start of the present AY.*

d) *AO has tabulated the month-wise details of the op. cash, Cash sales, Total cash accruals, cash deposited/closing cash in hand and cash expenses in para 5 of assessment order. This table shows as under: -*

:: 5 ::

- *Opening cash in hand on 01.04.2016 is Rs.67819/- and cash sales is Rs,6,49,500/- and cash expenses is Rs.45,943/-.*
- *This cash accumulation keeps on going up and as on 08.11.2016 the op. cash in hand goes up to Rs.28,92,566/-, cash sales is Rs.1,92,500/- and cash expense is Rs.1,009/-.*
- *As a result the Total Cash sales during AY. 2017-18 is Rs.74,25,360/- against which cash deposited is Rs.26,42,000/- and Total cash expenses is Rs.44,57,610/-.*
- *The above chart clearly shows that cash expenses during AY. 2017-18 is Rs.44,57,610/-. This includes business related expenses and the payments made to purchase parties from whom paddy was purchased on credit.*
- *As outlined in para 7.2(b) above, the credit purchases for AY. 2016-17 was Rs.1.47 crore and credit purchases for AY. 2017-18 was Rs.0.52 Cr i.e. Total credit purchases during the two years was Rs.2 Crore approximately. In the year AY. 2016-17, the total cash sales was Rs.59 lac approximately and total cash sale for AY. 2017-18 was Rs.74 lac approximately i.e. Total cash sales for the two years is Rs.1.33 Cr. approx.*
- *If it is presumed that entire cash sales of AY. 2016-17 is utilized to paying off the Purchase credits then still the purchase credits payable as on 01.04.2016 which works out to Rs.88 lacs (147 lacs -59 lacs). From 01.04.2016 to 31.03.2017, the credit purchases workout to Rs.52 lacs. Thus, the total credit purchases payable till 31.03.2017 was Rs.140 lacs. As against this the cash expenses during the period 01.04.2016 to 31.03.2017 was Rs.44 lacs only. This shows that majority of purchase credits i.e. to tune of Rs.96 lacs remain unpaid till 31.03.2017. The Appellant just kept on buying paddy on credit and kept selling it on cash and kept depositing the said cash in her bank account which was ultimately used to settle the Gold loan account with Laxmi Vikas Bank on 14.02.2017. This is not normal and prudent business.*
- *Appellant purchases paddy from small farmers on credit and sells the same in cash. She is trading in paddy with a specified percentage of profit. It is not possible that Appellant just avoids complete payments of Purchase credits for long periods of time and utilizes the entire cash sales amount for her own business. The farmers from whom paddy is purchased have to be paid regularly after a period of 2/3 months. However, the facts of the present case show the reverse i.e. farmers from whom purchases are made are not paid off for long periods of time and Appellant utilizes the entire cash sales to build up her cash in hand to be deposited in her bank account during the demonetization period and later utilized to settle her gold loan account. Ultimately when these purchase credits were paid off is not clear from the records. Appellant had filed her return for AY. 2016-17 in ITR-4 and had maintained complete books of accounts. However, in AY. 2017-18, the return was filed u/s.44AD and no books of accounts were maintained. This is a very unusual fact. The reason for the same appears to be the fact that Appellant can inflate the cash sales to cover up the cash deposits made during the demonetization period. However, the Appellant failed to explain as to how and when were the purchase credits ultimately paid off. This shows that the data of sales submitted is not genuine data.*
- *The above facts clearly show that the claim of Appellant that source of cash deposits is out of cash sales of paddy is not acceptable on merits. Hence, the action of AO to this extent is upheld.*
- *The Appellant has contended that even if the addition is correct, then credit should be given to the extent of business income shown by Appellant. This contention of Appellant is acceptable and addition made by AO u/s.69A is*

:: 6 ::

restricted to Rs.18,95,580/- (Rs.24,66,500/- - Rs.5,70,920/-) instead of Rs.24,66,500/- made by the AO.

- *Appellant has itself mentioned in its written submissions that Section 115BBE was introduced by Taxation Laws (Second Amendment) Act, 2016 on 15.12.2016 w.e.f. 01.04.2016. Hence, the same is applicable to AY. 2017-18 i.e. AY under consideration.*

7.3 In view of the facts outlined in para 7.2 above, the Grounds of Appeal No.4, 5,6,7,9,10 and 11 are partly allowed.

6. The Ld.Counsel for the assessee, referring to month-wise purchase and sales for two assessment years and also month-wise cash sales and cash deposits for two assessment years submitted that the assessee is predominantly dealing with cash. She made purchase in credit, whereas her sale is in cash. She never deposited cash into bank account even during earlier Financial Year. However, because of demonetization she had deposited entire capital employed in the business in Specified Bank Notes, because, Specified Bank Notes cannot be a valid tender after specified date. The AO except stating that the assessee has booked excess sales to cover up cash deposits, does not give any valid and cogent reasons to reject the arguments of the assessee. Therefore, he submitted that additions made by the AO should be deleted.

7. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that if you go by preponderance of probability, it is very clear that the assessee has filed return of income for the AY 2017-18 u/s.44AD of the Act, to cover up cash deposits made during demonetization period. The AO has brought out clear facts to negate arguments of the assessee while making additions towards cash deposits u/s.69A of the Act, and their orders should be upheld.

:: 7 ::

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that the assessee has filed her return of income for the AY 2016-17 in ITR-4 and has maintained books of accounts, but for the AY 2017-18, she had filed return of income u/s.44AD of the Act, and estimated net profit without any books of accounts. Admittedly, return of income filed by the assessee for the AY 2017-18 is after demonetization. Therefore, the conduct of the assessee is changing return of income from ITR-4 to u/s.44AD of the Act, should be examined in light of preponderance of human probability. If you examine the conduct of the assessee on the element of preponderance of human probability, there is a serious doubt about the conduct of the assessee, in not maintaining books of accounts. Therefore, the observation of the AO with regard to cash deposits in the return of income filed by the assessee appears to be reasonable and correct.

9. Having said so, let us examine reasons given by the AO to reject the arguments of the assessee while making additions towards cash deposits into bank account during demonetization period. The AO never disputed the fact that the assessee was trading in paddy and predominantly it was in cash. In fact, the main business activity of the assessee was in cash in the impugned assessment year as well as for the immediately preceding assessment year. The AO accepted these facts. However, rejected the arguments of the assessee for source for cash deposits only on the ground

:: 8 ::

that the assessee has declared more cash sales for the AY 2017-18 when compared to previous AY 2016-17. The Ld.Counsel for the assessee filed month-wise purchase and sales for two Financial Years and argued that for the FY 2015-16 relevant to the AY 2016-17, it is the first year of operations of the business of the assessee and the assessee has commenced business activity in the month of October, 2015. The total sales achieved by the assessee for the FY 2015-16 was at Rs.59,08,400/- and the month-wise average sales works out to Rs.9.85 lakhs per month. The assessee has achieved a turnover of Rs.74,25,360/- for FY 2016-17 and monthly average sales works out to Rs.6.19 lakhs per month. From the above, it is very clear that the observation of the AO is nothing, but a suspicion, because as claimed by the AO, the sales declared by the assessee for the AY 2017-18, is not increased when compared to last Financial Year. Therefore, in our considered view, the reasons given by the AO to make additions towards cash deposits is incorrect. Thus, we are of the considered view that neither the assessee proved its arguments for source for cash deposits nor the AO reached to a conclusion that the explanation offered by the assessee is not genuine. Under these facts and circumstances of the case, the only possible solution is to resolve the dispute by estimation of profit on cash deposits made during demonetization period. The assessee is in the business of trading in paddy and the assessee has declared 11.17% gross profit for the AY 2016-17. The gross-profit declared by the assessee for the AY 2017-18 has worked out by the AO is at 58.92%. If you go by gross-profit declared

:: 9 ::

by the assessee for the immediately preceding assessment year and gross profit worked out by the AO for the impugned assessment year, there is a huge gap. However, if you take average gross-profit, it works out to 35%. Therefore, considering the nature of the business of the assessee and also average gross profit for the last two assessment years, we are of the considered view that estimation of profit on cash deposits would meet end of the justice. Therefore, we direct the AO to estimate 30% net profit on total cash deposits of Rs.24,66,500/- made during demonetization period and delete the balance additions made u/s.69A of the Act.

10. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 02nd day of November, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 02nd November, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF