

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:375/CHNY/2021
निर्धारण वर्ष /Assessment Year: 2017 - 2018

Shri. Muthusamy K.,
No.123, 8th Street,
Gandhipuram,
Coimbatore – 641 012.

The Income Tax Officer,
Vs. Non-Corporate Ward – 2(1),
No.63, Race Course Road,
Coimbatore – 641 018.

PAN : AEVPM 4990G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. N. Arjunraj, C.A. for
Mr. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr. ARV. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 13.04.2022

घोषणा की तारीख/Date of Pronouncement

: 20.04.2022

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeals), Coimbatore, National Faceless Appeal Centre [NFAC], Delhi in Appeal No.2/10285/2019-20, dated 25.08.2021. The assessment was framed by the Income Tax Officer, Non-Corporate Ward – 2(1), Coimbatore for the Assessment Year 2017 – 2018 vide his order u/s.144 of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 05.08.2019.

2. The only issue in this appeal of the Assessee is as regards to the order of the CIT(A) in confirming the action of the Assessing Officer in making an addition of the unaccounted income u/s.69A of the Act, being 5% of the total deposits made in the bank account.

3. The Ld. AR assailed the application of Sec.69A & Sec.115BBE whereas Ld. DR justified the assessment framed by Ld. AO. Having heard rival submissions, our adjudication would be as under.

4. The assessee being resident individual is stated to be engaged in trading of edible oil. During assessment proceedings, it transpired that the assessee deposited a sum of Rs.1,13,96,490/- bank accounts maintained with Bank of Baroda. The assessee did not file the return of income and summons were issue to the assessee u/s 131. The assessee submitted that he was engaged in trading of edible oils. The payments from customers were received in cash which was deposited in Bank account. It was submitted that regular books were not maintained by the assessee. Considering the same, Ld. AO estimated profit of 5% and added the same to the income of the assessee u/s 69A as unaccounted money which would be assessable at higher rate of tax u/s 115BBE. The Ld. CIT(A) confirmed the action of Ld. AO since the assessee failed to furnish any documentary evidences. Aggrieved, the assessee is in further appeal before us.

5. Having considered factual matrix, we find that since the assessee did not furnish any documentary evidences to establish the source of deposits, Ld. AO has accepted the business of the assessee and estimated the income @5%. The estimation is very fair and reasonable considering the nature of assessee's business. Therefore, the orders, to that extent, could not be faulted with. However, keeping in view the fact that Ld. AO has accepted the business of the assessee, the same was to be assessed under the head 'Business Income' only and not u/s 69A. We order so. The Ld. Sr. DR has referred to the case of Hon'ble Gujarat High Court in Fakir Mohmed Haji Hasan V/s CIT (165 CTR Guj 111) which is a case wherein gold has been found from the possession of the assessee and therefore, the same is not much relevance to the facts of the present case.

5. In the result, the appeal of the Assessee stands partly allowed.

Order pronounced in the court on 20th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th April, 2022

IA, Sr. PS

- आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**
1. ँ पीलर्षी/Appellant
 2. प्रत्यर्षी/Respondent
 3. आयकर आयुक्त (ं पील)/CIT(A)
 4. आयकर आयुक्त/CIT
 5. विभर्षीय प्रतिनिधि/DR
 6. गर्ळ फर्ळल/GF