

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

श्री मनोज कुमार अग्रवाल, लेखा सदस्यके श्री संजय सरमा, न्यायिक सदस्य समक्ष  
**BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A No.:254/CHNY/2021  
निर्धारण वर्ष/ **Assessment Year 2017 - 2018**

M/s. Rajagopal Finance and Leasing  
Private Limited,  
No.415, East 9<sup>th</sup> Cross Street,  
K.K. Nagar,  
Madurai – 625 020.  
**PAN : AABCR 0954J**

(अपीलार्थी/**Appellant**)

The Income Tax Officer,  
Corporate Ward – 4,  
Income Tax Department  
CR Building, 2 V.P. Rathinasamy  
Nadar Road,  
Viswanathapuram,  
Madurai – 625 002

(प्रत्यर्थी/**Respondent**)

अपीलार्थीकीओरसे/Appellant by

: Mr. N. Arjunraj, C.A. for

Mr. S. Sridhar, Advocate,

प्रत्यर्थीकीओरसे/Respondent by

: Mr. ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 16.08.2022

घोषणा की तारीख/Date of Pronouncement

: 18.08.2022

**आदेश /O R D E R**

**PER SONJOY SARMA, JM:**

This appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi vide order No.ITBA/NFAC/S/250/2021-22/1033600802(1); dated 22.06.2021. The assessment was framed by the Income Tax Officer, Corporate Ward – 4, MDU for the Assessment

Year 2017 – 2018 u/s.143(3) of the Income Tax Act, 1961 (hereinafter “the Act”), vide order dated 28.12.2019.

2. The Assessee has raised the following Grounds that are as under:

- [1] The order of the National Faceless Appeal Centre, Delhi dated 22.06.2021 in DIN and Order No.ITBA / NFAC / S/250 / 2021-22 / 1033600802(1) for the above mentioned Assessment Year is contrary to law, facts and in the circumstances of the case.
- [2] The NFAC erred in sustaining the addition of Rs.1,40,000/- as unexplained investment within the scope of Section 69A of the Act, while computing the taxable total income without assigning proper reasons and justification.
- [3] The NFAC failed to appreciate that the provisions of Section 69A of the Act had no application to the facts of the case and further ought to have appreciated that having filed the audited financials at every stage wherein the disputed quantum of cash deposits / receipts was reflected / accounted in the books of accounts maintained by the Appellant, there was no case for the Revenue to invoke the provisions of Section 69A of the Act.
- [4] The NFAC failed to appreciate that the sustenance of the differential sum of Rs.1,40,000/- namely the difference between the actual cash deposit / receipts and the contested notes on accounts was wholly unjustified and in this regard ought to have appreciated that the presumption of equating notes on accounts to the regular books of accounts was completely erroneous thereby vitiating the sustenance of the addition u/s.69A of the Act.
- [5] The NFAC failed to appreciate that having stated the mistake in incorporating the figure pertaining to the availability of SBNs in the notes on accounts, the source for the entire cash deposits / receipts was fully explained by marshalling the evidences in relation thereto thereby vitiating the addition sustained in the impugned order.

- [6] The NFAC failed to appreciate that the findings in Para 3.5 of the impugned order without granting personal hearing were wholly unjustified and ought to have appreciated that the sole reliance on the notes on accounts to sustain the addition u/s.69A of the Act by ignoring the books of accounts maintained in the regular course and further ignoring the evidences filed for the source for the deposits / receipts was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.
- [7] The NFAC failed to appreciate that the provisions of Section 115BBE of the Act had not application to the facts of the case and further ought to have appreciated that the consequential levy of enhanced charge of tax was wholly unjustified and unwarranted.
- [8] The NFAC failed to appreciate that there was no proper / reasonable opportunity before passing the impugned order and ought to have appreciated that the impugned order passed in violation of the principles of natural justice should be reckoned as bad in law.
- [9] The Appellant craves leave to file additional grounds / arguments at the time of hearing.

3. Brief facts of the case are that the Assessee is a company and is engaged in the business of financing loan for the purchase of two-wheelers. The Assessee e-filed its return of income for the Assessment Year 2017 - 2018 on 15.06.2017 admitting a total income as 'NIL'. However, under the normal provisions of the Income Tax Act, 1961, the return of income filed has been processed by the Central Processing Centre [CPC] and subsequently the case

was selected for complete scrutiny under the Computer Assisted Scrutiny Selection [CASS]. A notice u/s.143(2) dated 09.08.2018 was issued and served upon to the Assessee on 09.08.2018 and further a notice u/s.142(1) was issued to the Assessee on 09.08.2019 seeking for trading Profit and Loss Account, Balance Sheet and Schedules for expenses claimed in the P&L account and all ledgers, Cash Book and Bank Statement to verify the cash deposits for which the Assessee had furnished all the documents that were called for. All the documents that were furnished by the Assessee were scrutinized. However, the claim of the Assessee before the Assessing Officer was that, there was a cash balance of Rs.4,37,833/- as on 08.11.2016 while doing the assessment proceedings. The Assessing Officer noticed from the ITS statement that the Assessee had deposited cash aggregating to an amount of Rs.9,17,000/- with the Bank of Baroda during the demonetization period, i.e. 09.11.2016 to 30.12.2016. During the assessment proceedings, the Assessing Officer

had sought for details of the cash deposits by the Assessee with the Bank of Baroda and in response to the same, the Bank had filed a written reply before the Assessing Officer and on perusal of the details furnished by the Bank, the Assessing Officer noticed that the Assessee had deposited cash in the Specified Bank Notes [SBN] to the tune of Rs.4,07,000/-. While the Assessing Officer had examined the copy of the notes of accounts submitted by the Assessee before the Registrar of Companies [ROC] in which the Assessee has shown the details of the specified bank notes available as on 08.11.2016 amounting to Rs.2,67,000/-. In this regard, the Assessing Officer had directed the Assessee to reconcile the difference of Rs.1,40,000/-. However, the Assessee had submitted before the Assessing Officer that due to an inadvertent mistake it had happened so and had requested the Assessing Officer to accept its explanation. Subsequently, the Assessing Officer having been not satisfied with the submissions made by the Assessee, added the sum of

Rs.1,40,000/- as unexplained money u/s.69A of the Act. Dissatisfied with the above order passed by the Assessing Officer, the Assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals. However, the learned Commissioner of Income Tax (Appeals) considering the submissions made by the Assessee, dismissed the appeal of the Assessee by observing in paragraph Nos.3.2 to 4, as under:

*"3.2 Considered the facts of the ground, the contention of the Authorized Representative of the Appellant and the material available on record, it is noted that an addition of Rs.1,40,000/- has been made u/s.69A of the Act on account of the failure on the part of the Appellant to reconcile the difference between the amount deposited in the Bank of Baroda to the tune of Rs.4,07,000/- and the note on accounts submitted to the Registrar of Companies in which the Appellant had shown the details of the SBNs [Specified Bank Notes of Rs.500 and Rs.1000] available as on 08.11.2016 at Rs.2,67,000/-. The Assessing Officer asked the Authorized Representative of the Appellant to explain the difference between the SBNs notes deposited in the Bank and the SBNs available with the Appellant as per the note on account submitted to the Registrar of Companies which it failed to do so as per*

*the Assessing Officer. Contra, the Appellant claims it to be an inadvertent error and claims that what was reported in the notes on account pertained only to Rs.1000 notes. In support of its contention, it has submitted receipts and other documents.*

*3.3. However, here it is pertinent to note that the Appellant has not made any submission to the effect that the accounts / notes submitted to the Registrar of Company has been corrected or a correction statement has been filed with the ToC or any reconciliation statement has been submitted to that effect to the RoC. The Appellant is a company, which is liable to be subject to the provisions of the Company Law and therefore it ought to have made the appropriate corrections even before the RoC if the above was an inadvertent mistake. It is a trite law that two different positions of the same facts or difference accounts cannot be said to be exist, one that is for the purpose of the Company Law and other for Income Tax Law. If the Appellant is claiming that the error was inadvertent during the course of income tax proceedings, then it ought to have corrected this account submitted to the Registrar of Companies. However, no such effort seems to have been made either during the assessment proceeding or even during the course of faceless appellate proceedings. Accordingly, the contention of the Appellant lacks credibility.*

*3.4 During the course of faceless appellate proceedings, the Appellant has submitted a copy of its cash book from 08.11.2016 to 12.11.2016 and copies of its receipts which are titled outdoor receipts to show that it did have that much of specified cash and that too in the SBN. However, here it is noteworthy that the company has furnished a copy of its cash book which does not bear any signature, seal of the company or the signature / seal of the auditors. The company being liable for statutory audit, any certificate from the auditor has also not been furnished to establish the correctness of its claim that indeed the company did have the specified amount of ABNs on the said date nor a copy of the audited accounts furnished. Thus, effectively what the company has furnished during the course of faceless appellate proceedings is merely a computer-generated copy of the purported cash book, which lacks any authentication. Further, the cash book is also for a specified period 08.11.2016 to 12.11.2016 and there is no way by which the opening balance as shown in the cash book can be counter verified to ascertain the veracity of the accounts submitted.*

*As far as the temporary outdoor receipts are concerned, it is noted that some receipts have been furnished dated 08.11.2016. These receipts are 10 in number covering an amount of only Rs.28,855/-. Further, these specify the total amount given by the depositor. Some of these receipts carry break up of*

*some notes which is given on the top of the receipts and is scribbled in hand written notes. However, it cannot be established that these entries of breakup of notes submitted as jotted on the top margin of the temporary outdoor receipt, was made at the time of issuance of receipts or ex-post facto to justify the cash receipts in the specified bank notes of Rs.500 to Rs.1000/-. Considering the above, it is very clear that the said submissions of the Assessee completely lack credibility and cannot be relied upon.*

*3.5 It is also pertinent to note here that it is that this mismatch between the SBNs deposited in the Bank to the tune of Rs.4,07,000/- and the SBNs available with it as mentioned in the notes on accounts submitted to the Registrar of Companies, i.e. Rs.2,67,000/- has been discovered by the Assessing Officer and not by the Appellant. Had the Assessing Officer not discovered this mismatch or rather the difference between the notes deposited and as claimed in the notes of account, it would have remained undetected? This also erodes the credibility if the appellants claim. As has been held by various Courts / Tribunals that once the Appellant was made aware of the fact that it had to reconcile the said difference, the onus immediately shifted to the Appellant to provide all the details as sought for and satisfy the queries raised by the Assessing Officer during the course of assessment proceedings. However, the Appellant continued to reiterate that it was an inadvertent mistake without*

*bringing any bonafide documents on record. Even during the course of faceless appellate proceedings the Authorized Representative of the Appellant has failed to counter the questions raised by the Assessing Officer.*

*Further, as regards to the contention of the Appellant that the provisions of Section 69A of the Act are not applicable in the instant case as the amount of Rs.1,40,000/- is duly recorded in the books of accounts and the said provisions are applicable only when the money is not recorded in the books of accounts is concerned. In this regard, it is noted that the Appellant has failed to explain the said difference between the SBNs available with it as mentioned in the notes on account to the Registrar of Companies and SBNs deposited by it in the Bank of Baroda. Hence, this contention of the Appellant also does not hold any ground. What follows from the above, is that the Appellant has failed to explain the said difference and the SBNs available with it as mentioned in the notes on account and the SBNs deposited in the Bank of Baroda and thus the claim of the Appellant that the said amount of , i.e. Rs.1,40,000/- is recorded in the books of accounts and the provisions of Section 69A of the Act are not applicable and are found to be wrong. The contention of the Appellant is dismissed. The grounds are decided in negative to the Appellant. In the result, the appeal is dismissed.”*

4. Before us, at the time of hearing the learned Authorized Representative at the outset submitted that while deciding the issues by the authority below, the learned Commissioner of Income Tax (Appeals) has shown reliance placed on the notes of accounts to sustain the addition u/s.69A of the Act by ignoring the books of accounts maintained by the Assessee in the regular course of business. Moreover, the authorities below had ignored the evidences filed by the Assessee to explain the source for such an alleged deposit made by the Assessee before the authorities below. Therefore, the impugned order was unjustified, erroneous, incorrect and invalid and therefore it is not sustainable in both facts as well as law. He further submitted that after considering the facts and circumstances of the case and considering his submissions before us, to remand back the whole issue to the file of the Assessing Officer with a direction to re-examine the Assessee's cash book including the opening balance, so as

to verify the accounts submitted by the Assessee and decide the whole issue on the merits of the case.

5. On the other hand, the learned Departmental Representative relied on the order passed by the lower authorities.

6. We, after hearing the rival submissions and after considering the facts and circumstances of the case are of the considered view that the impugned order passed by the authorities below were on the basis of the notes of accounts submitted by the Assessee, ignoring the books of accounts maintained by the Assessee in the regular course of business, we in the interest of justice set aside the impugned order and remand back the issue to the file of the learned Assessing Officer to decide the issue raised before us afresh and re-examine the cash books and the other documents including the opening balance of the Assessee, so as to determine the correct income of the Assessee and decide the issue(s) on merits of the case. We

further direct the Assessee to remain vigilant in receiving the notice from the Assessing Officer and not to request for adjournment, unless and otherwise required for a reasonable cause and also file all necessary documents, evidences in support of its claim, so as to facilitate the Assessing Officer to determine the correct income of the Assessee. Needless to mention here that, the Assessee should be given proper opportunity of being heard.

7. In the result, the appeal of the Assessee in I.T.A No.:254/CHNY/2021 is allowed for statistical purposes.

Order pronounced in the court on 18<sup>th</sup> August, 2022 at Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

**Sd/-**

(संजय सरमा)

**(SONJOY SARMA)**

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 18<sup>th</sup> August, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकरआयुक्त (अपील)/CIT(A)  
4. आयकरआयुक्त/CIT  
5. विभागीयप्रतिनिधि/DR  
6. गार्डफाईल/GF