

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.: 74/CHNY/2022

निर्धारण वर्ष/Assessment Year: 2017-18

Smt. Muthusamy Arunadevi,
2/120-C, Seelakkampatti,
Seelakkampatti Post, Pollachi,
Coimbatore - 642 205.

The Income Tax Officer,
vs. Ward-2(4),
Tirupur.

PAN: AUOPA 9902B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri A.Arjunraj, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 10.10.2022

घोषणा की तारीख/Date of Pronouncement

: 12.10.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi in Appeal No.CIT(A), Coimbatore-3/11336/2019-20 dated 24.12.2021. The assessment was framed by the Income Tax Officer, Ward 2(4), Tirupur for the assessment year 2017-18

u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 09.10.2019.

2. The first issue raised vide ground Nos.1 & 2 is regarding jurisdiction which reads as under:-

1. CIT(A) erred in upholding the assessment u/s 144 passed without issuing any notice u/s 143(2) when the return of income was filed on 11.07.2019.
2. 142(1) notices issues are against the provisions of the Act and the consequent assessment is bad in law and CIT(A) is erred in upholding the same.

2.1 At the outset, the Id.AR for the assessee stated that he is not pressing these two grounds and hence, the same are dismissed as not-pressed.

3. Coming to the issue on merits which is against the order of CIT(A) confirming the action of AO in making addition of cash deposit of Rs.7.70 lakhs as 'income from other sources' u/s.69A of the Act and charging under special rate of tax u/s.115BBE of the Act. For this, assessee has raised the following ground No.4:-

3. The CIT(A) is also erred in upholding the cash deposits of Rs.7,70,000/- as income u/s 69A and charging special rate of tax.

4. Brief facts are that the original assessment was completed by the AO u/s.144 of the Act, as the assessee failed to respond to any

notice or show-cause notice issued on 04.09.2019 proposing to assess the entire cash deposit of Rs.7.70 lakhs made in the Federal Bank savings bank account. This cash deposit of Rs.7.70 lakhs are cash deposit during demonetization period and particularly the entries made on 11.11.2016 - Rs.20,000/-, 12.11.2016 - Rs.50,000/-, 18.11.2016 - Rs.5,00,000/- and 18.11.2016 - Rs.2,00,000/-. The total cash deposits during demonetization period were Rs.7.70 lakhs. No explanation was submitted before the AO and hence, the AO treated the entire cash deposits during demonetization period as unexplained money u/s.69A of the Act and taxed u/s.115BBE of the Act @ 60%. Aggrieved, assessee preferred appeal before the CIT(A).

4.1 Before the CIT(A), the assessee produced the land holding papers i.e., agricultural land holding owned by assessee of 5 acres and 10 acres in the name of assessee's husband Shri Muthusamy. The assessee filed this detail in response to hearing notice issued on 25.10.2021 and assessee also submitted income certificate from Village Administrative Officer (VAO) certifying income per annum at Rs.8 lakhs (Rs.3 lakhs from assessee's land and Rs.5 lakhs from her husband's agricultural land). The assessee replied as under:-

“Sir, With reference to your query, I would like to furnish before you, the following enclosures 1. Proof of 5 Acres (1.94.5 Hectares) of Agricultural Land in the name of Arunadevi in English version 2. Proof of 10 Acres (4.22.5 Hectares) of Agricultural land in the name of Mr.Muthusamy (spouse of Arunadevi) in English version. In order to prove our nature and source of Income is only from Agriculture and from our agricultural land, our Per annum Income is Rs.8,00,000/- (rs.300000/- from my land and Rs.50000/- from my spouse agri land). We have attached the Certificate from Village administration officer from our corresponding Village. We do not have any other source of Income except Agricultural Income. Hence we humbly request you to delete the additions made by the Learned officer and render us Justice. We are also ready to provide any further details, in case of any further requirement from your Goodself. Thanking you Yours Sincerely, Arunadevi”.

The assessee also produced the certificate of land holding issued by Revenue Officer of Government of TamilNadu i.e., land certificate record patta issued by Revenue Department, Coimbatore District, wherein entire holding of assessee of 5 acres land and assessee's husband of 10 acres is mentioned. These documents are reproduced in the order of CIT(A) at pages 13 to 16. The assessee has also enclosed certificate regarding agricultural income per annum given by VAO which are reproduced at page 17 of CIT(A)'s order certifying that the assessee is having Rs.3 lakhs agricultural income and her husband is having Rs.5 lakhs of agricultural income per annum from this agricultural lands. The Id.AR for the assessee made the same arguments which were made before CIT(A) and relied on the evidences filed before CIT(A). He also submitted same

evidences in assessee's paper-book 1 & 2. We have taken cognizance of these documents and perused the order of CIT(A) and noticed that the entire basis of CIT(A) rejecting the explanation of the assessee and rejecting evidences that the lands are dry lands and moreover the assessee is not engaged in any commercial activity. The CIT(A) also rejected the explanation of the assessee for the reason that the assessee has not maintained any books of accounts to prove the availability of cash in hand. The Id.Senior DR supported the orders of AO as well as the CIT(A).

5. After hearing rival contentions and going through the documents placed before us in assessee's paper-book 1 & 2 and perusing the order of CIT(A) who has reproduced the land holding documents, which proves that the assessee is owner of 5 acres of agricultural land and assessee's husband is owner of 10 acres of agricultural land. It is also available on record that the assessee is growing coconut trees on these lands and earning agricultural income from coconut. But, we are also conscious of the fact that the Village Administrative Officer is not an authority to certify the agricultural income and assessee is unable to correlate these entries with that of the deposits of cash during demonetization period. But undeniable fact is also that the assessee is holding agricultural lands

including her husband i.e., 15 acres and for that, we have to give some credit and assessee might have earned agricultural income although he has no definite evidence. It is also a fact that assessee is a pure agriculturist residing in a village and selling agricultural produce in cash to petty traders who are coming to villages to procure the products of coconut. In such circumstances, we have to estimate some agricultural income. If we give credit, the assessee might have earned some Rs.30,000/- per acre. The assessee's income during the year will be around Rs.4.5 lakhs. Giving further credit, the assessee might have accumulated some cash in earlier year also after allowing deduction of personal expenses, the assessee might have saved some cash. Hence, we estimate the availability of cash with the assessee at Rs.5 lakhs and direct the AO to delete this addition to the extent of Rs.5 lakhs and sustain the addition of Rs.2.70 lakhs, which assessee has to pay tax as per the provisions of section 115BBE of the Act.

6. The next issue is as regards to charging of interest u/s.234A & 234B of the Act, which is consequential in nature and the AO will recompute the interest accordingly.

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

Order pronounced in the open court on 12th October, 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 12th October, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |