

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

श्रीमहावीर 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 अपीलसं./**ITA No.: 487/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2017-18

**Ms. K. Rajeswari,**  
11/D2, Second Street,  
Muniyasampuram,  
West Tuticorin – 628 002.

**The ACIT,**  
vs. Circle-1,  
Tuticorin.

**PAN: AGAPR 9765M**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Balasubramanian, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Dr. R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 15.02.2023

घोषणा की तारीख/Date of Pronouncement : 17.02.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the revision order passed by the Principal Commissioner of Income Tax, Madurai-1 u/s.263 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order in Revision No.PCIT, Madurai-1/Revision-263/10000302509/2022 dated 21.03.2022. The assessment was framed by the ACIT, Circle-1, Tuticorin for the assessment year 2017-18 u/s.143(3) of the Act vide order dated 18.09.2019.

2. At the outset it is noticed that this appeal is time barred by 1 day. It is noticed from Form 36 that the order of PCIT was received on 31.03.2022 but appeal was actually filed on 31.05.2022 with a delay of 1 day. The assessee has filed petition for condonation of delay along with affidavit stating the reason that the delay of one day has occurred during transmission of appeal papers for signature from her counsel and in turn to her counsel after signing. As the delay is small just of 1 day and the cause seems reasonable, which was not contested by Revenue, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to revision order passed by PCIT u/s.263 of the Act holding that the assessment order framed by the AO u/s.143(3) of the Act dated 18.09.2019 is erroneous and prejudicial to the interest of Revenue as the AO failed to examine the cash deposits made during demonetization to the tune of Rs.1,09,23,576/-. For this, assessee has raised various grounds which are argumentative in nature, hence need not be reproduced.

4. Brief facts are that the AO while framing assessment made assesment u/s.143(3) of the Act i.e., scrutiny assessment through CASS. The AO examined the cash deposit made during

demonetization period and framed assessment u/s.143(3) of the Act. The relevant portion of the assessment order reads as under:-

The CASS selection reason as follows:-

1. Cash deposit during demonetization period.

During the course of e-proceeding, the assessee was requested to furnish the explanation for the above points. The assessee representative furnished details in respect of the CASS reason. The submissions of the assessee were examined and reproduced as under:-

Cash deposit during demonetization period

“My assessee is dealing with purchase and sale of Edible oil & eatable food products, so they have purchased the products from big companies and sell the same to retail outlets for more than 3000 outlets in and around Tuticorin. Being the petty shop holders, their purchase amount is less than the prescribed cash limit of the Income tax department and deposits the same to the bank immediately in the tomorrow morning. So this is the way of their business module.”

The books of account uploaded by the assessee to substantiate their claim were examined and the assessment is completed accepting the returned income.

5. Subsequently, the PCIT on verification of records noted that the assessee was engaged in the business of purchase of edible oil and food produces and selling them to retail outlets in and around Tuticorin. The PCIT noted that the assessee has made cash deposit to the tune of Rs.1,09,23,576/- in the bank account during demonetization period. He noted that on enquiry from the assessee, the assessee explained that the cash received from petty

shop holders for the product sold was deposited in the bank account. The assessee explained that the specified bank notes after demonetization was deposited in the bank post 08.11.2016. The assessee admitted before PCIT that the cash was received by assessee on account of sale of its products to the petty shop holders after 08.11.2016 and argued that the source is explained and hence, the AO has rightly not made any addition. But, the PCIT was not convinced and stated that the AO has not at all examined this issue as is noted from the assessment order and hence, he held that for lack of examination or verification of the issue, the assessment order is erroneous and prejudicial to the interest of Revenue. For this, the PCIT observed in para 5,5.1 & 6 as under:-

5. I have considered the written submission of the assessee and discussion had with the assessee's Authorised Representative, in the light of the facts of the case, the provisions of the law and the material information available on records. With regard to the cash deposits made during demonetization period to the tune of Rs.1,09,23,576/-, the assessing officer has not made any verification and failed to examine the details of Specified Bank Notes out of total cash deposited during the demonetisation period from banks. As the Specified Bank Notes had ceased to be legal tender with effect from 08/11/2016, the allowability of the same should have been examined by the assessing officer. In the absence of valid records for deposit of Specified Bank Notes or demonetized notes in banks after 08/11/2016, the same should have been treated as unexplained income and taxed u/s 115BBE. The assessing officer failed to examine this issue during the assessment proceedings.

5.1. The assessee in his reply has stated that the assessee has deposited the said amount during demonetization period from cash received from the

petty shop holders for the products sold. In this regard it is to be stated that the amount deposited in SBN is not a legal tender as per the Gazette notification in SO 3407(E) dated 08-11-2016 issued by the Ministry of Finance, Government of India with certain exemption as notified in the Gazette Notification of Ministry of Finance in No. 2653 dated 8<sup>th</sup> November 2016. Further, it was declared in Gazette by the RBI that SBN ceased to be legal tender; no person is allowed to use such SBN notes for transacting normal business activities or allowed to accumulate for future usage with certain exemptions. The assessing officer shall examine whether the assessee is covered by any exception provided in the notification and examine the allowability of the SBN of Rs.1,09,23,576/- deposited in to Bank account after 08/11/2016 in accordance with the Gazetted notification in SO 3407(E) dated 08-11-2016 and CBDT's SOP dated 05/03/2019, 13/06/2019 and various subsequent SOPs and notifications in this regard. If the deposit made by the assessee in Specified Bank Notes in banks after 08/11/2016 is found to be ineligible in view of the above notification & SOPs, the same shall be treated as unexplained income and taxed u/s 115BBE of the Act.

6. It is seen from the above that the assessment order passed by the Assessing Officer is not only erroneous but also prejudicial to the interest of revenue since the same has been passed without proper examining the cash deposits made during demonetisation to the tune of Rs.1,09,23,576/-. It is judicially well settled that the powers under section 263 of the Income Tax Act can be exercised by the Principal Commissioner or Commissioner where the order was passed by the Assessing officer by incorrect application of Law or with incorrect assumption of facts or without any inquiry into the matter or without application of mind [Malabar Industrial Company Ltd. vs. CIT (243 ITR 83)]. The Hon'ble High Court of Allahabad in the case of Swarup Vegetable Products Vs CIT (187 ITR 412) has held that when the Assessing Officer accepted the assessee's claim without making proper enquiries, the Commissioner acting under section 263 was justified in setting aside the assessment order. Similar view has been taken by the Madras High Court in Jai Bharath Tanners (264 ITR 673). The Hon'ble High Court of Madras in the case of Ashok Leyland Ltd Vs CIT (260 ITR 599) has held that when the Assessing was required to examine the claim of the assessee but has failed to do so, the order passed by him was not only erroneous but also prejudicial to the interest of the revenue. Further, the Hon'ble Madras High Court in K A

RarmnaswarnyChetiar vs.CIT (220 1TR 657) has held that when the Officer is expected to make an enquiry of income and if he does not make an enquiry as expected, it is to be a ground to interfere with the order passed by the Assessing Officer since such an order passed by the officer is erroneous and prejudicial to the interest of revenue. In the assessment order, the Assessing Officer failed to discuss as to why and how the claim of cash deposits and SBN deposited during demonetization period were accepted as genuine. Therefore the revisional powers under section 263 would be justified in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Raja Industries (340 TR 344).

Aggrieved, assessee came in appeal before the Tribunal.

6. Now before us, the Id.counsel for the assessee agreed, yes, the cash deposit was made during the demonetization period i.e., after 08.11.2016 on account of sale of products sold by assessee in market to petty shop owners. On query from the Bench, the Id.counsel could not answer whether the SBN deposited in the bank account is a legal tender or not as per gazette notification issued by Ministry of Finance vide SO No.3407(E) dated 08.11.2016. Apart from this, it was asked how the assessee has explained before the AO, the Id.counsel could not bring on record what were the documents placed before the AO and what were the documents examined by the AO before framing assessment. We noted that the assessee simply made submissions before the AO without any evidences, the AO accepted the same without any enquiry. When this was confronted to Id.counsel, he could not reply.

7. On the other hand, the Id. CIT-DR supported the order of the PCIT.

8. After hearing rival contentions and going through the facts of the case, we noted that the assessee herself admitted that the cash deposit in SBN received after 08.11.2016 was deposited by the assessee in bank account, which was received by assessee from petty shop owners on account of sale of its product. The relevant detail given by assessee in her paper-book and the same reproduced by PCIT in page 13 of revision order is being reproduced as under:-

Sl.No.	Particulars	Amount
1	Cash Deposit as on 08-11-2016	2,54,866.00
2	Cash Deposit (From 10-11-2016 to 12-11-2016) – Old Notes	9,69,000.00
3	Cash deposit Specified Bank Notes – Supporting Documents and bank Challans are enclosed (From 15-11-2016 to 28-11-2016)	24,65,402.00
4	Cash deposited to Bank but the Bank is not allow the old notes (From 29-11-2016 to 30-12-2016)	72,54,598.00
	<b>Total</b>	<b>1,09,43,866.00</b>

We noted that the cash deposited by assessee in specified bank notes were received during demonetization period and nothing was examined by the AO while framing assessment. Now, the PCIT has

only directed the AO to make necessary enquiry in regard to cash deposits and the allowability of SBN deposited during demonetization period. We are of the view that this is a case where no enquiry was carried out by the AO while framing assessment in regard to cash deposits made during demonetization period and hence, the PCIT has rightly held that the order is erroneous as well as prejudicial to the interest of Revenue. We uphold the order of PCIT and direct the AO to carry out necessary verification as directed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 17<sup>th</sup> February, 2023 at Chennai.

Sd-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 17<sup>th</sup> February, 2023

**RSR**

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.

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT