

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

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

आयकर अपील सं./ITA No.606/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

M/s.Orange Aqua Poly-
Products P. Ltd.,
37/9, Suresh Nagar,
Main Road,
Janaki Nagar,
Valasaravakkam,
Chennai-600 087.

v. The Dy. Commissioner-
of Income Tax,
Corporate Circle-5(1),
Chennai.

[PAN: AABCO 1350 M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.S.Sridhar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.02.2023

घोषणा की तारीख /Date of Pronouncement

: 28.02.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 11.07.2022 and pertains to assessment year 2017-18.

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

1. The order of the CIT (Appeals) - 18, Chennai dated 11.07.2022 vide DIN & Order No.ITBA/APL/M/250/2022-23/104378780(I) for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

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2. The CIT(Appeals) erred in sustaining the addition of Rs.2,09,94,500/-being the cash deposits made by the Appellant in the bank accounts as part of the computation of taxable total income by invoking section 69A read with section 115BBE of the Act without assigning proper reasons and justification.

3. The CIT(Appeals) failed to appreciate that the sustenance of the addition in treating the cash deposits as unexplained money was wrong, incorrect, invalid, unjustified, erroneous and not sustainable both on facts and in law.

4. The CIT(Appeals) failed to appreciate that the explanation offered for the source of the cash deposits as captured in para 5.3 of the impugned order was wrongly rejected from para 5.4 of the impugned order and ought to have appreciated that the findings from para 5.4 of the impugned order were wrong, incorrect, invalid, unjustified, erroneous and not sustainable both on facts and in law.

5. The CIT(Appeals) failed to appreciate that the explanation offered for the source of cash deposits was rejected on mere suspicion and surmises as well as without cross verification and ought to have appreciated that the factual findings recorded from para 5.4 of the impugned order had defied the fair process of adjudication, thereby demonstrating the perversity in recording the facts in relation to the materials available on record.

6. The CIT (Appeals) failed to appreciate that the assessment order passed u/s 144/143(3) of the Act was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order as well as before passing the assessment order and any order passed in violation of the principles of natural justice would be nullity in law.

8. The Appellant craves leave to file additional grounds /arguments at the time of hearing.

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading, filed its return of income for the AY 2017-18, on 21.07.2017 declaring total income of Rs.NIL with a current year loss of Rs.1,05,71,326/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has deposited cash of Rs.2,09,94,500/- in its bank account during demonetization period and thus, called upon the assessee to explain source for cash deposits. In response, the assessee submitted that source for cash deposits was out of withdrawals from NRO bank account of Managing Director, Mr.K. Ananthan, and said cash withdrawals was for the purpose

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of factory restructuring work. The AO was not convinced with the explanation of the assessee and according to the AO, the assessee could not file any evidences to prove that cash withdrawals from NRO account of Managing Director and the same has been brought into books of accounts of the company and deposited in bank account. Therefore, cash deposit of Rs.2,09,94,500/- has been treated as unexplained money u/s.69A of the Income Tax Act, 1961 (in short "the Act"), and levied tax u/s.115BBE of the Act.

4. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 11.07.2022, has sustained the additions made by the AO towards cash deposits on the ground that the assessee could not explain source for cash deposits, even though, claims to have been received cash from the Managing Director. Further, the assessee could not file any confirmation letter from the Director in support of claim and also could not explain 'as to why' cash withdrawn from the Director's account in the month of February-March, 2016 was kept until demonetization period in the month of December, 2016, for a gap of 9 months. Therefore, rejected the arguments of the assessee and sustained the addition made by the AO.

The relevant findings of the Ld.CIT(A) are as under:

5.4 I have considered the submissions of the appellant. The appellant had not substantiated the submissions made with any documentary evidence. Firstly, the appellant had not produced the bank statements of the Director evidencing withdrawal of the amount from his NRO account and has not explained the purpose for which such amounts were withdrawn by the Director. No confirmation letter was produced from the Director in support of "the submission that he has withdrawn the amount from the bank

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and given to the company. Further, though the appellant had referred cash book maintained by the appellant firm, it has not chosen to file the same in the appeal proceedings. The submission of the appellant that it had taken the funds from the Director for restructuring of company factory was also not proved with any evidence much less documentary evidence. If the funds from director's bank account are taken for restructuring work of the company, what prevented account transfer of the funds from director's bank account to company's bank account? Why should it be first withdrawn in cash from director's bank account and then cash has to be deposited in company's bank account. All these defies the logic. In fact, even according to the appellant the project was not successful and not happened at all. It is further noticed that the withdrawals by the Director in his bank account was in Feb-March, 2016 whereas the amount was deposited by the appellant company in the bank account in December, 2016 after a gap of more than 9 months. It is also not clear whether the amounts were given immediately to the company by the Director. If that be so, when the amount given earlier on 20/02/2016 of Rs.50 lakhs was not utilized for the intended purpose, there is absolutely no need for further withdrawals and depositing the same in the company's account. The claim of the appellant seems to be not an acceptable explanation. The appellant had not also submitted its financials to show that the company had cash balance as on 31/03/2016 and as on the date of demonetization.

5.5 It is true that the citizens were allowed to deposit the demonetized currency before 30/12/2016 and that does not lead to the conclusion that the amounts so deposited were all accounted money.

5.6 All things considered, the inevitable conclusion in this case is that the appellant had not discharged his burden of proving the source for the demonetized currency deposited in the bank accounts during demonetization period and the AO was therefore quite justified in assessing the same as unexplained money under section 69A of the Act. As the addition is u/s. 69A, Section 115BBE has been rightly invoked in this case. As several opportunities of being heard were given to the assessee both during the assessment proceedings by the AO and during appellate proceedings by the undersigned, the ground on principles of natural justice is devoid of merit.

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) has erred in not appreciating the fact that source for cash deposits was out of cash received from Director, Mr.K. Ananthan, where he had withdrawn from his NRO A/c. The assessee further referring to ledger account of Managing Director Mr.K. Ananthan in the books of accounts of the assessee submitted that amount received from Director has been credited to his account and shows under 'trade payables'. The assessee has explained source for cash deposits with necessary evidences, including confirmation from the Director. However, the AO & the Ld.CIT(A) rejected the arguments of the assessee and sustained the additions made by the AO only on the ground

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that the assessee could not explain the reasons for cash withdrawals in the month of February to April, 2016 and deposited in the month of December, 2016.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not explain source for cash deposits with valid reason, although, claims to have been received cash from Director Mr.K. Ananthan. The assessee could not have been filed confirmation from the Director and also failed to explain how cash withdrawals from Director's personal bank account, has been routed in the books of accounts of the assessee. Therefore, the AO has rightly made addition towards cash deposits and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO has made addition towards cash deposits into bank account during demonetization period on the ground that the assessee could not explain source for cash deposits. It was the arguments of the assessee before the AO that the source for cash deposits is out of cash received from Managing Director, Mr.K. Ananthan, where he has drawn amount from NRO Bank A/c maintained with Canara Bank. We find that the assessee has filed NRO A/c maintained with Canara Bank of Mr.K. Ananthan where cash withdrawals of Rs.50 lakhs on 20.02.2016 and cash withdrawals of Rs.1 Cr. On 03.03.2016 was noticed. We further noted that the assessee has filed ledger extract of Director's current account in the books of accounts of the company and

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explained that on 22.12.2016, 30.12.2016 & 30.12.2016, the company has received cash from Managing Director, Mr.K. Ananthan. We find that although, the assessee has filed ledger account of Mr.K. Ananthan in the books of accounts of the company but fail to file cashbook extract of the company for above period to prove that cash received from Managing Director has been routed through cash book before depositing into bank account. Further, the assessee could not explain how cash withdrawn by the Managing Director in the month of February, 2016 has been brought in the books of accounts of the assessee company in the month of December, 2016. Therefore, we are of the considered view that the observations of the AO that the assessee could not satisfactorily explained source for cash deposits, appears to be correct, because, the assessee could not file any evidences before the AO, including ledger account copy of the Managing Director in the books of accounts of the assessee. However, fact remains that if you go by evidences filed by the assessee, including ledger account of Mr.K. Ananthan in the books of the assessee company, there are three entries of cash receipts on two different dates before the date of cash deposit into bank account and their evidences were not filed before the AO. Further, the assessee could not explain 'as to why' current account of the Director has been classified under the head 'trade payables'. Therefore, we are of the considered view that the matter requires further examination from the AO in light of evidences filed by the assessee. Thus, we set aside the order of the Ld.CIT(A) and restore the issue to the file of the AO and

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direct the AO to re-examine the claim of the assessee in light of certain evidences filed by the assessee during the course of hearing and decide the issue afresh in accordance with law.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 28th day of February, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2023.

TLN

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF