

आयकर अपीलिय अधिकरण, 'सी' (एस एम सी) न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **1016/CHNY/2022**
निर्धारण वर्ष/Assessment Year: 2017-18

Smt. Rangasamy Deepa,
182-C2, T.V. Salai,
Pothanur Post,
P.Velur (TK),
Namakkal – 637 181.

The Income Tax Officer,
Vs. Ward 2,
Namakkal.

PAN: BJPPD 8010A
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate
: Shri S. Chandrasekaran, JCIT

सुनवाई की तारीख/Date of Hearing : 07.03.2023
घोषणा की तारीख/Date of Pronouncement : 07.03.2023

आदेश /ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.CIT(A), Salem/11013/2019-20 dated 28.06.2022. The assessment was framed by the Income Tax Officer, Ward 2, Namakkal for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 25.12.2019.

2. At the outset it is noticed that this appeal is time barred by 95 days. From Form 36, it is noticed that this appeal was filed by assessee on 30.11.2022 as against date of service of the impugned appellate order on 28.06.2022 thereby there is a delay of 95 days in filing of this appeal by assessee. The assessee has filed affidavit stating reason that there was a strained relationship between the assessee and her husband and due to that she could not concentrate on her business as well as litigation matter including this appellate proceedings. The reason cited by assessee in the affidavit reads as under:-

“The appeal against the above order, ought to have been filed on or before 27/08//2022, is now filed with a delay of 95 days.

The reasons for such delay are that there was a difference of opinion between the appellant and her husband, that it resulted in strained relationship and that the appellant had menstrual problems.

Now, after solving, though temporarily, all the above issues, the appeal is now filed.

As the appellant does not stand to gain by filing the appeal belatedly and since the delay is not intentional, it is submitted that the reasons be viewed liberally, delay be condoned and appeal be admitted in the interest of justice.”

When this was confronted to Id. Senior DR, he opposed condonation of delay because there is no evidence of any strained relationship between husband and wife. Except this, he could not controvert the above oath taken by assessee on affidavit. After hearing both the sides, I'm of the view that the delay being of 95 days which is a

small delay and the fact mentioned by assessee seems reasonable, hence I condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the assessment order framed by the AO in sustaining the addition of cash deposit made in the bank account during demonetization period of Specified Bank Notes (SBNs). Another aspect argued by assessee is also that the CIT(A) and AO erred in not considering written submissions and facts in prospective as well as violation of principles of natural justice.

4. I have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that the assessee is an individual and is an authorized dealer of Bharat Petroleum Company Ltd., and running fuel station in the name of M/s. Sri Angalamman Fuels during the financial year 2016-17. During the course of assessment proceedings, the assessee produced the following details:-

- Day Book, Ledger Book and Cash Book for the period relevant to the A.Y. 2017-18.
- Details of cash deposits made into the bank accounts during the year 2016-17
- Details of cash deposits during demonetization period.
- Sources for cash deposits made during the year (including demonetization period)

The AO after verifying the bank account obtained from the concerned bank u/s.133(6) of the Act, noted that the assessee has deposited SBNs amounting to Rs.73,61,500/- in his bank account during demonetization period i.e., period from 09.11.2016 to 24.11.2016. According to AO, the cash of Rs.73,61,500/- was deposited by assessee out of receipts of SBNs for the period 09.11.2016 to 24.11.2016 in view of the Gazette Notification issued by the Ministry of Finance in No.2653 dated 08th November, 2016, the Central Government of India has permitted exemptions for certain transactions to the Petrol/Diesel/Gas under authorization of public sector oil marketing companies wherein payment could be received old notes of both Rs.1000/- Rs.500/- for the period from 9.11.2016 to 24.11.2016. The AO noted that apart from this assessee has received SBNs from 25.11.2016 to 22.12.2016 amounting to Rs.4,95,000/- which is not covered by the Gazette Notification and hence, he added this cash receipt in SBNs amounting to Rs.4.95 lakhs as unexplained cash deposit u/s.69A r.w.s. 115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed action of the AO. Aggrieved, now assessee is in appeal before the Tribunal.

5. Now before me, the Id.counsel for the assessee filed copy of Gazette Notification No.2654 – S.O. 3409(E) & 2654-S.O. 3407(E) & 2653 – S.O. 3408(E) dated 8.11.2016 issued by Government of India, Ministry of Finance u/s 24(1) & 26(2) of the Reserve Bank of India Act, 1934 (2 of 1934) as amended by subsequent notifications issued under the Scheme of Demonetization of the year, 2016 and the relevant notification in Gazette Notification No.2653 dated 08.11.2016 which was further substituted vide Notification No.2774 SO 3544E dated 24.11.2016, to the extent of transactions specified below namely

a.....

b.....

c.....

d.....

e. for purchase of petrol, diesel and gas at the stations operating under the authorization of Public Sector Oil Marketing Companies (read as Public Sector Oil and Gas Marketing Companies –vide Notification No.2684 SO 3447(E) dated 13.11.2016)

According to Id. Counsel, this notification dated 24.11.2016 exempted the purchase of petrol, diesel and gas at the stations operated under the authorization of Public Sector Oil Marketing Companies receiving cash in demonetization notes i.e.,SBNs upto 31.12.2016. The AO has also not disputed this fact that the cash deposit is not out of sale of petrol or diesel. Admittedly the assessee is an authorized dealer of Bharath Petroleum Company Ltd., which is

an authorized Public Sector Oil Marketing Company. Once this is a position, I'm of the view that there is no illegality or the cash received is not unexplained because this is received on the basis of sale of petrol exempted vide the above notification which was further extended vide notification dated 24.11.2016. Hence I delete the addition and allow the appeal of assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 7th March, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 7th March, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |