

आयकर अपीलीय अधिकरण, 'ए/एस एम सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A/SMC' BENCH: CHENNAI

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

आयकर अपील सं./ITA No.147 /Chny/2023
निर्धारण वर्ष /Assessment Year: 2017-18

Krishnamoorthy Packiyalakshmi,
48A 2 Ward 49, Sathiya Nagar,
Trichy – 620 017.
[PAN: BUZPP-3619-Q]

The Income Tax Officer,
Vs. Ward-1(2),
Trichy.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri N. Arjunraj, C.A for
Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri S. Chandrasekaran, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.03.2023

घोषणा की तारीख /Date of Pronouncement

: 09.03.2023

आदेश / ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [CIT(A)] in Appeal No.NFAC/2016-17/10105764 dated 15.12.2022. The Assessment was framed by Income Tax Officer, Ward-1(2), Trichy for the relevant A.Y. 2017-18 vide order dated 24.12.2019 u/s. 144 of the Income Tax Act, 1961 (hereinafter 'the Act').

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2. At the outset, it is noticed that this appeal is time barred by 10 days and the assessee has filed condonation petition stating the following reasons:

“As could be seen from the Form No.36 filed, the appeal documents were prepared by the counsel on record on 25.01.2023 and sent to the instructing Chartered Accountant Mr. V.Ramkumar at Trichy for getting the signature of the Petitioner/Appellant through e-mail (ramkumarvairavan@gmail.com). The delay had occasioned on account of the mistake committed in the office of the Chartered Accountant and in fact the challan for Rs.8950/- was paid on 3.2.2023 and the signed documents along with the challan were sent to the counsel on record for filing the appeal before the Registry immediately thereafter.

In fact, the appeal was filed in the Registry on 6.2.2023 in view of the intervening Saturday and Sunday, namely 4.2.2023 and 5.2.2023 and hence the small delay in filing the appeal was not attributable to the Petitioner/Appellant while the said delay had occasioned on account of the mistake committed in the office of the Chartered Accountant which should be considered as reasonable cause for condonation of delay in filing the captioned appeal.”

3. I noticed that the delay is small and the reasons seem to be reasonable. Hence, I condone the delay and admit the appeal for adjudication.

4. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of A.O in making addition of cash deposit made during demonetization period as unexplained money u/s. 69A r.w.s. 115 BBE of the Act amounting to Rs. 8.95 Lakhs.

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5. I have heard the rival contentions and gone through the facts and circumstances of the case. The order of A.O is exparte and according to A.O the assessee is unable to explain the cash deposit made amounting to Rs. 8.95 Lakhs, which includes the cash deposit of Rs. 1.70 Lakhs during demonetization period. He brought out the details, which reads as under:

<i>Name of the Bank and Branch</i>	<i>Account No.</i>	<i>Cash deposit made during F.Y 2016-17</i>	<i>Other deposits (other than cash) made during F.Y 2016-17</i>	<i>Total deposit(s) made during F.Y 2016-17</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(3 + 4)</i>
<i>Karnataka Bank Ltd., Thillai Nagar, Trichy-18</i>	<i>7612000100125701</i>	<i>170000</i>	<i>725000</i>	<i>895000</i>
<i>Grand Total</i>		<i>170000</i>	<i>725000</i>	<i>895000</i>

The A.O accordingly assess the cash deposit as unexplained money u/s. 69A r.w.s.115 BBE of the Act amounting to Rs. 8.95 Lakhs. Aggrieved, the assessee preferred an appeal before CIT(A).

6. The Ld. Counsel for the assessee also pointed out that the CIT(A) has not adjudicated the issue on merits and dismissed the appeal for non prosecution of appeal simpliciter. Aggrieved, the assessee is appeal before the Tribunal.

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7. I noted that the order of CIT(A) is exparte and even the A.O has made assessment u/s. 144 of the Act, that means i.e., practically exparte. The assessee is unable to file any details, but he contended that the assessee has opted to file return of income u/s. 44AD of the Act offering income at 8% of the gross, turnover. The assessee reported gross receipts from sale of construction material at Rs.31,81,225/- and the construction service at Rs.19,50,000 thereby reporting a turnover of Rs.57,31,225/-. The assessee has also reported the sale turnover in the VAT returns. Total cash amount deposited during the demonetization period between 09.11.2016 to 30.12.2016 is only Rs. 1,70,000/- and the same was only out of the opening balance as on 09.11.2016. Further the cash amount deposited for Rs.7,25,000/- for the period other than the demonetization period was also added to the income u/s.69A of the Act without considering the fact that the same was deposited out of the sales receipts, but this was never considered. After going into the entirety of facts, I set aside the order of CIT(A) and that of the A.O and remand the matter back to the file of A.O for fresh adjudication. In term of the above, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 09th of March, 2023.

**Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice President**

चेन्नई/Chennai, दिनांक/Dated: 09-03-2023
EDN/-

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

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