

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.356/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Mrs.Sudha Suresh,
6/25/2, Main road,
Marthandam,
Kanyakumari District- 629 165.
[PAN: AKWPS 6487 R]

(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Circle-1, Nagercoil.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.T. Vasudevan, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing : 07.03.2023
घोषणा की तारीख /Date of Pronouncement : 15.03.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 21.03.2022, and pertains to assessment year 2017-18.

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

1. The impugned order is illegal, opposed to the facts, contrary to law, without jurisdiction and against the principles of natural justice and therefore liable to be quashed.

2. The learned CIT (Appeals) erred in confirming the addition of Rs.73,41,614/- under section 68 towards unexplained cash credits without noticing that the assessing officer had not brought on record the dates of credits and the names of the creditors in whose names the credits are allegedly introduced by the assessee.

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3. The learned CIT (Appeals) ought to have seen that section 68 is not applicable in respect of the sale amount which is already admitted in the profit and loss account and section 68 is applicable only in respect of balance sheet items.

4. The learned CIT (Appeals) failed to note that the assessee was authorized to receive SEN in the petrol pump business as per the instructions issued by Government of India during demonetization period.

5. The learned CIT (Appeals) ought to have seen that the sales amount reported in the petrol pump business is duly supported by the GST monthly returns filed by the assessee.

6. The learned CIT (Appeals) failed to note that there is no provision in section 68 to add the cash deposits during demonetization period.

7. The learned CIT (Appeals) erred in holding that the assessee submitted only the part details without giving an opportunity to the assessee to file the details required by him.

8. The learned CIT (Appeals) ought to have seen that there was adequate and sufficient reasons for not complying with the notices issued by the assessing officer.

9. The appellant prays for leave to add, alter, amend or modify any or all the grounds at any time before or at the time of hearing.

3. The brief facts of the case are that the assessee is engaged in the business of trading in jewellery filed her return of income for the AY 2017-18 on 23.12.2017 declaring total income of Rs.17,73,260/-. The case was selected for limited scrutiny through CASS to verify large value of cash deposits during demonetization period. During the course of assessment proceedings, the AO noticed that the assessee has made cash deposits during demonetization period as per SFT data available amounting to Rs.73,41,614/- and thus, called upon the assessee to file necessary details. The assessee neither appeared nor filed any details, even though, the case was posted for hearing on 28.01.2019, 27.11.2019 & 12.12.2019. Therefore, the AO has completed assessment u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") on 23.12.2019 and made addition of Rs.73,41,614/- towards cash deposits into bank during demonetization period as unexplained cash credit u/s.68 of the Act.

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4. The assessee carried the matter in appeal before the First Appellate Authority, but neither appeared nor filed any details which is evident from Para No.4 of Ld.CIT(A)'s order, where, it has been specified that despite number of opportunities were given to the assessee, the assessee did not file any evidences. Therefore, the Ld.CIT(A) by taking into account the grounds of appeal filed by the assessee and written submissions filed during the course of hearing opined that the assessee could not file any evidences to prove source for cash deposits into bank account during demonetization period. Therefore, confirmed addition made towards cash deposits to bank account u/s.68 of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.AR for the assessee submitted that although, the assessee could not appear before the AO and filed necessary details, but has filed written submissions and explained her case before the Ld.CIT(A). The Ld.CIT(A) ignored all evidences filed by the assessee and sustained addition made towards cash deposits. The AR further submitted that the assessee is running a petrol pump under the license of State Oil Marketing Companies and as per notification of Ministry of Finance dated 08.11.2016 & 24.11.2016 acceptance of Specified Bank Notes is allowed for purchase of petrol, diesel and gas at the stations operating under the authorization of Public Sector Oil Marketing Companies. Therefore, submitted that one more opportunity of hearing to be given to the assessee to explain her case.

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6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not avail number of opportunities were given by both the authorities and not explained her case. Therefore, there is no reason to give one more opportunity to the assessee.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that assessee could not explain source for cash deposits either before the AO or before the Ld.CIT(A), which is evident from the fact brought on record by the authorities that the assessee did not appear and explained her case with necessary evidences. Further, it was also not in dispute that the facts with regard to operating a dealership of Oil Marketing Companies, was not before the AO. But, for the first time, the assessee submitted certain evidences and argued that she was running a petroleum pump under the authorization of Public Sector Oil Marketing Companies and as per Ministry of Finance notifications dated 08.11.2016 & 24.11.2016, Specified Bank Notes are allowed in Petrol Pumps. We find that the arguments of the assessee that she was operating petrol pump and as per notification of Ministry of Finance, she has been allowed to receive Specified Bank Notes up to 15.12.2016, is a new fact which was not before the AO & the Ld.CIT(A). In principle, as per notifications of Ministry of Finance dated 08.11.2016 & 24.11.2016, government has allowed acceptance of Specified Bank Notes up to certain dates for purchase of petrol, diesel, gas at the stations operating under the authorization of public sector and to this

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extent, in principle, the arguments of the assessee appears to be genuine. But, fact remains that no details are filed before the AO & the Ld.CIT(A). Therefore, we are of the considered view that the issue needs to go back to the file of the AO to give one more opportunity of hearing to the assessee and thus, we set aside the order of the Ld.CIT(A) and restore the issue to the file of the AO and direct the AO to re-examine the issue of cash deposits into bank account during demonetization period in light of various averments made by the assessee, including the notifications of Ministry of Finance dated 08.11.2016 & 24.11.2016 and decide the issue in accordance with law. Needless to say, the assessee shall appear before the AO without seeking any adjournment unless otherwise warranted.

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

Order pronounced on the 15th day of March, 2023, in Chennai.

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

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 15th March, 2023.
TLN

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