

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.608/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Andigoundanur Gounden Thavaamani, 115/2, 4 th Main Road, Shivaya Nagar, Reddiyur, Salem-636 004.	Vs	The Deputy Commissioner of Income Tax, Circle-1(1) Salem.
PAN: ADHPT 5196L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Sree Lakshmi Valli, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. D. Hema Bhupal, JCIT

सुनवाईकीतारीख/Date of hearing	:	20.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	24.03.2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 12.11.2021 for assessment year (AY) 2017-18.

2. The assessee has assailed (i) action of the Ld.CIT(A) confirming addition of Rs.27,39,500/- for cash deposits in Indian Overseas Bank during the demonetization period; (ii) is against action of the Ld.CIT(A) confirming action of the Assessing Officer (hereinafter 'AO') in treating amount

deposited in the bank u/s.69A of the Income Tax Act, 1961 (hereinafter 'the Act') and applying section 115BBE of the Act; (iii) is against action of the Ld.CIT(A) confirming action of the AO in respect of addition of Rs.8 lakhs which has been claimed to be agricultural income.

3. Brief facts are that the assessee is an individual, who had filed his return of income on 24.08.2017 declaring total income of Rs.20,14,360/-. Later, the assessee's case was selected for scrutiny and the AO noted that the assessee had claimed to have agricultural income to the tune of Rs.8 lakhs. The Assessing Officer asked the assessee to submit copy of cash book, patta, chitta, adangal, working of agricultural income, details of crops cultivated annual agricultural expenses and net agricultural income along with sales invoice and purchase invoices for earning agricultural income. However, according to the AO, the assessee failed to produce copy of adangal, cash book, working of agricultural income etc. and only produced copy of patta and chitta. Therefore, he was of the opinion that since the assessee has not submitted requisite details called for regarding agricultural income earned, so he is not eligible

to claim as exempt income Rs.8 lakhs and thus, he disallowed it and added the same as income from 'other source' u/s.56 of the Act.

4. Likewise, cash deposits of Rs.27,39,500/- made during the demonetization period between 09.11.2016 and 13.12.2016, the AO asked the assessee to explain cash deposits during that period deposit of specified bank notes, [which has been rendered to be not valid legal tender]. Pursuant thereto, the assessee gave explanation which suggested that these amounts (cash deposits) were out of cash available with him as on 08.11.2016. It was brought to the notice of the AO that cash deposits were made out of sale of plots (immovable property) from 06.06.2016 to 14.09.2016 and gave details of the buyer and the amount received as sale consideration; and filed cash flow statement for the financial year 2016-17 (AY 2017-18). However, the AO was not satisfied with the details and explanation submitted by the assessee and he added the same as unaccounted money u/s.69A of the Act.

5. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), wherein the assessee produced copy of adangal to prove the agricultural income. However, the Ld.CIT(A) observed that since the assessee didn't produce copy of adangal before the AO, producing the same before him during appellate proceedings would tantamount to production of additional evidence, which could be done only by filing of application under Rule 46A of the Income Tax Rules, 1962 (hereinafter 'the Rules'); and since the assessee has not filed application for producing additional evidence, he dismissed the grounds of appeal of the assessee in respect of agricultural income; and Ld.CIT(A) confirmed action of the AO regarding addition made u/s.69A of the Act to the tune of Rs.27,39,500/- by observing that the assessee failed to provide concrete evidences to support the claim which he made during the assessment proceedings that cash deposit was from previously held cash balances. According to the Ld.CIT(A), onus was on the tax payer to justify entries in the bank account and since the assessee has only made peripheral claim / evidences and failed to provide concrete evidence for cash generation from the agricultural activities and quantum of the same for taking

credit from cash deposits during demonetization period, the Ld.CIT(A) confirmed action of the AO. Aggrieved by this action of the Ld.CIT(A), the assessee is in appeal before us.

6. We have heard both the parties and perused records. At the outset, Ld. A.R for the assessee brought to our notice that both the authorities [AO as well as Ld.CIT(A)] has neither given proper opportunity nor considered submissions / documents produced before them to explain / support both the issues raised during assessment / first appellate proceedings. The Ld. A.R., pointed out that AO had disallowed agricultural income of Rs.8 lakhs only on the ground that the assessee failed to produce copy of Adangal and certain other documents during the assessment proceedings. However, the Ld.AR drew our attention to page no.85 of the paper book, which is the acknowledgement (e-proceedings) of filing of copy of adangal and other documents called for by the AO during assessment proceedings, which it is noted has been uploaded by the assessee in the Income-tax portal. Even though, the same was uploaded by the assessee, the AO has disallowed the claim only on the ground that same was not produced before him. On

appeal, the Ld.CIT(A), interestingly, has dismissed the grounds of appeal (agricultural income) of the assessee by simply observing that since the assessee did not file copy of adangal before the AO during assessment proceedings, the same cannot be produced before him without filing application under rule 46A of the I.T.Rules. This action of the Ld.CIT(A) cannot be countenanced in the light of the evidence to show that the assessee has in fact uploaded copy of adangal and other documents called for by AO during the assessment proceedings itself as noted (supra).

7. Likewise, the Ld.CIT(A) has not properly appreciated explanation / evidences submitted before him in respect of cash deposited in the bank account during the demonitization period and only referred to agricultural income which assessee earned and didn't look into the income on sale of immovable property etc. Further, it was brought to our notice by the Ld.A.R for the assessee that even the AO has neither applied his mind nor given proper opportunity to the assessee before making addition u/s.69A of the Act. We, after going through the records and impugned order passed by the Ld.CIT(A) as well

as the AO, find that the assessee did not get proper opportunity before the AO, during the assessment proceedings which resulted in the AO taking adverse view against the assessee on both the issues (supra). Therefore, relying on the decision of the Hon'ble Supreme Court in the case of Tin Box Company Vs. CIT reported in 249 ITR 216, wherein the Hon'ble Supreme Court held that if no proper opportunity assessee got before the AO, then assessment has to be restored back to the file of the AO for denovo assessment. The Hon'ble Supreme Court in the above cited case reversed the action of the Hon'ble High Court, Tribunal and Ld.CIT(A) and restored the matter back to the file of the AO for denovo assessment . It would be gainful to reproduce the order of the Hon'ble Supreme Court (Three Bench Decision) in the case of Tin Box Company Vs. CIT (supra).

"1. It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a

reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

3. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

4. In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the asses-see.

5. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs."

8. Since, we have found that the assessee did not get proper opportunity before the AO during assessment proceedings, we relying on the aforesaid decision of the Hon'ble Supreme Court in the case of Tin Box Company Vs. CIT(supra), set aside the impugned order of the Ld.CIT(A) and direct the Assessing Officer to *de novo* frame assessment; and the assessee is directed to diligently appear / file documents / explanation / written submissions, if so advised to do so and the AO after giving proper opportunity to assessee pass the assessment order in accordance to law.

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

Order pronounced in the open court on 24th March, 2023

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 24.03.2023

DS

Sd/-

(एबी टी. वर्की)

(Aby T. Varkey)

न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाइल/GF.