

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.79/Chny/2021
निर्धारण वर्ष/Assessment Year: 2017-18

The Deputy Commissioner of
Income Tax,
Circle 1, Trichy.

Vs. Shri Kandaswamy Annathurai,
No. 37, Nelpettai Street,
Gandhi Market,
Trichy 620 008.

[PAN:AACPA6576D]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AR V Sreenivasan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : None
सुनवाई की तारीख/ Date of hearing : 16.05.2023
घोषणा की तारीख /Date of Pronouncement : 19.05.2023

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 1, Trichy, dated 23.09.2020 relevant to the assessment year 2017-18.

2. The appeal filed by the Revenue is delayed by 394 days in filing the appeal before the Tribunal due to outbreak of COVID-19 pandemic and accordingly, the delay is condoned and admitted the appeal for

adjudication.

3. The Revenue has raised the grounds:

1. *The Ld.CIT(A) has erred in relying on the cash book produced by the assessee without appreciating the veracity of entries made by the assessee.*
2. *The Ld.CIT(A) has failed to consider the fact that as far as depositing of SBNs into banks during demonetisation period there was no cap and the customers were allowed to make deposits in SBNs in a single deposit irrespective of any amounts. Hence, the assessee's argument that the cash was deposited on various dates due to restrictions by the banks is not true.*
3. *The Ld. CIT(A) has failed to consider the fact that the cash in hand shown by the assessee for the last three years were only in lakhs as tabulated below; and the assessee is failed to explain the reason for huge cash in hand properly.*

| <i>A.Y.</i> | <i>Cash in hand as on</i> | <i>Amount in Rs.</i> |
|----------------|---------------------------|----------------------|
| <i>2014-15</i> | <i>31.03.2014</i> | <i>9,73,042</i> |
| <i>2015-16</i> | <i>31.03.2015</i> | <i>33,46,006</i> |
| <i>2016-17</i> | <i>31.03.2016</i> | <i>21,15,826</i> |

4. *The Ld.CIT(A) has erred in holding that addition u/s.68 would not be possible as particular stream of income has already shown by the assessee without considering the facts that the AO assessed the cash inflow/receipts as unexplained as the source of income itself lacks credibility.*
5. *For these and such other grounds that may be adduced at the time of hearing it is prayed that the order of the CIT(A) may be reversed and that of the Assessing Officer restored.*

4. Brief facts of the case are that the assessee is an individual and e-filed his return of income for the assessment year 2017-18 on 29.10.2017 returning loss of ₹.24,64,234/-. The case was selected for scrutiny under CASS. Notice under section 143(2) of the Income Tax Act, 1961 ["Act" in

short] was issued on 22.09.2018 and the same was duly served on the assessee on 25.09.2018. On perusal of the records, the Assessing Officer has noted that the assessee had deposited cash into bank accounts with SBI, ICICI Bank and Bank of Baroda during demonetization. The Specified Bank Notes (SBN) deposited into the above bank accounts was to the extent of ₹.3,19,52,500/. Thus, notices under section 142(1) of the Act dated 30.07.2019, 08.12.2019 & 15.12.2019 were issued calling for details relating to cash deposits during demonetisation and other details. In response to the notice, the assessee has submitted that out of opening cash balance as on 08.11.2016 of ₹.3,61,73,699/-, a sum of ₹.3,19,52,500/- was deposited in the above bank accounts. The Assessing Officer has not fully acceptable on account of the fact that on perusal of the cash book, the Assessing Officer noticed that the assessee has deposited cash into bank accounts on various dates starting from 10.11.2016 to 27.12.2016. Accordingly, the assessee was asked to explain as to why the deposit was not made in a single day.

4.2 The assessee in his reply had stated that the amount could not be deposited in one stretch as there was a certain limit per day especially when there was a rush. The Assessing Officer has noted that even in the fag end of December also, the assessee had deposited amounts as low

as 6500. Even if the assessee had split the deposit to his convenience, such variations in the denominations of deposit would not normally arise. The assessee had deposited cash into the bank account on 29 days during the demonetization which shows that the cash deposit is not out of the opening cash balance available with him and was treated out of unexplained sources. Accordingly, the Assessing Officer has allowed the cash deposits made on 10.11.2016 & 12.11.2016 of ₹.53,40,000/- and the remaining deposit of SBN into bank account of ₹.2,66,12,500/- [3,19,52,500-53,54,000] remains unexplained and added to the income of the assessee as unexplained credit under section 68 r.w.s. 115BBE of the Act.

5. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) has deleted the addition made under section 68 of the Act by observing as under:

4. *In the assessment order Assessing Officer has on page 2 mentioned as under:*

With regard to cash deposit of his Rs.3,19,52,500/- made in to the bank accounts in form of SBN. The assessee has submitted that out of opening cash balance as on 08.11.2016 of Rs. 3,61,73,669/- a sum of Rs.3,19,52,500/- was deposited in the above bank account”.

4(a) *From the facts of the case it would appear that assessee has deposited the cash in hand available with him as on 08.11.2016 This cash in hand was deposited in the bank accounts as late as 27.12.2016 and this has been objected by the Assessing Officer.*

5. *Assessing Officer has nowhere raised the doubt as to availability of adequate cash in hand as on 08.11.2016. The only objection which the Assessing Officer has taken is on the dates of deposit of cash in the bank. The learned AO has in his wisdom held that merely because assessee has made deposits as late as 27.12.2016 the amount of cash even though available in his books of accounts was to be treated as unexplained. Assessing Officer has nowhere raised any doubt as to cash book and balance of cash in hand as on 08.11.2016. It is not the argument of the Assessing Officer that assessee had unexplained sources of cash or that cash receipts were not adequately recorded in the books and were not emanating from cash balance available in the cash book and accounts which have been regularly maintained by the assessee.*

6. *The Assessing Officer has sought to justify this action by relying on human probability test and has quoted the case of CIT Vs Durga Prasad More 82 ITR 540 (SC) and also the case of Sumathy Dayal vs CIT (SC). The Assessing Officer has also mentioned few other cases seeking to justify the test of human probabilities as propounded by above mentioned Supreme Court cases.*

7. *We may at this juncture refer to speech of Honourable Prime Minister Shri Narendra Modi in announcing demonetisation as on 08.11.2016. As per the speech of Honourable Prime Minister it was announced that the Reserve Bank of India would allow all the banks to receive old currency from 08.11.2016 to 31.12.2016. It is clear that when Government of India has itself allowed 50 days for assessee to deposit SBN in the bank account it is not open to the Assessing Officer to cast doubt on the same merely because assessee did not rush to deposit all of his cash in hand in 1st few days of demonetisation.*

8. *Assessing Officer is right in holding that a normal person would rush to deposit any SBN lying with him in the bank account at 1st available opportunity. However, very fact that assessee did not do so has to be interpreted in a balanced and reasonable manner and not in a preconceived manner. If the assessee has adequate cash in hand balance available with him it was his own sweet will as to when he should deposit the money in his bank accounts. It was for the assessee to decide how and when to deposit his own money in his own bank account and it is not for the Assessing Officer to sit in the judgement chair and decide the same for the assessee.*

9. *Demonetisation was once-in-a-lifetime event and it understandably created turbulence in the minds of business community regarding its impact, its effect and its rollout. It is a matter of general public knowledge that Government of India came out with numerous circulars explaining, elaborating and finally limiting the use of SBN for various activities. In such a dynamic and fluctuating scenario it is not unreasonable for the business person to hold on and wait, to see what new guidance was given by RBI and what relief it any would be given by Ministry of Finance by way of an extension of time or a reduction in rigour of the scheme. Very fact that assessee has deposited the total amount well within the overall limit provided by the Reserve Bank of India cannot in any manner be held against the assessee.*

10. *It may be worthwhile to mention that income tax is concerned with the real income earned by real people in real business situations. Assessment of income chargeable to tax cannot be an activity conducted "in void", on hypothetical basis*

and on the notions of what and ideal and imagined businessmen was supposed to do. In the business environment as it existed during the first 50 days of the demonetisation and the expected mental state of the assessee, the decision to defer deposit of cash in the bank can be considered well within normal action and hence not hit by the human probability test theory. The intention of assessee is one of the primary factors which is used to give clarity as to the real purpose of any action which is sought to be interpreted by the taxing authority. The Assessing Officer has to be just and reasonable. In this case Assessing Officer has neither rejected the books of accounts nor cast any doubt as to the accounting results.

10(a) AR of assessee Shri N. Magesh has submitted reply through ITBA in which he has furnished full cash book and has drawn attention to the conduct and process of demonetisation as seen from the circulars issued by the RBI. As the books of accounts and the availability of cash in hand has not been put in question by the Assessing Officer the very fact that assessee has chose certain period within overall limit given by the Reserve Bank of India to deposit SBN cannot be held against him.

10(b) The month to month build-up of cash in hand as per the audited books of accounts and the cash book is as under:

| <i>S.No.</i> | <i>Date</i> | <i>Opening Balance</i> |
|--------------|---------------------------|------------------------|
| 1. | 01.04.2016 | 21,15,286.00 |
| 2. | 01.05.2016 | 36,89,154.36 |
| 3. | 01.06.2016 | 34,10,434.36 |
| 4. | 01.07.2016 | 33,85,495.43 |
| 5. | 01.08.2016 | 38,34,781.13 |
| 6. | 01.09.2016 | 1,56,98,258.59 |
| 7. | 01.10.2016 | 2,85,52,482.07 |
| 8. | 01.11.2016 | 3,28,37,891.67 |
| 9. | 09.11.2016 | 3,62,33,699.11 |
| | | |
| 10. | 1 st October | 2,8552,482.07 |
| 11. | 8 th October | 3,81,40,668.07 |
| 12. | 12 th October | 4,27,19,993.07 |
| 13. | 14 th October | 3,64,21,479.07 |
| 14. | 20 th October | 3,53,86,198.47 |
| 15. | 27 th October | 3,28,72,105.67 |
| 16. | 02 nd November | 3,27,30,466.67 |
| 17. | 08 th November | 3,46,98,963.22 |

10(c) It can be seen that cash in hand and balance available with the assessee has increased slowly but steadily from 01.04.20-16 till 08.11.2016. Assessee had maximum cash in hand of Rs.427.19 lakhs on 12.10.2016. These details were available with the Assessing Officer who has not investigated the availability of cash in the books of the assessee. AR of the assessee has also raised objection that AO has not sought guidance of the PCIT while making this huge addition and has in a very cryptic and summary manner completed the assessment. It would appear that the AO had just presumed that assessee was on the wrong side of the law and hence would fail the human probability test. This interpretation given by the Assessing Officer clearly seems arbitrary and is based on conjectures and surmises.

10(d) It may hence be noted that addition under section 68 would not be possible as particular stream of income has already been shown by the assessee in this books of accounts. When the inflow/receipts have been recorded in the books of accounts as income the same cannot arbitrarily be taxed under section 68 again as income as has been done in this case. The assessee has shown these receipts as being payments received from the debtors. These debtors were all emanating from the sales made and recorded in the books. It would seem that the Assessing Officer has exceeded his powers as he has just allowed cash deposited during the 1st few days and not allowed cash deposited by the assessee in his own bank for other dates without giving any cogent reason.

11. From the above discussion it is apparent that both on facts and on law the Assessing Officer has managed to misguide himself as to the real issue regarding availability of adequate cash in hand with the assessee as on 08.11.2016, Once the assessee has sufficient cash in hand available with him the same cannot be treated as unexplained cash and the addition for the same cannot be made under section 68 of the I.T. Act 1961. On the above mentioned facts and the legal matrix the addition made under section 68 is hence deleted. As a result appeal of assessee is ALLOWED.

6. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted the customers were allowed to make deposits in SBNs in a single deposit irrespective of any amount. Therefore, the assessee's argument that the cash was deposited on various dates due to restrictions by the banks was not true.

7. When the appeal was taken up for hearing, none appeared on behalf of the assessee despite various opportunities have been afforded. Hence, we proceed to decide the issue on merits after hearing the Id. DR.

8. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. In this case, out of the cash deposit of ₹.3,19,52,500/- made by the assessee into the bank accounts in the form of SBN, the Assessing Officer allowed the cash

deposits of ₹.53,40,000/- made on 10.11.2016 & 12.11.2016 and the remaining deposit of SBN to the extent of ₹.2,66,12,500/- was treated as unexplained credit under section 68 r.w.s. 115BBE of the Act.

8.1 On appeal before the Id. CIT(A), the assessee has produced all the details including audited books of accounts as was produced before the Assessing Officer. From the cash book of the assessee, the Id. CIT(A) has noted that the cash in hand and balance available with the assessee has increased slowly but steadily from 01.04.2016 till 08.11.2016 and the assessee had maximum cash in hand of ₹.427.19 lakhs as on 12.10.2016 much before the announcement of demonetization of SBN on 08.11.2016. Moreover, the assessee has shown particular stream of income in his books of account and the inflow/receipts have been recorded in the books of account as income, we are of the opinion that the Assessing Officer cannot treat it as unexplained credits. From the records, the Id. CIT(A) has noted that the assessee has shown the receipts as being payment received from the debtors and also these debtors were all emanating from the sales made and recorded in the books and these facts were not disputed by the Revenue. When the demonetization was announced by the Government, there was heavy tension among the public for depositing the SBN. Therefore, we cannot question as to why the deposits were not

made in single day. From the point of Revenue, if the assessee has to make deposit on single day, why the Assessing Officer has allowed the deposits made on 10.11.2016 & 12.11.2016 to the extent of ₹.53,40,000/- . In fact, it was announced that the Reserve Bank of India would allow all the banks to receive old currency from 08.11.2016 to 31.12.2016 and the assessee made deposit before the end date announced by the Government. Under these facts and circumstances and once the cash in hand was not disputed, we are of the considered opinion that the Id. CIT(A) has considered all aspects and rightly allowed the appeal of the assessee. We find no reason to interfere with the order passed by the Id. CIT(A). Thus, the appeal filed by the Revenue is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 19th May, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 19.05.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/
Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.