

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.240/Viz/2022

(निर्धारण वर्ष / Assessment Year :2017-18)

Sri Kanaka Mahalakshmi  
Crackers,  
Visakhapatnam.

PAN: ABYFS 8554 Q

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

Vs. Income Tax Officer,  
Ward-1(1),  
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Sri Sankar Pandi, Sr. AR

24/05/2023

15/06/2023

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1046394928(1), dated 19/10/2022 arising out of the order passed U/s. 143(3) vide Order No.

ITBA/AST/S/143(3)2019-201022913442(1), dated 23/12/2019 of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Briefly stated the facts are that the assessee filed its return of income for the AY 2017-18 on 13/11/2017 declaring an income of Rs. 5,97,530/-. Subsequently, the case was selected for scrutiny under CASS and notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee from time to time. The assessee is a wholesale and retail seller of crackers. The assessee filed return of income adopting the presumptive taxation provisions as per section 44AD of the Act. During the scrutiny assessment, the Ld. AO noticed that the assessee has deposited demonetized cash in the bank account with Andhra Bank. It was also noticed by the Ld. AO that the assessee declared a turnover of Rs. 28 lakhs through banking channels and cash sales upto the date of demonetization for Rs. 39,74,601/-. The Ld. AO also noticed that the assessee has deposited cash of Rs. 13,11,000/- into the bank account from 01/08/2016 to 8/11/2016. The Ld. AO after scrutinizing the VAT returns submitted by the assessee, arrived at the cash balance as follows:

Total sales as per the VAT returns	Rs. 67,74,601
Less: Sales through banking channels	Rs. 28,00,000
Cash sales till date of demonetization	Rs. 39,74,601
Less: Cash deposited till the date of	Rs. 13,11,000

demonetization (till 08/11/2016 night)	
Maximum cash available with the assessee from sales till date of demonetization	Rs. 26,63,601

3. The Ld. AO then proceeded to arrive at the profit as per section 44AD of the Act based on the VAT turnover and computed the assessee's business income at Rs. 4,85,970/- as against Rs. 5,46,001/- declared by the assessee. The Ld. AO also observed that the assessee has deposited Rs. 64,50,000/- into the bank account during the demonetization period whereas it was observed by the Ld. AO that the cash balance was Rs. 26,63,301/- only. The Ld. AO estimated that the assessee would have spent Rs.6,63,301/- towards various expenses and considered the balance of Rs. 20 lakhs as available with the assessee for depositing into the bank account. Therefore, the Ld. AO proceeded to treat the amount of Rs. 44,50,000/- [Rs. 64,50,000 - Rs. 20,00,000] as unexplained money as per the provisions of section 115BBE of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

4. Before the Ld. CIT(A)-NFAC, the assessee's representative submitted that the Ld. AO has erred in taking an amount of Rs. 64,50,000/- as cash deposits whereas the actual cash deposits is

Rs. 53,50,000/- only. The Ld. CIT(A)-NFAC considering the various submissions made by the Ld. AR based on the declared turnover by the assessee while filing the return of income, partly allowed the appeal of the assessee and directed the Ld. AO to make an addition of Rs. 19,35,996/- as unexplained. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us.

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

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT (A) is not justified in sustaining the addition to the extent of Rs. 19,35,996/- out of addition of Rs. 44,50,000/- made by the assessing officer U/s. 69A of the Act towards alleged unexplained cash deposits during the demonetization period.*
- 3. The Ld. CIT(A) ought to have held that the assessing Officer is not justified in charging the above said addition to tax at higher rate by invoking section 115BBE of the Act.*
- 4. Any other grounds may be urged at the time of hearing."*

6. At the outset, the Ld. AR argued that the assessee has made purchases to the extent of Rs. 1,06,95,659/- as has closing balance as on 31/3/2017 at Rs. 26,01,000/-. The Ld. AR further submitted that these purchases have been duly declared in the VAT returns which was not disputed by the Ld. AO. Further, the

Ld. AR also submitted that the net cost of goods sold should be at Rs. 80,94,659/- [Rs. 1,06,95,659 – Rs. 26,01,000]. The Ld. AR further submitted that if the estimated percentage is included in the above cost of goods sold, the gross sales stood at Rs. 87,98,542/-. The Ld. AR admitted that the some of the sales were not disclosed in the VAT returns. Ld. AR also further pleaded that the assessee does not have any other sources of income or any other bank account and hence the entire sales are deposited into the single bank account which is with Andhra Bank. The Ld. AR further submitted that all these submissions were placed before the Ld. Revenue Authorities but it was not considered. The Ld. AR further submitted that the sale of crackers being a seasonal business the assessee earned more profits but has decided to avail the benefit of presumptive taxation U/s. 44AD of the Act. The Ld. AR therefore pleaded for considering the additional profit earned by the assessee. There is sufficient cash balance with the assessee and hence the addition made U/s. 115BBE by the Ld. Revenue Authorities should be deleted.

Per contra, the Ld. DR fully supported the orders of the Ld. Revenue Authorities.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The case of the AO is that the assessee has declared a turnover of 75,25,004/- and accordingly estimated profit as per provisions of sec 44AD of the Act, as against the turnover as per VAT returns for Rs 67,74,601/-. The Ld AO proceeded to compute the income and cash balance considering the VAT turnover and computed the cash balance available with the assessee at Rs 26,63,301/-, while recomputing the income at Rs. 4,85,968/- as against the income declared by the assessee in ITR at Rs. 5,46,001/-. The Ld AO also estimated cash expenditure at Rs. 6,63,301/- while considering the balance of Rs. 20 lakhs as cash available with the assessee for deposit in to the bank during demonetization. We also note that the Ld. AO claims that the assessee has deposited cash of Rs 64,50,000/-, whereas the assessee claims to have deposited only Rs 53,50,000/- as detailed below:

Date	Nature of deposit	Amount (Rs.)
10/11/2016	Cash deposit	10,00,000
11/11/2016	Cash deposit	2,50,000
13/11/2016	Cash deposit	8,00,000
14/11/2016	Cash deposit	8,00,000
19/11/2016	Cash deposit	10,00,000
25/11/2016	Cash deposit	8,00,000
28/11/2016	Cash deposit	7,00,000
	Total	53,50,000

This fact was also verified by Ld CIT(A)-NFAC from the bank statement produced before him. We find that the Ld CIT(A)-NFAC has accordingly proceeded to compute the cash balance as per the turnover declared by the assessee while filing ITR, and hence arrived at the cash balance at Rs. 34,14,004/-. The Ld CIT(A)-NFAC has also estimated cash expenses at Rs 4,00,000/- net of cash withdrawals and has computed unexplained cash of Rs 19,35,996/-. Meanwhile the assessee claims that he has made purchases for Rs 1,06,95,659/- and has a closing stock on hand is Rs.26,01,000/- as at 31<sup>st</sup> March 2017. This fact was never disputed by the Revenue. From the written submissions made before Revenue, which is also placed before us, we find that the assessee has computed the cost of goods sold at Rs. 80,94,659/- (Rs.1,06,95,659 - Rs.26,01,000). If the estimated profit is included to the above cost of goods sold the gross sales stood at Rs. 87,98,542/-. All these submissions were placed before the Revenue, but it was not considered. The contention of the AR is that the assessee has no other source of income and has also only one bank account, where cash sales is deposited, merits consideration. The AR also pleaded that the assessee has taken the benefit of presumptive tax provisions, whereas the profit margins in this seasonal business is higher than 8% also deserves consideration. We therefore find merit in the argument that the assessee's only source of income is from sale of crackers, and it can be

concluded that the cash deposits in the assessee's bank account arise only out of cash sale. No material against the assessee is brought on record by the Ld. AO for the cash deposits. When the purchases and closing stock was not disputed by the Revenue, it is imperative to admit that the difference ought to be the sales made by the assessee. In similar circumstances the Chennai Bench of the Tribunal in the case of Sridevi Ravi vs ITO (60 CCH 0408 (Chen Trib) it was held as follows:

*"10. In this case, the Assessing Officer has accepted part of cash deposits as out of her business receipts and part of cash deposits as her unexplained investments, without brought on record any cogent reasons to justify different view taken on cash deposits found in her bank account during the same financial year. The learned CIT(A) has also simply upheld the findings of the Assessing Officer without assigning any reason why explanation furnished by the assessee regarding source of income for cash deposits found in ITA Nos. 2716 to 2718/Chny/2018 her bank account was accepted in part, cannot be accepted for remaining cash deposits found in the same bank account. Therefore, we are of the considered view that Assessing Officer as well as learned CIT(A) were erred in assessing part of cash deposits as unexplained investments to be taxed u/s.69 of the Act and part of cash deposits as receipts from business liable to be taxed u/s.44AD of the Act. Hence, we direct the Assessing Officer to treat the total cash deposits found in her bank account maintained with Bank of India, West Mambalam branch as receipts from her civil contract business and estimate 8% net profit on total receipts as per the provisions of section 44AD of the Act. In the result, the appeal filed by the assessee for the assessment year 2010-11 is partly allowed."*

8. The assessee in its written submissions accepted the additional profit of Rs. 6,62,458/-. Relying on the decision of the Chennai Bench of the Tribunal in the case of Sridevi Ravi vs ITO (60 CCH 0408 (Chen Trib)

(supra), we find that the assessee has therefore explained the cash deposits and hence no addition can be made U/s. 69A r.w.s. 115BBE of the Act. It is ordered accordingly.

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

Pronounced in the open Court on the 15<sup>th</sup> June, 2023.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated :15.06.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sree Kanaka Mahalakshmi Crakers, D.No.22-51-31, One Town, Visakhapatnam, Andhra Pradesh – 530001.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), Pratyakshkar Bhavan, MVP Double Road, Visakhapatnam, Andhra Pradesh – 530017.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam