

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

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.272/Chny/2021
निर्धारण वर्ष /Assessment Year: 2017-18

The Dy. Commissioner of
Income Tax,
Non Corporate Circle-7(1),
Chennai.

(अपीलार्थी/**Appellant**)

Shri Raju Saravanan,
No.8, G-3 Santham Apts.,
Vs. Thamarai Nagar, 2nd Street,
Thirumullaivoyal,
Chennai – 600 062.
[PAN: BBCPS-8286-C]
(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by

: Shri G. Baskar, Advocate &
Shri I. Dinesh, Advocate

प्रत्यर्थी की ओर से /Revenue by

: Shri ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 08.06.2023

घोषणा की तारीख /Date of Pronouncement

: 28.06.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals), Chennai [CIT(A)] dated 18-09-2020 and pertains to Assessment Year (AY) 2017-18.

The Revenue has raised the following ground of appeal:-

“The learned CIT-A has erred in not providing an opportunity to the AO under Rule 46A as new evidence was submitted by the assessee during the course of the appellate proceedings.”

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2. The brief facts of the case are that the assessee is an individual engaged in the business of trading in cement. A survey under section 133A of the Act was conducted in the business premises of the assessee on 15-03-2018 on the basis of the information that during demonetization period the assessee has deposited SBN currencies amounting to Rs.1,02,76,750/- in the bank accounts. During that survey, a sworn statement was recorded from the assessee which was later on retracted by the assessee. The assessee filed his return of income electronically on 31-03-2018 declaring a total income of Rs.34,49,580/- which was selected for scrutiny under CASS. Accordingly, notices under section 143(2) of the Act dated 16-08-2018 and under section 142(1) of the Act dated 27-05-2019 along with the questionnaire were served upon the assessee. The assessee, in response to such notices submitted the details and clarifications as called for. The Ld. Assessing Officer [AO] completed the assessment under Section 143(3) of the Act vide order dated 30-12-2019 by adding that amount of Rs.1,02,76,750/-. While completing the assessment, the Ld. AO took rest on the following:-

- (i) *Ledger accounts of the Debtors are not furnished*
- (ii) *Valid PAN of the Debtors are not available*
- (iii) *Cash available as on 08-11-2016 were not deposited immediately, instead the appellant deposited in a piecemeal manner spreading over 53 days during the demonetization period;*
- (iv) *Books of account are not furnished;*
- (v) *Confirmations of the Debtors are undated; and*

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(vi) Financial statements of the Debtors are not furnished.

3. Being aggrieved, the assessee filed 1st appeal before the Ld. CIT-A. The Ld. CIT(A) vide order dated 18-09-2020 disposed of the appeal in favour of the assessee and has deleted the addition of Rs. 1,02,76,750/- made by the Ld. AO.

Aggrieved, the Revenue filed the present appeal before the Tribunal.

4. Heard both the parties and perused the material on record. The Ld. DR contending that, the Ld. CIT(A) did not give any opportunity of being heard to the Ld. AO before accepting the additional evidence filed by the assessee. And secondly, there was confessional statement of the assessee that the amount of Rs. 1,02,76,750/- deposited in the bank account was the unexplained cash deposit. On the other hand, the Ld. AR contended that no additional evidence was submitted by the assessee before the Ld. CIT(A) and deposit made in the bank account during the demonetization period was not unexplained cash deposit. The Ld. AR further claims that, the statement recorded during the survey proceeding was not a proper confessional statement.

5. As per submissions of both the parties, the issue to be adjudicated by us is whether the assessee had filed any additional evidence before the Ld. CIT(A) during the 1st appellate proceedings

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and whether the confessional statement recorded during the survey proceeding was a proper confessional statement or not. The assessee submitted before the Ld. CIT(A) that, Section 133A of the Act does not empower the Authorized Officer to record statement on oath. The object of the survey is to collect evidence and not confessional statement as the survey proceeding is different from the search proceeding. In this connection, the assessee relied on the judgment of the Hon'ble Kerala High Court. Regarding the cash deposit, the assessee's submission were that it was the cash collections from the debtors during pre-demonetization period as sales were made prior to demonetization, cash had to be deposited in a staggered manner due to non-acceptance of bulk deposits by the Bank in a single day etc.

6. The Ld. CIT(A) observed that the Ld. AO did not discuss in detail the documents submitted by the assessee and there is no finding on how the assessee's contention was not acceptable. Therefore, the Ld. CIT(A) called for assessment records and survey folders for examination of facts by himself. After examination of the same the Ld. CIT(A) vide para No. 8.5 of his order dated 18-09-2020 have observed as under:-

"8.5 In the written submissions filed by the AR, it was stated that the appellant had furnished all the documentary evidences to substantiate the fact that cash deposits during demonetization period were made out of collections from the Debtors in respect of

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sales prior to demonetization. However, the AO has not discussed in detail the documents submitted by the appellant and there is no finding on how the appellant's contention is not acceptable. Hence, this office has called for assessment records and survey folders for the purpose of examination of facts. From the perusal of assessment records, it is evident that the AO has not ascertained the factual position of the case and concluded the assessment on the basis of sworn statement recorded during the course of survey. Further, the AO has not made any efforts to find out whether the appellant is correct or otherwise in his statement regarding the source of cash deposits. Hence, by virtue of coterminous and coextensive powers of this office with that of the AO and in exercise of powers vested with this office U/s.250(4) of the Act read with sub-rule (4) of rule 46A of the Income Tax Rules, 1962, the appellant was directed to produce the following by way of order sheet noting:

7. The Ld. CIT(A) examined the aforesaid materials very carefully and finally came to the conclusion that, the Ld. AO erred in treating the cash deposit in the bank account during demonetization period as unexplained. The final observations of the Ld. CIT-A read as under:-

"8.26 In view of the above discussions, I do not hesitate to hold that the AO erred treating the cash deposits in the bank account during demonetization as unexplained although the nature and source of cash deposits being proceeds arising out of receipts from Debtors is patently evident from the entries in the audited books of account of the appellant. It is not the case either of the AO or survey team that the cash deposited in the banks during the demonetization period was in excess of what was available in the cash book. The fact that the cash deposits in banks were sourced out of cash receipts from Debtors is evident from the entries in the cash book. Nothing incriminating against or contrary to the entries recorded in the cash book was found either during the course of survey or during the course of assessment proceedings. The books of account of the appellant have been audited by a Chartered Accountant and have not been rejected by the AO u/s.145(3) of the Act. It is not the case of the AO either that the cash receipts from the Debtors who are not genuine. Further, the sales and purchases accounted by the appellant proved to be genuine and are not inflated or fictitious. Thus, the recording of any bogus cash receipt is not borne out from the facts on record or from the findings of the survey proceedings. Therefore, sales recorded in the books of account of the appellant having been accepted by the AO, the corresponding cash collections from the

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Debtors cannot be rejected and are deemed to have arisen on account of income from unexplained sources on the basis of mere surmises and conjecture. Therefore, I am of the considered view that the addition of Rs.1,02,76,750/- made by the AO by treating cash deposits during demonetization period as unexplained is not tenable and deserves to be deleted. Thus, the AO is hereby directed to delete the addition of Rs.1,02,76,750/-.

Having decided the appeal on merits after a detailed analysis of the case whereby all the issues raised in grounds of appeal are addressed directly or indirectly, there is no need to separately adjudicate the other grounds which now become purely academic.

9. In the result, the appeal is allowed. This order passed under section 250 read with section 251 of the Act.”

8. We have carefully considered the submissions of the parties as well as observations of the lower appellate authorities. We observe that, the Ld. CIT(A) has decided the appeal by taking a correct decision. It was proved that, deposit of the amount of Rs. 1,02,76,750/- in the bank accounts by the assessee were the recoveries made from his debtors. We are also in agreement with the views of the Ld. CIT(A) that, confirmation from debtors are not required regarding cash payment made by them. They are purchaser of goods. It is not the duty of a businessman to ascertain the financial position of a purchaser / buyer of goods. As the purchasers are reliable persons, the assessee sold the goods on credit to them. Therefore, explanation for cash deposit by the assessee in the bank accounts were there and the same has been proved before the Ld. CIT(A). We are also in agreement with the finding of the Ld. CIT-A that assessee can retract statement which was given during the survey proceeding as the said

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statement was not given with free mind. The mind of the assessee was in stress at the time of recording of his statement by the authorised officer of the Department. Further despite of the confessional statement, the assessee succeeded in proving his claims. Accordingly, we confirm the decision of the Ld. CIT(A) vide which he directed the Ld. AO to delete the addition of Rs. 1,02,76,750/- from the total income of the assessee.

9. Regarding the additional evidence submitted before the Ld. CIT(A) by the assessee, we observe that the assessee has complied with the direction of the Ld. CIT(A). Therefore, the assessee did not furnish any additional evidence before the Ld. CIT(A). The assessee was bound to comply the direction of the Ld. CIT(A). The Ld. CIT(A) himself has examined the relevant materials, because the Ld. AO did not consider the said materials during the assessment proceeding. The Ld. CIT(A) was empowered to call for the materials and examined the same. In CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC), wherein it was held that the AAC (now CIT[Appeals]) has plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the ITO. Therefore, we have no alternative but to

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confirm the decision of the Ld. CIT(A) and decide the appeal against the Revenue.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 28th June, 2023.

Sd/-

(मंजुनाथ. जी)

(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 28.06.2023.

EDN/-

Sd/-

(मनोमोहन दास)

(Manomohan Das)

न्यायिक सदस्य/Judicial Member

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

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