

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

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं  
श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**  
**AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.153/Chny/2023  
निर्धारण वर्ष /Assessment Year: 2017-18

Mrs.Ektha Sanjey Ahuja,  
1F, Rajaji Road,  
Salem-636 007.

v. The Dy. Commissioner –  
of Income Tax,  
Circle-1(1),  
Salem.

[PAN: ABEPN 1225 F]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr.N.Arjunraj, CA  
: Mr. AR.V.Sreenivasan,  
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 21.06.2023

घोषणा की तारीख /Date of Pronouncement

: 28.06.2023

**आदेश / ORDER**

**PER MANOMOHAN DAS, JM:**

Aforesaid appeal by assessee arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A) dated 09-01-2023 in the matter of assessment framed by Ld. Assessing Officer [AO] under section 143(3) of the Act on 18-12-2019.

**2.** The grounds of appeal of the assessee are as under:

1. The order of the National Faceless Appeal Centre at Delhi dated 09.01,2023 in DIN & order No. ITBA/NFAC/S/250/2022-23/1048574768(l) for the above assessment year is contrary to law, facts, and in the circumstances of the case.

2. The NFAC erred in sustaining the addition of Rs.53,50,000/- in terms of Section 69 A read with section 115 BBE of the Act as part of the computation of taxable total income without assigning proper reasons and justification.

**:: 2 ::**

3. The NFAC failed to appreciate that the sustenance of the said sum as unexplained money on the facts and in the circumstances of the case was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

4. The NFAC failed to appreciate that the explanation offered for the source of the cash deposits during the demonetization period with evidences was overlooked and brushed aside and ought to have appreciated that the non-consideration of the explanation offered for source without proper application of mind in the process of adjudication of the appeal pending and disposed off should be reckoned as nullity in law.

5. The NFAC failed to appreciate that the remand proceedings initiated earlier and completed on receipt of the remand report were not taken to its logical end and ought to have appreciated that the reasons for non-furnishing of the remand report were wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

6. The NFAC failed to appreciate that the realization of trade debtors and income earned from the business duly accounted and reflected as part of the books of accounts maintained in the regular course which constituted the source for the deposit of SBNs would negate the presumption of the applicability of section 69A of the Act thereby vitiating the charge of enhanced rate of tax u/s 115 BBE of the Act.

7. The NFAC failed to appreciate that the survey results were completely ignored and ought to have appreciated that the explanation offered for the source of deposit of cash into the bank accounts was noticed/recorded during the course of survey conducted thereby vitiating the findings relating to sustenance of the disputed addition as unexplained money forming part of the computation of taxable total income.

8. The NFAC failed to appreciate that the consistent stand taken by the appellant and filed as part of the written submissions filed/e-responses uploaded was completely overlooked and brushed aside thereby vitiating the related findings.

9. The NFAC failed to appreciate that the judicial trend in this regard brought to the notice of the Revenue was completely overlooked and brushed aside and ought to have appreciated that the misreading of facts and error of law committed in the orders passed by the authorities below should be considered as bad in law.

10. The NFAC failed to appreciate that in any event the assessment of entire disputed cash deposits was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

11. The NFAC failed to appreciate that the procedure prescribed statutorily for the conduct of the faceless appeal hearings was not followed and ought to have appreciated that the procedural irregularities committed should be considered as fatal to the passing of the impugned order.

12. The NFAC failed to appreciate that the passing of the impugned order without granting personal hearing had completely defied the principles of Natural Justice as well in defying the rules prescribed in relation thereto should be reckoned as bad in law.

13. The NFAC failed to appreciate that the entire recomputation of taxable total income was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

14. The NFAC failed to appreciate that the order of assessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

15. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

:: 3 ::

3. The brief facts of the case are that the assessee is an individual and engaged in the business of money lending. She filed her return of income for the assessment year on 31-03-2018 declaring total income of Rs.53,78,000/- which was e-processed under section 143(1). Subsequently, the case was selected for scrutiny under CASS and notices under section 143(2) was served upon the assessee on 24-09-2018. As there was no respond from the assessee, a notice under section 142(1) was issued on 14-10-2019 asking to submit the following details:

(i) *Please produce the details of sources of cash deposits made into the bank account along with reconciliation of bank account entries and cash book. Also explain the sources for cash deposit made during the demonetization period and provide explanation in the following format .....*

(ii) *Please state are you an eligible person/ agency to receive demonetised currencies during the demonetization period as per Ministry of Finance S.O.3408(E) dated from Nov 8th, 2016 to Dec 15th 2016.*

(iii) *Please state that the cash deposit have been accounted in the books of account and necessary proofs in support of your claim of cash deposit in the form of identity, genuineness and creditworthiness of the person from whom cash was received along with cash book (month wise) in the following format....*

(iv) *Details of moth wise cash sales and cash deposits from 01-04-2015 to 08-11-2015*

(v) *Details of month wise cash sales and cash deposits from 01-04-2016 to 08-11-2016.*

(vi) *In this regard, submit the details of month wise cash received from customer and deposited the same into bank account from 01-11-2016 to 08-11-2016.*

(vii) *Month wise cash deposit received from customer and deposited into bank accounts from 09-11-2016 to 30-12-2016. In this regard you are requested to submit cash petty book for the cash received from the customer and proof of cash in and at the end of the day from 01-11-2016 to 31-12-2016.*

*You are required to explain the source(s) for cash deposit in the aforesaid bank account with material evidence .....*

*"Please produce the details of sources for large payment of tax paid in cash during the period of demonetization and state whether it is accounted in your book of accounts and produce the proof...."*

**:: 4 ::**

**4.** The assessee in response submitted a reply along with statement of income. The Ld. AO after consideration of the reply filed by the assessee concluded the assessment that the assessee made cash deposits in the ICICI bank account no. 611901055425 to the tune of Rs.38,50,000/- and paid advance tax of Rs.15,00,000/- in cash during the demonetization period. The Ld. AO while concluding the assessment observed that the assessee failed to explain the source of cash deposit and large tax paid in cash during the period of demonetization and added the said amount to the total income of the assessee.

**5.** Being aggrieved, the assessee filed 1<sup>st</sup> appeal before the Ld. CIT(A). However, the Ld. CIT(A) vide order dated 09-01-2023 upheld the additions made by the Ld. AO.

**6.** Aggrieved further, the assessee filed the present appeal before the Tribunal.

**7.** Heard both the representatives of both the parties and perused the material on record.

**8.** The Ld. AR submitted that the Ld. CIT(A) did not consider the confirmations of the borrowers which was furnished by the assessee during the appellate proceeding. The Ld. CIT(A) did not furnish the remand report of the Ld. AO to the assessee. The Ld. DR on the other hand submitted that the assessee has failed to explain the source of the cash deposits and payment of advance tax in cash during the demonetization period. The Ld.

**:: 5 ::**

DR further submitted that the confirmations of the borrowers were not submit during the assessment proceeding and the same are obtained after four years due to which it has no reliability.

**9.** We have carefully considered the submissions of the parties and the observations of the lower authorities. We observe from the order of the Ld. CIT(A) that there was a survey proceeding against the assessee but the assessment order of the Ld. AO dated 18-12-2019 is totally silent about such survey proceeding, therefore, it cannot be said that the order of the Ld. AO was a proper order. It was a defective order. The Ld. AO failed to consider the entire facts of the matter. Secondly, the Ld. CIT(A) did not furnish the remand report of the Ld. AO to the assessee due to which the assessee could not furnish reply before the Ld. CIT(A) effectively. The Ld. CIT(A) considered that remand report of the Ld. AO behind the back of the assessee. Further, the Ld. CIT(A) did not consider the confirmation letters of the borrowers which were filed by the assessee while passing of the impugned appellate order. We think that, non-furnishing the remand report of the Ld. AO to the assessee and non-consideration of the confirmation letters of the borrowers of the assessee by the Ld. CIT(A) violated the principles of natural justice and therefore, the impugned order of the Ld. CIT(A) dated 09-01-2023 is unsustainable in the eyes of law. Therefore, we set aside the order of the Ld. CIT(A) dated 09-01-2023 and remand the matter to the Ld. AO for reframing of the assessment order after giving to the assessee a reasonable opportunity of hearing. At the same time, we

:: 6 ::

direct the assessee to substantiate her claims before the Ld. AO. Ordered accordingly.

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

Order pronounced on the 28<sup>th</sup> day of June, 2023, in Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(मनोमोहन दास)

**(MANOMOHAN DAS)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28<sup>th</sup> June, 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