

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

श्री मनोज कुमार अग्रवाल, लेखासदस्य 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.344/Chny/2020
निर्धारण वर्ष /Assessment Year: 2016-17

Shri Thiyagarajan Kavitha,
No.7, Palat Madhavan Road,
Mahalingapuram,
Chennai – 600 034.
[PAN: BPRPK-9829-J]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Non Corporate Ward-5(1),
Chennai
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri J. Vignesh, C.A
प्रत्यर्थी की ओर से /Respondent by : Shri ARV Sreenivasan, Addl. CIT
सुनवाई की तारीख/Date of Hearing : 15.06.2023
घोषणा की तारीख /Date of Pronouncement : 28.06.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of the learned Commissioner of Income Tax (Appeals) -5, Chennai [hereinafter "CIT(A)"] dated 16-01-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] under section 143(3) of the Income Tax Act, 1961 [hereinafter "the Act"] on 24-12-2018. The assessee's grounds of appeal are as under:

"1. The order of the Learned Commissioner of Income Tax Appeals, Chennai, in upholding the order of the assessing officer which is

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against law, principles of justice, weight of evidence and probabilities of the case of the appellant.

2. The Learned Assessing Officer and the Appellate Commissioner have erred in ignoring the Board's Circular and judicial decisions with regards to conversion of limited scrutiny into a complete scrutiny without the prior approval of the competent authorities.

3. The learned assessing officer and the appellate commissioner have failed to note that the reasons for taking up for scrutiny cannot be cash deposits after demonetization period as the demonetization period pertains to Financial Year 2016-2017 and the year under assessment is Financial Year 2015-2016.

3. The learned assessing officer and Commissioner of Income Tax Appeals have failed to consider that advances mentioned in their order are trade advances received for supply of material which are subsequently squared up against sales do not constitute unexplained investment under section 69C.

4. The Learned Assessing Officer and the Commissioner of Income Tax Appeals should have seen that the so called investments, which are brought to tax, being recorded in the books of account maintained (from which books only the assessing officer got the information) will not come under unexplained investments as it leads to double taxation of same income and hence the order passed is without legal sanction, jurisdiction and void abintio.

5. The Learned Assessing Officer and the Appellate Commissioner are wrong in making and sustaining respectively of the additions of Rs. 78,31,180/- received as trade advances and squared up in the same year by sales and Rs. 18,43,974/- received as trade advances at the end of the year and outstanding at the end of the year and squared up by sales in the subsequent year under section 69 of the Income Tax Act as the unexplained investment thus bringing the same income to tax twice which is against the Income Tax Act and also against the constitutional rights.

6. The Learned Assessing Officer and Commissioner of Income Tax Appeals have ignored the sales invoices, VAT returns , sales and cash reconciliation etc. filed before them and included in the paper book and has not considered them as evidence in passing their orders making additions.

7. The Learned Assessing officer and the Commissioner of Income Tax Appeals have not gone in to the ledger account copies of the parties which would have shown that the transactions with these parties were continuing transactions and were in cash and also the fact that majority of the sales of the appellant are only through cash

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sales in the year thus the totality of the transactions or the business of the appellant was not taken in to account while passing the assessment order or the appellate order.

8. The learned assessing officer and the Commissioner of Income tax Appeals has failed to consider that confirmation of accounts cannot be insisted as per various judicial pronouncements once trade advance is squared up as sale and included in income and taxed.

9. The Learned Commissioner of Income Tax and the Assessing Officer have failed to consider that the accounts of the appellant were duly audited by the Auditors and were subjected to tax audit also.

10. The Assessing Officer and the Learned Commissioner of Appeals were wrongly invoked and sustained section 69 which has no relevance and is not applicable at all to trade advances.

11. The learned Assessing officer and the Appellate Commissioner are wrong in imposing interest under section 234B and 234C as the same is not applicable in the appellant's case.

12. The appellant craves leave to furnish in case of a need to file additional grounds if any on or before the hearing or at the time of hearing.

13. The Appellant prays that the Honorable ITAT may be pleased to quash the Appellate order as void and illegal or grant and give suitable remedy as prayed for and render justice to the Appellant.

2. The brief facts of the case are that the assessee is an individual and is engaged in the business of trading of Acid Slurry and Spent Acid carrying on the proprietary business in the name and style of M/s Supriya Chemicals. The assessee filed her return of income for the AY 2016-17 on 05-01-2018 admitting total income of Rs. 4,74,030/- and the same was processed under section 143(1) of the Act. The case was selected for limited scrutiny under CASS for the reasons that "Return filed after 07-11-2016 and cash deposits during demonetization period". Accordingly, notice under section 143(2) of the

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Act was served upon the assessee. Notice under section 142(1) dated 12-10-2018 was also issued to the assessee. As there was failure to respond such notice, letter was issued to the assessee on 23-10-2018 and thereafter, the assessee furnished the details through e-filing portal. The Ld. AO based on the submissions made by the assessee completed the assessment under section 143(3) of the Act. The Ld. AO noticed that the assessee started her business and obtained her TIN on 09-10-2015 only and her first sales commences only on 22-12-2015. The Ld. AO also noticed that, there were cash deposits of Rs.78,13,180/-in the Bank account of the assessee as under:

<i>Sl. No</i>	<i>Date of Deposit</i>	<i>AMOUNT in (Rs.)</i>
1	23-11-2015	9,13,180
2	11-12-2015	6,00,000
3	14-12-2015	9,50,000
4	15-12-2015	9,50,000
5	15-12-2015	2,00,000
6	16-12-2015	9,50,000
7	16-12-2015	3,00,000
8	17-12-2015	9,50,000
9	18-12-2015	9,50,000
10	18-12-2015	1,00,000
11	19-12-2015	9,50,000
	TOTAL	78,13,180

3. The Ld. AO show-caused the assessee as to why the said deposits should not be treated as unexplained and taxed accordingly. The assessee replied that the cash was deposited out of the advances received from the customers for supply of material and the same was

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adjusted against the sales made and the bills for the sales made were debited to the account of the said customers. The assessee furnished the details of the customers and copies of the ledger account to the Ld. AO which are as under:

<i>Supriya Chemicals (Proprietor – T. Kavitha)</i>		
<i>Details of cash Deposited into bank during 16-10-2015 to 22-12-2015</i>		
<i>S. No.</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
1	<i>Anath Chemical Traders</i>	<i>19,00,000</i>
2	<i>Bharath Soap Industries</i>	<i>9,13,180</i>
3	<i>Guna Trade Corporation</i>	<i>7,00,000</i>
4	<i>Jeevan & Co.</i>	<i>9,50,000</i>
5	<i>SenthilAndavar Products</i>	<i>3,00,000</i>
6	<i>Sivasakthi Commercial Traders</i>	<i>19,00,000</i>
7	<i>Veera Trade Co.</i>	<i>9,50,000</i>
8	<i>Western Agencies</i>	<i>2,00,000</i>
	<i>Total</i>	<i>78,13,180</i>

4. The Ld. AO observed that the assessee furnished the ledger account copy only without complete address of the parties from whom such advances were received. The invoices as submitted were also unsigned. Hence, the Ld. AO in order to obtain confirmation from such parties issued letters under section 133(6) of the Act to such parties, however, the same were returned un-served by the postal authorities as under:

<i>S. No.</i>	<i>Name of Party</i>	<i>Remarks</i>
1	<i>M/s Ananth Chemical Traders</i>	<i>Returned with a remark no such addressee</i>
2	<i>M/s SenthilAndavar Products</i>	<i>From the speed post tracker it is seen that the letter is unclaimed</i>

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3	M/s Bharath Soap Industries	From the speed post tracker it is seen that the letter is unclaimed
4	M/s Guna Trade Company	Returned unserved with a remark insufficient address.
5	M/s Jeevan & CO.	Returned with a remark no such addressee.
6	M/s Sivasakthi Commercial Traders	From the speed post tracker it is seen that the letter is not delivered
7	M/s Veera Trade Co.	Returned unserved with a remark insufficient address
8	M/s Western Agencies	Returned unserved with a remark no such addressee.

5. As the letters issued to the parties under section 133(6) returned un-served as aforesaid, the Ld. AO observed that the assessee has failed to prove genuineness of the transaction, the identity of the persons and creditworthiness of the parties from whom advances were received by the assessee. Accordingly, the Ld. AO added the said amount of RS. 78,13,180/- to the total income of the assessee by treating as unexplained investments of the assessee.

6. The Ld. AO further noticed that the assessee has received Rs.18,43,974/- as cash advances. Therefore, letter was addressed to the assessee to furnish confirmations along with full name, complete addresses and PAN of the persons from whom said advances of Rs.18,43,974/- were received. In response, the assessee furnished the details of the customers and claimed that these advances were again adjusted through sales made to them in the next year and the sale invoices for such sale made are debited to their accounts thus

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adjusted the advances as received. The assessee furnished account copies of the said trade creditors claiming that no further confirmation is required. The Ld. AO was not satisfied by the reply submitted by the assessee and made addition of the said amount of Rs. 18,43,974/- to the total income of the assessee.

7. Aggrieved, the assessee filed 1st appeal before the Ld. CIT(A) unsuccessfully. The Ld. CIT(A) vide order dated 16-01-2020 confirmed the additions made by the Ld. AO.

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

8. Heard both the representatives of both the parties and perused the materials on record. The Ld. AR submitted before us that the assessment proceedings should have been restricted for the limited scrutiny for verifying as to whether any deposits were made by the assessee during the demonetization period or not, but the Ld. AO acted beyond the assigned jurisdiction. The assessee further alleges that both the Ld. AO as well as the Ld. CIT(A) failed to consider that the advances were subsequently adjusted against sales income as per audited accounts, tax audit report, VAT returns, cash flow statement, reconciliation statement, Ledger copy of accounts and invoices etc.

The assessee in support of his case has relied on a number of decisions of the Court as well as Tribunals. On the other hand, the Ld. DR supported the orders of the lower authorities. The Ld. DR submitted that the assessee has failed to prove the creditworthiness and genuineness of the transactions during the assessment proceedings as well as before the Ld. CIT(A) during the 1st appeal.

9. The aforesaid submissions were also the submissions of the assessee before the Ld. CIT(A). The Ld. CIT(A) after considering the replies of the assessee as well as the findings of the Ld. AO came to a conclusion that the assessee has failed to prove the creditworthiness of the customers and genuineness of the transactions before him also.

The observations of the Ld. CIT(A) read as under:

6. The matter is considered. Perused the assessment order and remand report furnished by the Assessing Officer. I have also gone through the written submissions made by the appellant and the rejoinder filed to the remand report. The first objection of the appellant is that since the case was selected for limited scrutiny under CASS, for the reason that 'return of income filed after 07.11.2016 and the cash deposits made during demonetization period', the Assessing Officer has converted the same into full scrutiny without the approval of the Pr. CIT. Therefore, the impugned assessment is null and void.

7. To this, the AO, in the remand report, has submitted that since the reason for which this case was selected for limited scrutiny is that of return of income filed after 07.11.2016, the return of income was picked up for scrutiny was looked into in entirety and therefore, the allegation made by the appellant does not have any substance. In her forwarding letter, the JCIT, NCR-5, Chennai has also endorsed the view of the AO by stating that the AO was within her limit in examining the return of income filed after 07.11.2016.

8. I agree with the view of both the AO and the JCIT, NCR-5, Chennai that since the reasons given for selecting this case under limited scrutiny are on two counts viz. return of income filed after 07.11.2016 and the cash deposits made during demonetization period. There is no basis to say that the AO has converted this case from limited scrutiny to complete scrutiny. The AO has only examined the cash deposits made in the bank account and the advances received from the customers. There is no infirmity in the action of the Assessing Officer in examining the impugned issues of cash deposits and advances made during the assessment year under consideration. Hence, I dismiss the grounds taken by the appellant on this count.

9. Coming to the merits of the case, the AO has made two additions to the income returned. As can be seen from the relevant discussions made in the assessment order (reproduced supra), that letters issued u/s 133(6) of the Act, to various parties against whom invoices are raised, have been returned back. The claim of the appellant that cash deposited in Karur Vysya Bank to the tune of Rs.78, 13, 180/- out of the advances received from the customers remained unsubstantiated. Not only the letters issued u/s 133(6) of the Act to the parties have been returned back but also no confirmations, in Support of the contention that the said deposits were made out of advances received from the customers against the supply of materials, were filed before the AO. Hence, the Assessing Officer, in remand report furnished, has categorically stated that the appellant has failed to produce the copies of relevant sale bills and so also the confirmations from the parties against whom the invoices were raised. Even before me, the AR failed to furnish any material evidence to establish that the cash deposits made in Karur Vysya Bank account to the tune of Rs.78,13,180/- on account of unexplained cash deposits stand confirmed. The relevant grounds taken are dismissed.

10. As regards the second addition of Rs. 18,43,974/- on account of unexplained advances from customers, the Assessing Officer, in the remand report furnished, has once again reiterated the fact that the appellant had not explained satisfactorily the advances received and therefore, the addition made at Rs. 18,43,974/- needs to be sustained. Even before me, the AR failed to substantiate the nature of the advances received to the tune of Rs.18,43,974/- with any material evidence such as confirmation from the respective parties, etc. It can be noted from the assessment order that the letters sent to respective parties u/s 133(6) of the Act have been returned back. Therefore, the appellant failed to discharge the onus of proving the transactions as genuine. Therefore, in the absence of any verifiable evidence, I

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uphold the addition made at RS. 18,43,974/-. The relevant grounds taken are dismissed.”

10. We have carefully considered the rival submissions and perused the orders of the lower authorities. We observe that the assessee had to supply the goods to the parties from whom advance payments were received by the assessee. As the assessee had received the payment in advance, she had supplied/delivered the required goods to those parties against the advance payment. Therefore, in our view, there was a condition that against the advance payment, the required goods will be supplied/ delivered by the assessee. Therefore, it was not the duty of the assessee to see the creditworthiness of the persons who had made the advance payment. The only duty of the assessee was that she had to supply the goods to the persons against their advance payment and that duty had been performed by the assessee. The assessee took advances for the purpose of business only she did not borrow the money from her customers. The assessee was obligated to supply the goods against advance payments. It could be seen that the advances so received by the assessee are backed up by sales invoices either in current year or in subsequent year. The sales turnover has nowhere been disputed by the revenue and the sale is supported by the VAT returns. The business profit against such sales

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has also been accepted by revenue. Accordingly, the question of creditworthiness of the persons who made advance payment will not arise.

11. Regarding the genuineness of the transactions, the assessee has furnished the required materials before the assessing authority and the sale transactions have been accepted by the authority. The assessing authority wanted confirmation from the persons who had made advance payment to the assessee. Accordingly, Ld. AO issued letters u/s 133(6) to the purchasers of goods and that were returned un-served. However, this fact alone would not make the transactions non-genuine. Once the sales have been accepted, the assessee stood discharged. There was sale of goods against the advance payment and the transactions were completed as soon as the intended goods were supplied to the persons who had made advance payment for that. In the light of all the above facts, the impugned additions are not sustainable in law. We order so.

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12. In the result, the appeal of the assessee is allowed.

Order pronounced on 28th June, 2023.

Sd/-

(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)
लेखा सदस्य /Accountant Member

Sd/-

(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 28-06-2023.

EDN/-

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

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

गार्ड फाईल/GF