

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 620/CHNY/2022

निर्धारण वर्ष /Assessment Year: 2017-18

Shri Mohanraj Kotteswaran,
No.20, Anyur Main Road,
Kamaraj Nagar Extension,
Vellore – 632 002.

The Income Tax Officer,
v. Ward-1,
Vellore.

PAN: BDGPK 5788R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri S. Senthil Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 11.07.2023

घोषणा की तारीख/Date of Pronouncement

: 14.07.2023

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal by assessee is arising out of the Revision order passed by the Principal Commissioner of Income Tax, Chennai-8 in Order No.ITBA/REV/F/REV5/2021-22/1042031783(1) dated 30.03.2022. The assessment was framed by the Income Tax Officer, Ward 1, Vellore for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 21.12.2019.

2. At the outset, it is seen that this appeal is time barred by 57 days and assessee has filed condonation petition for condonation of delay. This appeal is filed by assessee on 25.07.2022 whereas the order of the PCIT was communicated to the assessee on 30.03.2022. The appeal was to be filed on or before 29.05.2022, whereas appeal was filed only on 25.07.2022, thereby there is a delay of 57 days. The assessee in his condonation petition has stated the reason that the appeal papers were sent for signature to the office of the Chartered Accountant which was misplaced and appeal papers were traced after getting reminder from the office of the counsel on record in the middle of July, 2022. Actually these papers were signed by assessee on 24.07.2022 and thereby appeal was filed thereafter on 25.07.2022. This delay was unintentional and due to the papers got misplaced in the office of the chartered accountant. When this was pointed out to Id. CIT-DR, he opposed condonation of delay as the cause is not reasonable. After going through the facts and reasons stated and considering the small delay of 57 days, we are inclined to condone the delay. Hence, delay is condoned and appeal is admitted.

3. The only issue in this appeal of assessee is as regards to the order of PCIT revising the assessment framed by the AO for the relevant assessment year 2017-18 vide order dated 21.12.2019, u/s.263 of the Act for the reason that the order of the assessment is

erroneous and prejudicial to the interest of Revenue because the AO has wrongly estimated profit rate @ 8% on the differential cash deposit of Rs.12,16,370/-. For this, assessee has raised ground Nos. 1 to 8, which are factual, argumentative and hence, need not be reproduced.

4. Briefly stated facts are that the assessee is trading in cellular E-recharge of Vodafone Mobile Services Ltd. The AO noticed from the ITBA portal that the assessee has deposited cash amount of Rs.10,69,89,610/- in ICICI bank, Vellore during the financial year 2016-17 relevant to this assessment year. The AO also noticed that out of this cash deposit, an amount of Rs.1,52,30,644/- was deposited during demonetization period. The assessee explained before the AO that the total turnover for the year ending 31.03.2017 stands at Rs.11,18,07,682/- and out of this, the total cash sales amounts to Rs.11,15,10,815/-. The assessee explained that the cash deposit is on account of sale proceeds of the business of recharge of Vodafone mobile. The assessee submitted the details of month wise cash sales and cash deposits during the period 01.04.2016 to 31.03.2017. The AO noted that there is a difference of Rs.12,16,374/- and added 'income from business' of Rs.1,00,000/-.

5. Subsequently, the PCIT on examination of assessment proceedings noted that the assessee has booked of expenditure in his books of accounts and hence, the differential cash deposit amount arrived at by the AO of Rs.12,16,374/- is to be assessed as deemed income u/s.68 of the Act as unexplained cash credit instead of adopting net profit of 8% on estimate basis.

5.1 The assessee explained before the PCIT that the difference between cash sales and cash deposit into his bank account was due to cash deposited out of collection from debtors (being credit sales executed), MPesa collections etc. In his view, there was no difference of cash deposit, as pointed out by the AO. The debtor collection was also being done by cash which were deposited in the bank. It was claimed that certain amount of withdrawals from banks were not utilized for the purpose for which the same had been withdrawn and hence, they were once again deposited in the bank. The difference between cash deposited in bank and cash sales in its entirety is not to be added as income. The difference pointed out is neither income nor omission to be added as income. By considering this, the AO had made an addition toward income of Rs.1,00,000/- estimating @ 8% on an agreed basis, on the difference of Rs.12,16,374/-.

5.2 But the PCIT noted that no additional expenditure was incurred by the assessee and hence, estimating the profit rate @8% on the part of the AO makes the assessment order as erroneous and prejudicial to the interest of Revenue and hence, he set aside the assessment with a direction to the AO to examine whether any expenditure is incurred by assessee or not. Aggrieved assessee is in appeal before the Tribunal.

6. Before us, the Id.counsel for the assessee reiterated the same arguments which were made before the PCIT. On the other hand, the Id.CIT-DR supported the revision order passed by the PCIT u/s.263 of the Act and argued that the assessee's books of accounts were audited by a chartered accountant u/s.44AB of the Act and it is established that expenditure made by assessee were duly verified and no additional expenditure can be claimed by the assessee to the extent of 92% of the differential cash deposit of Rs.12,16,374/-. In term of the above, he supported the revision order.

7. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO while framing assessment has categorically noted that there is a difference of Rs.12,16,374/- between the cash sales and cash deposits into the bank and the explanation of the assessee before AO was that the difference between cash sales and cash deposits into his bank account

was due to cash deposited out of collection from debtors being credit sales being executed, other collections etc., Hence, it was stated that the difference between cash deposit in the bank account is on account of cash sales or recovery from earlier year and hence, AO has taken a possible view and estimated the net profit on the differential cash deposit treating the same as sales. We are of the view that the AO has taken one of the possible views and hence, we find no infirmity in the assessment order and we find no error or prejudice in the order of the AO. Therefore, the order of PCIT is set aside and restore the order of the AO.

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

Order pronounced in the open court on 14th July, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 14th July, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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