

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.33/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

M/s.Eagle Fleet Services,
1226, Magudam Towers,
Mettupalayam Road,
Saibaba Colony,
Coimbatore-641 043.

v. The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-2,
Coimbatore.

[PAN: AADFE 8193 P]
(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

: 13.07.2023

घोषणा की तारीख /Date of Pronouncement

: 19.07.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 17.12.2021, and pertains to assessment year 2017-18.

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

1. The order of National Faceless Appeal Centre at Delhi in DIN & Order No.ITBA/NFAC/S/250/2021-22/1037885093(I) dated 17.12.2021 for the above assessment year is contrary to law, facts, and in the circumstances of the case.

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2. *The NFAC erred in sustaining the addition of Rs.72,92,000/- as unexplained money u/s.69A of the Act without assigning proper reasons and justification.*

3. *The NFAC failed to appreciate that the source for the cash deposits made by the appellant were out of the collections from the operation of taxi services rendered by the appellant and further ought to have appreciated that the explanation offered by the appellant would vitiate the findings recorded in the impugned order, thereby fortifying the stand on the non-applicability of Section 69A of the Act.*

4. *The NFAC failed to appreciate that having taken on record the cashbook maintained by the appellant establishing the source for cash deposits, the sustenance of the addition made u/s 69A of the Act was wholly unjustified and unwarranted.*

5. *The NFAC failed to appreciate that the provisions of section 69A of the Act had no application to the factual matrix and further ought to have appreciated that the misreading of the provisions under consideration would vitiate the decision rendered in sustaining the cash deposit addition in terms of section 69A of the Act.*

6. *The NFAC ought to have appreciated that having taking into consideration the audited financial statements in the assessment proceedings, the explanation for the source for the cash deposited into the bank account was fully and clinchingly established therefrom and hence ought to have appreciated that the application of section 69A of the Act should be regarded as bad in law.*

7. *The NFAC failed to appreciate that the sustenance of the cash deposit addition on various facets was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.*

8. *The NFAC failed to appreciate that the prohibition of acceptance of SBNs after 08.11.2016 in view of demonetization would not automatically attract the provisions of section 69A of the Act and ought to have appreciated that having admitted the deposits of the SBNs during the window period by giving sanctity to the said SBNs, the presumption of such deposited SBNs as unexplained money was wholly unjustified.*

9. *The NFAC failed to appreciate that the distinction between the prohibition in transacting SBNs and permission granted to deposit the SBNs within the window period was completely overlooked and ought to have appreciated that in the event of reckoning SBNs as not a legal tender, the sustenance of the said addition as unexplained money would automatically fall to the ground.*

10. *The NFAC failed to appreciate that there was no proper / reasonable opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

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

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of car hire firm, operating its own fleet as well as cars attached to the firm. The assessee filed its return of income for AY 2017-18 on 23.09.2017, declaring total income of Rs.19,47,640/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee had deposited cash

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aggregating to Rs.86,25,500/- in various bank accounts held with Axis Bank during demonetization period. It was further noticed that out of said cash deposits, a sum of Rs.72,92,000/- was in Specified Bank Notes (in short "SBNs"). The AO called upon the assessee to explain source for cash deposits in SBNs during demonetization period and reasons for accepting said notes after 09.11.2016 in view of notification of Ministry of Finance and RBI. The assessee stated that source for cash deposits is out of business receipts, and further, cash has been collected from customers and deposited into various bank accounts. The AO, however, was not convinced with the explanation of the assessee and according to the AO, after 09.11.2016, SBNs of Rs.500/- & Rs.1,000/- are illegal tender, and thus, the assessee claim for source for cash deposits is out of business receipts, is not accepted. Therefore, rejected arguments of the assessee and made addition of Rs.72,92,000/- towards cash deposits in SBNs during demonetization period u/s.69A of the Income Tax Act, 1961 (in short "the Act"). The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 17.12.2021, rejected the arguments of the assessee and sustained the additions made towards cash deposits during demonetization period.

4. The Ld.AR for the assessee submits that the AO and the Ld.CIT(A) are erred in sustaining additions towards cash deposits in SBNs during demonetization period without appreciating the fact that there is no

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prohibition to accept/transact any SBNs during window period between 08.11.2016 to 30.12.2016, and the same is evident from the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 and followed by the Specified Bank Notes (Cessation of Liabilities) Act, 2017. He further submits that the assessee is engaged in the business of car hiring, has collected charges from customers in SBNs during demonetization period, on the *bona fide* belief that there was no specific bar in accepting demonetizing currency till 31st day of December, 2016. The Ld.Counsel for the assessee further referring to SOP (Standard Operation Procedure) issued by the CBDT for AO to verify cash deposits during demonetization period submits that the AO did not dispute fact that any deviation in the deposits made during demonetization period when compared to earlier. Therefore, when the source is explained towards cash deposits, no addition can be made u/s.69A of the Act. The AO and the Ld.CIT(A) without appreciating the relevant facts, simply made addition, and thus, additions made by the AO should be deleted.

5. The Ld.DR present for the Revenue Shri AR.V.Sreenivasan, Addl.CIT, supporting the order of the Ld.CIT(A) submits that from 08.11.2016 onwards legal tender of SBNs of Rs.500/- & Rs.1,000/- was withdrawn by the RBI. Further, the assessee does not come under the category of exempt clauses of persons to deal with SBNs up to 31.12.2016. Therefore, the AO after considering relevant facts has rightly made addition towards

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cash deposits during demonetization period, and their orders should be upheld.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The factual matrix of the impugned dispute is that the assessee's firm engaged in the business of car hiring. The main source of income of the assessee is hire charges received from customers and such receipts is mainly in cash. The assessee claimed to have been received SBNs from customers during demonetization period and deposited into bank account. We find that the arguments of the assessee appears to be *bona fide*, if you go by the nature of business of the assessee, because, it is common practice in transport business to accept cash from customers. We further noted that the AO did not notice any variation/deviation in cash deposits during demonetization period when compared to corresponding previous period. Therefore, from the arguments of the assessee, it appears that the source for cash deposits is out of business receipts during demonetization period. Once, the assessee explains the source for cash deposits, additions cannot be made u/s.69A of the Act, because, in order to make addition u/s.69A of the Act, assessee is found to be the owner of any money and further the explanation offered by the assessee about the nature and source of money is not satisfactory in the opinion of the AO. In this case, if you go by the language used by Sec.69A of the Act, the AO must see two things, one is the nature and source of money and explanation of the assessee for said money. However,

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the AO, having accepted the explanation of the assessee with regard to source for cash deposits found during the course of search, went on to make additions only on the ground that legal tender of SBNs from 09.11.2016, is illegal. In our considered view, for the purpose of s.69A of the Act, there cannot be any distinction between generation of such money through legal tender or ceased legal tender in as much as in the context of the provision of the Act, which is not restricted to a legal source alone. Therefore, reasons given by the AO to make addition towards cash deposits during demonetization period in light of notification of Ministry of Finance and RBI, is not correct.

7. Having said so, let us come back to the arguments of the assessee, although, the assessee claims to have received SBNs from customers during demonetization period, but could not file necessary evidences to prove its claim. Further, the assessee could not file necessary analysis of receipts from business including cash receipts and bank receipts during demonetization period and corresponding previous period. In absence of any details with regard to nature and source of cash receipts, the arguments of the assessee that said cash deposits is out of business receipts, cannot be accepted in total. Therefore, considering the fact that the assessee is in the business of hiring of cars and also fact that the main source of receipts for the assessee is cash, we are of the considered view that a reasonable amount of cash deposits during demonetization period is out of business receipts, cannot be ruled out. Since, there are no details

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with regard to exact amount of cash receipts during demonetization period, the only way forward is to estimate receipts from business. Thus, we direct the AO to treat 50% of cash deposits during demonetization period is out of business receipts of the assessee and balance 50% cash deposits is unexplained. To sum up, out of total cash deposits of Rs.72,92,000/-, assessee gets partial relief to the extent of Rs.36,46,000/-, and the balance amount of Rs.36,46,000/- is directed to be confirmed.

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

Order pronounced on the 19th day of July, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 19th July, 2023.

TLN

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT 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