

अपीलीय अधिकरण, 'बी' (एस एम सी) न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: 326/CHNY/2023
निर्धारण वर्ष /Assessment Year: 2017-18

Shri Chinnasamy Rajendran,
No.10/N-7, Narayana Street,
Udayarpalayam, Attur Taluk,
Salem – 636 102.

The Income Tax Officer,
v. Ward 1(6),
Salem.

PAN: AATPR 1114R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri I. Dinesh, Advocate
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 03.07.2023

घोषणा की तारीख/Date of Pronouncement

: 03.07.2023

आदेश /ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2022-23/1049791022(1) dated 15.02.2023. The assessment was framed by the Income Tax Officer, Ward 1(6), Salem for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.12.2019.

2. The only issue in this appeal is as regards to the order of CIT(A) confirming the action of the AO in making addition of demonetized currency u/s.69A of the Act amounting to Rs.9,00,000/-.

3. Brief facts are that the assessee is engaged in the business of running Dall mill in Salem, Tamilnadu. The AO during the course of assessment proceedings noticed that the assessee has made cash deposit in Specified Bank Notes (SBNs) (demonetized currency) during the period i.e., 09.11.2016 to 31.12.2016 amounting to Rs.58,52,500/- in Canara Bank. The AO has given details of cash deposits in demonetized currency in assessment order. The assessee has not disputed deposit of demonetized currency in bank account but assessee explained that the cash deposits are out of amount received from customers and amount received on account of sale proceeds of assessee's business. The AO accepted the plea of the assessee as regards to deposits out of cash generated prior to 08.11.2016 but made addition of Rs.9,00,000/- of cash deposits in SBNs deposited on 29.11.2016, 01.12.2016 and 07.12.2016 as unexplained money u/s.69A of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) confirmed the action of the AO by holding that the SBNs as per provision of section 5 of Specified Bank Notes (Cessation of Liability) Act, 2017, the assessee cannot hold, transfer or received any SBNs after 08.11.2016 because that is not legal tender. According to him, no legal sale / purchase could have been made with the use of prohibited currency and hence, he confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

5. I have heard rival contentions and gone through facts and circumstances of the case. Before me, the Id.counsel for the assessee filed fresh evidences to explain the source of cash as under:-

#	Date	Particulars	Pgs.
1	-----	<i>Purchase ledger of the appellant for this A.Y.</i>	1-5
2.	-----	<i>Cash Book of the appellant for this A.Y.</i>	6-33

The Id.counsel for the assessee stated that these are fresh evidences and for that he also filed petition for admission of additional evidences under Rule 26 of the ITAT rules. He cited to following reason for admissibility of additional evidences:-

3. Challenging this order, an appeal was filed before the CIT(A). The appellant filed his Written Submissions challenging the addition. Since the AO had made the addition only on the basis of probability, the appellant did not file any documents to substantiate the source of the deposits since the same were never questioned nor doubted by the AO. The appellant now seeks to file his purchase ledger and cash book for the F.Y.2016-17 to fortify his submission as to the sources of the deposits.

4. It is submitted that the non-fling of the above documents before the lower authorities was neither wilful nor wanton and only due to the reasons stated above. It is further submitted that if the above documents are not admitted as evidence, the appellant would be put to great hardship and irreparable loss. It is thus just and necessary that the above documents are admitted as additional evidence and taken on file in this appeal before this Hon'ble Tribunal.

6. When these was confronted to Id.Senior DR, he could not controvert the above fact situation but argued that even though the assessee has made sales as per additional evidences, which is not verified, there will not be any impact on the assessment for the reason that the assessee has traded in currency, which is not legal tender.

7. I have gone through the facts and additional evidences filed by assessee. I noted that these evidences require verification and AO after considering these evidences will consider the issue afresh. In term of the above, I remit this issue back to the file of the AO.

Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 3rd July, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 3rd 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. | |