

आयकर अपीलिय अधिकरण, 'ए' (एस एम सी) न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (SMC) BENCH, CHENNAI**

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

आयकर अपील सं./ITA No.: **791/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2017-18

M/s. Pappiah Enterprises,
No.69A, Big Chetty Street,
Chengalpattu – 603 002.

The ACIT,
Vs. Non-Corporate Circle-22,
Chennai.

PAN: AAGFP 7182E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S.P. Chidambaram, Advocate
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.06.2023

घोषणा की तारीख/Date of Pronouncement

: 28.07.2023

आदेश /ORDER

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-18, Chennai vide order No. ITBA/APL/M/250/2022-23/1044143600(1) dated 27.07.2022. The assessment was framed by the ACIT, Non-Corporate Circle-22, Chennai for the assessment year 2017-18 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 12.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of unaccounted cash u/s.69 of the Act being deposits of 'Specified Bank Notes' (SBNs) during demonetization period. For this, assessee has raised various grounds, which need not be reproduced.

3. Brief facts are that the assessee firm is carrying on the business as distributor for Nestle India Ltd. For the relevant assessment year 2017-18, assessee filed its return of income on 04.11.2017 declaring total income at Rs.8,460/- along with audit report u/s.44AB of the Act. The Revenue carried out a survey u/s.133A of the Act on 14.03.2017 at the business premises of the assessee. During the course of survey on 14.03.2017, statement of partner of the assessee firm Shri K. Srinivasan was recorded and as per the assessment order, the assessee has made cash sales and received demonetized currency in the shape of 1000 and 500 Specified Bank Notes to the extent of Rs.31,21,238/- and according to AO, the assessee partner admitted the same as unexplained cash deposit and declared under Pradan Mantri Garib Kalyan Yojana (PMGKY) scheme amounting to Rs.31,21,000/- and agreed for payment of taxes on the same. But in the return of income filed, the assessee has not declared this income and therefore, notice u/s.148

of the Act dated 20.02.2019 was issued and the case was reopened and assessment was framed u/s.143(3) r.w.s. 147 of the Act vide order dated 12.12.2019. The AO made addition of unaccounted cash u/s.69 of the Act and applied the provisions of section 115BBE of the Act. Aggrieved assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO by observing in para 5.4 & 5.5 a under:-

5.4 I have considered the submissions of the appellant and the reasons given by the AO in the assessment order. The diary found during the course of survey clearly disclosed receipt of Rs.31,21,238 from other sources and the partner of the appellant had admitted that they represent unaccounted cash. The partner was willing to offer the same as undisclosed income under PMGKY Scheme. The appellant admittedly did not honour the promise nor submitted any valid explanation for the unaccounted cash of Rs.31,21,238 noted in the diary. Hence, the AO had no other alternative except to bring the said amount to tax. The assessment is not based on mere statement alone, it is backed by the clear noting in the diary. The plea of the appellant that the statement was given under confused statement of mind cannot be accepted. If that be so, he should have retracted the same immediately after the survey. The cash found being unaccounted cash would not be disclosed in the books of accounts and therefore reference to the audited books of accounts etc. are irrelevant. The denial of the statement by the partner is only an afterthought and too without any valid grounds.

5.5 I therefore hold that the AO was justified in assessing Rs.31,20,000 as appellant's income u/s 69 representing unexplained cash found during survey u/s 133A. The grounds raised are dismissed.

Aggrieved, assessee came in appeal before the Tribunal.

5. I have heard rival contentions and gone through facts and circumstances of the case. Now before me, the Id.counsel for the assessee drew my attention to the statement recorded and stated that cash collection receipts being nothing but are sale collections and the alleged statement of one of the partner Shri K. Srinivasan was recorded under compulsion that the assessee is surrendering this amount of Rs.31,21,000/- under PMGKY scheme. The Id.counsel referred to the relevant question No.14, 15 & 16 and the answer of the same, which reads as under:-

14. It is noticed from the details taken from the diary that the collection amount during the period is Rs. 37,57,260/- and receipts from other sources which are not identified is RS.31,21,238/-. Could you identify the sources for the above amounts of Rs. 37,57,560/- and Rs. 31,21,238/-

Ans: As stated earlier, the sum of Rs. 37,57,260/- relates to the daily sales collection. I admit that Rs. 31,21,238/- is unaccounted cash. I therefore agree to avail the provisions of Pradhan Mantri Garib Kalyan Yojana and propose to declare Rs. 31,21,000/- under the scheme as under:

- 1. I will pay tax @ 49.9% on Rs. 31.21.000/- Cash deposit made under the PMGKY Scheme. i.e. Rs. 15,57,380/-*
- 2. I will deposit 25% of the amount i.e. Rs. 7,80,250/- in the specified Deposit under the Scheme*
- 3. As a token of proper cooperation, I will pay Rs .2,00,000/- tomorrow I promise to pay the remaining tax dues before 31st March 2017. I request you not to invoke other provisions of the Act levying interest or penalty. I may be provided immunity from prosecution also.*

15. Are you aware that the taxes have to be paid and deposit should be made under the PMGKY before 31 March 2017? Are you aware of the fact that the immunity offered by PMGKY scheme will be withdrawn if you do

not pay the promised taxes and make the PMGKY deposit before 31st March 2017?

Ans: Yes, I am aware of the above fact and promise to avail the scheme before the due date 31st March 2017.

16. Do you have anything to say?

Ans: I reiterate my commitment to pay taxes and make deposit under PMGKY Scheme on or before 31st March 2017. I also request the Income Tax Department not to initiate penal or prosecution proceedings as I am making the declaration to purchase peace."

In view of the above, the Id.counsel for the assessee stated that the assessee firm has not accepted the alleged surrender by the partner for the reason that the assessee's statement was obtained by compulsion ad coercion and also in the night of 14.03.2017 at 10 p.m., when the survey party concluded the survey proceedings. The Id.counsel for the assessee referred to question Nos.11, 12 & 13 and the answers of the same, which reads as under:-

11. Please provide proof for the cash collection receipts relating to sales during the period November and December 2016?

Ans: The details are maintained only in the Diary mentioned above. I have no other record to support receipt of cash relating to sales.

12. As per the counterfoils the total sum of old notes remitted in the Bank during the period amounts to Rs. 35,33, 500/-, Please provide the source for the same.

Ans: During the period, the sales collection were received both in old and new notes. This sum was remitted in the bank account.

13. As per the Page -wise, Day-wise details taken from the Diary it is noticed that you have received cash both from sales and otherwise. Please explain.

Ans: I am not able to explain the details since there is no other record maintained for the purpose.

The Id.counsel for the assessee stated that as per answer to question No.12, there is a mention of sale collection received both in old and new notes but how much, it is not clear. The Id.counsel for the assessee stated that even there is no detail in assessment order or the order of the CIT(A) that how much are old notes and how much are new notes i.e., old notes means demonetized currency in 1000 and 500 notes i.e., SBNs. According to Id.counsel, the entire cash deposits on account of sale proceed of product of Nestle India Ltd., for which assessee is distributor of Nestle products and it is making sales to various traders and vendors. The Id.counsel for the assessee also filed copy of sales ledger and book of bank register maintained in the Bank of Baroda, OD A/c No.90220. The Id.counsel carried out to entries and stated that entire cash sales as per cash books is deposited in the bank account but nothing is coming out, whether it is in old or new notes i.e., whether it is in demonetized currency or new currency. Even otherwise, the Id.counsel argued that once this is out of explained source, no addition can be made either u/s.69 or u/s.69A or u/s.68 of the Act. The Id.counsel drew

our attention to the assessment order that the unaccounted cash has wrongly been assessed u/s.69 of the Act, whereas if at all assessment is to be made, it should be made u/s.69A of the Act. He explained that section 69 of the Act is for unexplained investment and section 69A is for unexplained money.

6. When this was confronted to Id. Senior DR, he could not answer what is the quantum of demonetized currency in this cash deposits and what is the quantum of new currency. Further, he could not controvert the sale effected by assessee of Nestle products to various vendors and traders because the entire cash receipts is attributable to sales only, which has been deposited by the assessee in to its bank account. Admittedly, this cash deposit in OD bank account by the assessee is not clearly established by the Revenue whether it is in demonetized currency or in the new notes but it is an explained source and out of sale proceeds. I'm of the view that at the best, some profit element can be added in this cash sales of Rs.31,21,000/- because the assessee also could not back the sales by evidences that the entire cash deposits are on account of sale proceeds or sale receipts. Hence, I estimate a reasonable disallowance of 10% on this and direct the AO to tax the same under normal rates because being 'business income' this is not to be

assessed u/s.115BBE of the Act. In term of the above, the appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 28th July, 2023 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 28th July, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.