अपीलीय अधिकरण, 'ए' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 741/CHNY/2022**

निर्धारण वर्ष /Assessment Year: 2017-18

Shri Kuppusamy Venkatesan, 14, First Street, Ponniammal Nagar, Poonamallee, Chennai – 600 056.	v.	**The Income Tax Officer,** Non-Corporate Ward 8(5), Chennai

PAN: ALOPV 8119L

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Girish Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 31.07.2023
घोषणा की तारीख/Date of Pronouncement : 31.07.2023

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai vide order No.ITBA/APL/M/250/2022-23/1043500186(1) dated 21.06.2022. The assessment was framed by the Income Tax

Officer, Non-Corporate Ward 8(5), Chennai for the assessment year 2017-18 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.12.2019.

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 Rs.42,73,500/- as unexplained money u/s.69A of the Act and taxing the same u/s.115BBE of the Act as the assessee deposited the demonetized cash in demonetized currency of 1000 and 500 notes during demonetized period. For this, assessee has raised various grounds which need not be reproduced.

3. We have heard rival contentions and gone through facts and circumstance of the case. Brief facts are that the assessee being individual and also engaged in the retail business and agency of edible oil. The Income-tax Department conducted survey on the business premises of the assessee on 22.02.2017 u/s.133A of the Act. Subsequently, the assessee's case was selected for scrutiny through CASS and notice u/s.143(2) of the Act dated 28.09.2018 was issued. The AO on perusal of bank account of the assessee maintained with Tamilnadu Mercantile Bank A/c. No.204150050800295 noted that the assessee has deposited cash

of Rs.1,51,40,898/- during demonetized period i.e., 09.11.2016 to 31.12.2016. The assessee in reply filed details of demonetized currency deposited in this bank account amounting to Rs.60,98,500/- as under:-

Bank Name : TMB		A/c No.201450050800295	
S.No.	No. of Rs.1000 Notes remitted	No. of Rs.500 Notes remitted	Over all amount
1.	2048	500	
Total	20,48,500/-	40,50,000/-	60,98,500/-

The assessee also explained vide letter dated 26.12.2019 that the cash deposits in the bank account is on account of selling of cooking oil in retail to various shops and sale made during the diwali period which was on 30.10.2016. The assessee contended that the collections were made during the first week of November but deposited the same during demonetized period. The AO noted that the assessee has deposited old demonetized notes to the tune of Rs.60,98,500/- and he accepted the cash deposits made on 10.11.2016 at Rs.7,00,000/-, on 11.11.2016 at Rs.6,25,000/- and on 12.11.2016 at Rs.5,00,000/- and thereby accepted cash deposits of Rs.18,25,000/- and balance cash deposits in old demonetized notes of Rs.42,73,500/- deposited on various dates between 13.11.2016 to 31.12.2016 was considered as unaccounted despite

the fact that the assessee produced complete sales and purchase bills and vouchers including cash book and ledger accounts. But the AO treated the same as unexplained money deposit u/s.69A of the Act amounting to Rs.42,73,500/- and taxed the same u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

4. We noted that admittedly the assessee is able to prove that the assessee is selling cooking oil in retail to various shops and also made sales during diwali time which was on 30.10.2016. But from the daily summary of cash, it is noticed that cash is being received on pattern basis and even during demonetized period, assessee has received cash, which was deposited in the bank account. It is an admitted fact that the cash is from business transaction but it is not fully explained that how much is during demonetization period and how much is prior to that. Considering the entirety on facts, we can make fair estimate of addition and accordingly, we estimate the addition at Rs.25,00,000/- but this is to be treated as business income and not as unexplained money u/s.69A of the Act. Hence, we direct the AO to assess this Rs.25,00,000/- as business income

and charge the same under normal taxes. We direct the AO accordingly.

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

Order pronounced in the open court on 31st July, 2023 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 31st 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.