

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

श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **290/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

Shanmugam Sumathi No. 193, Senguttamparai Thottam, v. Sengodampalayam, O. Rajapalayam Post, Tiruchengode, Namakkal District – 637 209 [PAN: ECYPS-2359-A]	Assistant Commissioner of Income tax, Circle-1, Namakkal.
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(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. I. Dinesh, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 01.08.2023

घोषणा की तारीख/Date of Pronouncement : 11.08.2023

आदेश /ORDER

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.01.2023 and pertains to assessment year 2017-18.

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

"1. The Commissioner of Income-tax (Appeals) is not justified in confirming the view of the Assessing Officer that cash of Rs. 10,55,500 /- was deposited into bank,

out of unexplained sources, while sales turnover were accepted at Rs. 1,33,12,185/-.

2. As facts in all citations relied on the by assessment order were distinguished by Grounds of Appeal and Written Submissions, Commissioner (Appeals) ought to have dealt with this submission.

3. Fact that Section 44AD(5) exempts an assessee from maintenance of books of account, ought to have been considered, especially when assessment order has adopted 8% envisaged by the Section as income on a part of the sales.

4. When a flat rate of profit is applied, that would take care of everything and there was no need for the Assessing Officer to make a further addition in respect of introduction of cash (302 ITR 246 = 206 CTR 648 P&H - CIT v. Aggarwal Engineering Co.)

5. Claim made based on cited decisions, against invoking sections 69A and 115BBE made by Written Submissions filed on 01-05-2021 ought to have been accepted.

6 Facts in the cases discussed by appellate order are totally different from those in assessee's case

7 Charging interest under Section 234 on tax on unanticipated addition is not correct.

8. For these and other reasons which may be stated, at the time of hearing of the appeal, it is prayed that the income admitted may please be accepted."

3. The brief facts are that, the assessee has not filed her return of income for assessment year 2017-18. Therefore, notice u/s. 142(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 09.03.2018, which was duly served on the assessee on 19.03.2018. Since, there was no response from the assessee,

a letter dated 03.05.2019 was issued to the assessee. In response, the assessee has filed her return of income on 20.06.2019, admitting total income of Rs. 10,65,000/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made substantial cash deposits during demonetization period into her bank account. The Assessing Officer, has analyzed total deposits in Corporation Bank, Tiruchengode and arrived at a total deposit of Rs. 1,33,12,185/-, which includes cash deposits during demonetization period at Rs. 10,55,500/-. The Assessing Officer, called upon the assessee to file necessary explanation for source for cash deposits during demonetization period. The assessee neither appeared before the Assessing Officer nor filed any submissions with evidence to justify source for cash deposits. Therefore, the Assessing Officer passed exparte assessment order u/s. 144 of the Act and determined total income of Rs. 31,01,035/-, which includes addition towards business income estimated @ 8% on total turnover at Rs. 9,80,535/- and additions towards cash deposits under the head income from other source at Rs. 10,55,500/-. The assessee carried the matter in appeal before the first appellate

authority, but could not succeed. The Id. CIT(A), for the reasons stated in their appellate order dated 24.01.2023, rejected arguments of the assessee and sustained additions made towards cash deposits and estimated net profit @8% on business turnover. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, Shri. I. Dinesh, Advocate, at the time of hearing, referring to petition filed by the assessee for admission of additional grounds of appeal submitted that the assessee has filed legal ground challenging jurisdiction of the Assessing Officer to pass the assessment order and also validity of assessment order passed by the Assessing Officer without serving notice u/s. 143(2) of the Act. The Ld. Counsel for the assessee, submitted that additional grounds of appeal taken by the assessee are purely legal issues, which can be taken at any time of proceedings including pending proceedings before the Tribunal. Therefore, in the interests of advancement and substantial justice, additional grounds filed by the assessee may be admitted.

5. The Id. DR, strongly opposing petition filed by the assessee for admission of additional grounds submitted that, the assessee could not establish facts with regard to the said grounds which are already on record before the Assessing Officer. Therefore, he submits that the petition filed by the assessee should not be admitted.

6. We have heard both the parties and considered relevant additional grounds of appeal filed by the assessee, in light of explanation furnished in the petition for admission of additional grounds. We find that additional grounds taken by the assessee challenging jurisdiction of the Assessing Officer and validity of assessment order are purely legal grounds, which can be taken at any time of proceedings including pending proceedings before the Tribunal and thus, we admit additional grounds filed by the assessee for adjudication.

7. The first issue that came up for our consideration from additional grounds of appeal filed by the assessee is jurisdiction of Assessing Officer to pass assessment order. The Ld. Counsel for the assessee, referring to show cause notice dated 26.08.2019 issued by the Income Tax Officer, Ward-1,

Tiruchengode and the assessment order passed by the Assessing Officer submitted that, the notice issued by one officer and assessment order passed by another officer without there being any order for change in jurisdiction of the Assessing Officer is invalid and liable to be quashed.

8. The Id. DR, on the other hand submitted that the assessee is a non-filer and the Department has issued notice for assessment on the basis of information available with different officer and the assessment has been completed by another officer either based on PAN details or transfer of case from one officer to another officer. Unless the assessee makes out a case that no such order has been passed by the Department, he cannot come and argue that the order passed by the Assessing Officer is not having jurisdiction to pass such order.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that the assessee is a non-filer and did not filed her return of income for the impugned assessment year before issue of notice u/s. 142(1) of the Act.

It is also an admitted fact that, the department is in possession of materials about the cash deposits during demonetization period, which needs to be examined in light of taxability of source for said cash deposits. Therefore, the arguments of the assessee that the Assessing Officer who issued show cause notice is different and the Assessing Officer to pass assessment order is different and further, without there being any order u/s. 127 of the Act, the assessment order passed by the Assessing Officer is invalid is devoid of merits, because when the assessee is challenging jurisdiction of the Assessing Officer, he or she should prove his bonafideness by filing regular return of income on or before due date prescribed under the Act. Further, the assessee should question the jurisdiction of the Assessing Officer, as per the provisions of section 124(3) of the Act, within one month from the order or issue of show cause notice, why the assessment should not be completed to the best of the judgment of the Assessing Officer. In the present case, neither the assessee has filed her return of income within due date prescribed under the Act, nor filed any objections within one month from the date of issuance of show cause notice. Further, as per Notification No. 01 of 2018-19 dated

27.06.2016 issued by the Addl. Commissioner of Income Tax, Namakkal Range, Namakkal, the Deputy/Assistant Commissioner of Income Tax, Namakkal Circle, does have territorial jurisdiction in respect of all areas in the revenue districts of Namakkal and for all persons. Since, the Assessing Officer who passed the assessment order is have territorial jurisdiction over the assessee, in our considered view, the objections raised by the assessee on the issue of transfer of case from one Assessing Officer to another Assessing Officer is without any basis. Therefore, in our considered view, the grounds raised by the assessee challenging jurisdiction of the Assessing Officer in light of show cause notice and assessment order is devoid of merits and thus, rejected.

10. The next issue that came up for our consideration from additional grounds filed by the assessee is validity of assessment order passed by the Assessing Officer in absence of notice u/s. 143(2) of the Act. The Ld. Counsel for the assessee, submits that failure of the Assessing Officer to issue and serve on the appellant the notice u/s. 143(2) of the Act renders the assessment illegal and void. In this regard, he relied upon the decision of ITAT, Jaipur in the case of M/s.

Bhaval Synthetics (India) Ltd vs DCIT in ITA No. 1043/JP/2019. The Ld. Counsel for the assessee, had also relied upon the decision of Hon'ble High Court of Madras in the case of CIT vs K. Rangaswamy Naidu (2007) 288 ITR 109 (Mad).

11. The Id. DR, on the other hand opposing additional grounds filed by the assessee submitted that the requirement of issue of notice u/s. 143(2) mandates where the return has been furnished u/s. 139 of the Act, or in response to notice under sub section (1) of section 142 of the Act. Since, the assessee has not filed the return of income within due date u/s. 139 of the Act or even within time allowed in the notice issued u/s. 142(1) of the Act, the question of issuance of said notice does not arise.

12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per the provisions of section 143(2) of the Act, where the return has been furnished u/s. 139 of the Act, or in response to notice under sub-section (1) of section 142, the Assessing Officer shall serve on the assessee notice requiring

him on the date to be specified therein either to attend or to produce evidence on which the assessee may rely in support of the return. In the present case, the assessee neither furnished return of income u/s. 139 of the Act nor within time allowed in issuance of notice u/s. 142(1) of the Act. Further, the assessee neither appeared before the Assessing Officer nor questioned the non-serving of notice before the Assessing Officer. Therefore, we are of the considered view that the grounds taken by the assessee challenging validity of assessment order for non-serving the notice u/s. 132(2) of the Act is devoid of merits and thus, rejected.

13. The next issue that came up for our consideration from grounds of appeal filed by the assessee is additions made by the Assessing Officer towards cash deposits during demonetization period and estimation of income from business. The Assessing Officer, on the basis of information with the Department noticed that during the demonetization period, the assessee has made cash deposits of Rs. 10,55,500/- in specified bank notes. The Assessing Officer, further noted that there are other credits in the bank account to the extent of Rs. 1,22,56,685/-. Therefore, the Assessing

Officer called upon the assessee to furnish necessary evidence for nature and source for cash deposits and credit in bank account. Since, the assessee has failed to file any evidence, the Assessing Officer has passed best judgment assessment order u/s. 144 of the Act and made additions of Rs. 10,55,500/- u/s. 69A of the Act. Further, the Assessing Officer had estimated 8% net profit on total turnover excluding cash deposits amounting to Rs. 1,22,56,685/- and determined income from business at Rs. 9,80,535/-.

14. The Ld. Counsel for the assessee, submitted that the assessee has filed return of income and estimated 8% net profit on total credit including cash deposits during demonetization period, but the Assessing Officer has excluded cash deposits and made additions u/s. 69A of the Act and further estimated 8% net profit on other credits. The Assessing Officer had also made additions towards returned income without appreciating fact that said income consists of income from business estimated on gross receipts. Therefore, he submits that additions made by the Assessing Officer towards cash deposits should be deleted and further directions

should be given to the Assessing Officer to allow credit for income declared by the assessee.

15. The Id. DR, on the other hand submitted that the assessee could not file any evidence to justify source for cash deposits. Further, the return filed by the assessee estimating 8% net profit is invalid, because the same has been furnished beyond due date specified under the Act. Therefore, the Assessing Officer has not considered said return of income. He further submitted that, since the assessee did not file return of income within due date prescribed under the Act, the Assessing Officer has completed the assessment to the best of his knowledge and their order should be upheld.

16. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from record indicates that the assessee has filed a belated return of income and estimated 8% net profit on gross receipts at Rs. 1,33,12,185/- which includes cash deposits during demonetization period at Rs. 10,55,500/-. It is also an admitted fact that the Assessing Officer has determined total credits in the bank account

maintained with Corporation bank including cash deposits during demonetization period at Rs. 1,33,12,185/-. To this extent, there is no mismatch between gross receipts considered by the assessee for estimation of net profit and gross receipts considered by the Assessing Officer for assessment. However, the contention of the assessee is that the Assessing Officer has made additions towards estimation of 8% profit on business receipts excluding cash deposits during demonetization period and further made additions towards income declared by the assessee on the basis of estimation of net profit on gross receipts. The assessee further contended that, source for cash deposits is out of business receipts including cash in hand available as on the date of demonetization. We find that the assessee has neither appeared before the Assessing Officer nor filed any details. Although, the assessee claims that source for cash deposits during demonetization period is out of business receipts, but no evidence has been furnished to justify her arguments. Since, the Assessing Officer has passed exparte assessment order, in absence of necessary evidence to determine correct income of the assessee, in our considered view the issue needs to go back to the file of the Assessing Officer for fresh

consideration. Thus, we set aside the order passed by the Id. CIT(A) and restore the issue to the file of the Assessing Officer with a direction to re-examine the case of the assessee denovo in accordance with law, after providing one more opportunity of hearing to the assessee. The other contentions raised by the assessee including separate additions made towards cash deposits during demonetization period, other additions towards income declared in the return of income on the basis of estimation are left to the assessee to argue the case before the Assessing Officer.

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

Order pronounced in the court on 11th August, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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