

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

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM,
AND HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.304/Chny/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Balaji Builders 44, Indira Gandhi Street, K.K.Nagar Trichy-620 021.	बनाम / Vs.	ACIT Circle(OSD)-1, Trichy.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAOFB-2375-B		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Dr. R.Mohan Reddy (CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	12-06-2023
घोषणा की तारीख / Date of Pronouncement	:	08-09-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails validity of revisionary jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income Tax, Madurai-1 (Pr. CIT) vide impugned order dated 24-03-2022 against an assessment framed by Ld. AO u/s.143(3) of the Act vide order dated 27-12-2019.
2. The Ld. AR, drawing our attention to the assessment order, submitted that necessary enquiries were made by the Ld.AO while framing the assessment and therefore, the assessment order could not

be termed as erroneous and prejudicial to the interest of the Revenue. The Ld.AR submitted that all the details were provided during the course of assessment proceedings to the satisfaction of Ld. AO and therefore, it was case wherein necessary enquiries were made which could not be subjected to revision u/s.263.

3. The Ld. CIT-DR, on the other hand, submitted that though Ld.AO called for certain details, however, he failed to verify source of cash deposits made by the assessee during demonetization period. The Ld. CIT-DR submitted that there was no application of mind on the part of Ld. AO. The Ld. CIT-DR referred to the decision of the Hon'ble Apex Court in the case of **Denial Merchants P. Ltd. vs. ITO (2018) 95 taxmann.com.366 (SC)** in support of revision of order. Having heard rival submissions, the appeal is disposed-off as under.

4. Upon perusal of assessment order, it could be seen that the assessee's case was selected for complete scrutiny under CASS since there was abnormal increase in cash deposits during demonetization period as compared to average rate of cash deposit during pre-demonetization period. In response to various notices issued by the Ld.AO, the assessee filed financial statements, bank statement of ICICI and United Bank of India, Profit & Loss account, Balance Sheet, statement of total income and cash book etc. The assessee further clarified with evidence that as on 8th November, 2016, the assessee had cash balance of Rs.95.06 Lacs. During demonetization, the assessee deposited Rs.93 Lacs in denominations of Rs.500/- and Rs.1000/- and he did not collect any SBN currency post demonetization. The cash was stated to be sourced out of earlier cash withdrawals and the amounts introduced by the partners of the

assessee firm. Having satisfied with the assessee's reply, Ld. AO accepted the returned income filed by the assessee.

5. Subsequently, upon perusal of case records, Ld. Pr. CIT sought revision of the order and alleged that submissions of the assessee were accepted without any verification and without calling for any further details. The Ld. AO did not call for any further details in order to verify additional capital claimed to have been introduced by the partners of the assessee firm which is stated to be cash withdrawal from banks during the period of 15 to 30 days prior from introduction of capital in firm. This issue was not properly examined by Ld.AO. The Ld. AO ought to have examined whether cash withdrawal could have been utilized by the partners for any event such as marriage, foreign trip, house construction, purchase of property etc. where this cash could have been utilized. The veracity of the claim should have been examined in the light of the fact that despite having bank accounts, why large cash was kept in hand. It was also observed from bank statement that the assessee had transferred back to the partners certain funds through cheque after making cash deposits into bank account during the demonetization period. The Assessing Officer did not call for any explanation from the assessee as to why funds were transferred to partners immediately and that too, without any utilization. This aspect was fully ignored by the Assessing Officer. Further the assessee was engaged as builder and showing huge expenses towards labour charges, salary etc. In this type of business, usually cash was used to meet the daily expenses such as wages and petty expenses. Hence, the assessee's claim that cash deposits were made from earlier cash withdrawals ought to have been examined as to

whether the closing cash in hand as on 08-11-2016 was correct or not? The wages and other payment dates of previous months and in earlier years ought to have been examined to find whether the assessee had attempted to show increased cash in hand as on 08-11-2016 by suppressing cash outflow prior to 08-11-2016 and it ought to have been ascertained why expenses were not paid-off in spite of having sufficient cash balance. This aspect had also not been examined by the Assessing Officer. The Ld. AO did not call for any details such as books of accounts, details of deposit in demonetized currency, details of cash deposited in corresponding previous years and earlier period of current financial year to examine the genuineness of the assessee's claim. No details were called with respect to denomination of the currency as deposited by the assessee whereas the assessee could not legally accept the demonetized currency from 09-11-2016 onwards as the same were not a legal tender. This aspect was fully ignored by the Assessing Officer while completing the assessment.

6. Another allegation was that the net profit rate shown by the assessee was well below 8% but the assessee did not furnish any Audit Report as required u/s 44AB. In such a case, Ld. AO should have invoked the provisions of sub-section (6) of section 44AD of the Act. The aspect was also omitted to be considered by Ld. AO.

7. In reply to show-cause notice, the assessee submitted that the source of cash deposit was the capital introduced by the partners and cash withdrawal from the bank. The assessee produced all the requisite details as called for by Ld. AO during the course of assessment proceedings. The assessee submitted that the allegation was not based on facts. Further, initiating revisionary proceedings to

invoke the provisions of Sec. 44AD was bad in law and against the principle of natural justice.

8. However, Ld. Pr. CIT maintained that AO accepted the submissions regarding source of cash deposits without any verification and calling for further details. The findings of AO were without any basis and there exist no material evidence to explain the cash deposits. The cash withdrawal by partners ought to have been examined by Ld. AO. Finally, relying on the decision of Hon'ble Supreme Court in the case of **Malabar Industrial Company Ltd. (243 ITR 83)**, it was held that the order was passed without application of mind and without making due enquiries. The assessment order was held to be erroneous and prejudicial to the interest of the revenue since the same was passed without proper examination of materials and records. Accordingly, Ld. AO was directed to frame fresh assessment after making necessary enquiries with regard to the points noted in the revisionary order. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

9. Upon perusal of factual matrix, it could be seen that the sole issue for which the assessee's case was subjected to complete scrutiny was large cash deposit in the bank account during demonetization period. It was alleged that there was abnormal increase in cash deposits during demonetization period as compared to average rate of cash deposit during pre-demonetization period. During the course of assessment proceedings, various notices were issued to the assessee calling for various details, in this regard. The assessment order takes note of the fact that the assessee furnished

financial statements, bank statements, Profit & Loss account, Balance Sheet, statement of total income and cash book etc. It was also submitted that as on 08.11.2016, the assessee had cash balance of Rs.95.06 Lacs which was deposited in bank post demonetization. The Ld. AO, without calling for any further information regarding source of cash deposit, accepted the returned income. Considering the contents of assessment order, it could be concluded that the claim was accepted without due application of mind and without necessary enquiries which should have been made by Ld. AO. The whole purpose of scrutiny assessment was to examine the source of large cash deposit by assessee during demonetization period which remained to be fully verified by Ld. AO. The Ld. AO did not call for any further details in order to verify additional capital claimed to have been introduced by the partners of the assessee firm which is stated to be cash withdrawal from banks during the period of 15 to 30 days prior to the date of introduction of capital in firm. The bank statements of the partners were not examined and no confirmation was placed on record. Pertinently, the amount so received has subsequently been repaid to the partners within short interval. Another observation in the impugned order is that the assessee could not explain as to why large cash was kept in hand despite having bank account particularly in the light of nature of business being carried on by the assessee. No findings have been rendered as to whether the balance reflected in the cash book as on 08-11-2016 was correct or not. Lastly, the assessee reflected lower net profit rate but it failed to fulfill the obligations casted u/s 44AB. Therefore, no fault could be found in the observation that the assessment was framed without making due enquiries. In such a case,

revision would be justified in terms of the decision of Hon'ble Supreme Court in the case of **Malabar Industrial Company Ltd. (243 ITR 83)**,. The case law of **Denial Merchants P. Ltd. vs. ITO (supra)**, as referred to by Ld. CIT-DR, also supports the revision of the order.

10. The appeal stand dismissed in terms of our above order.

Order pronounced on 8th September, 2023

Sd/-

(MANOMOHAN DAS)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 08-09-2023

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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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