

आयकर अपीलीय अधिकरण न्यायपीठ पणजी में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI

(Through Virtual Court)

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.102/PAN/2022
निर्धारण वर्ष / Assessment Year : 2017-18

The Income Tax Officer,
Ward – 1, Belgaum

.....अपीलार्थी / Appellant

बनाम / V/s.

Kishore Alias Roshan Suresh Vernekar,
165, Mauli Mantralaya, Hindwadi,
Belagavi, Karnataka-590016

PAN : AEDPV1849P

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri N. Shrikanth

सुनवाई की तारीख / Date of Hearing : 04-12-2023
घोषणा की तारीख / Date of Pronouncement : 19-12-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 26-07-2022 passed by the National Faceless Appeal Centre ("NFAC"), Delhi for assessment year 2017-18.

2. We note that this appeal was filed on 04-10-2022 and registered as ITA No. 102/PAN/2022 on 06-10-2022. The Registry, ITAT, Panaji Bench issued notice dated 23-08-2023 intimating the date of hearing on 15-09-

2023 by Registered Post. On perusal of the ordersheet, we find that the appeal was adjourned sine die for non-appearance of the assessee on 15-09-2023. Again the appeal was listed for hearing on 12-10-2023, but however, adjourned to 06-11-2023 for non-appearance of assessee. We find no representation on 06-11-2023 and it was adjourned to today i.e. on 04-12-2023. Thus, find no representation on behalf of the assessee nor any application filed seeking adjournment. Today, the assessee called absent and set ex-parte. Therefore, we proceed to dispose off the appeal by hearing the ld. DR and perusing the material available on record.

3. At the outset, we note that the assessee is an individual and dealer in bullion and gold jewellery. The assessee is also a partner in M/s. Choudeshwari Jewelers. The assessee filed return of income declaring a total income of Rs.5,90,880/-. The AO found cash deposits in assessee's accounts to the tune of Rs.90,91,000/- made during the demonetization period between 09-11-2016 to 31-12-2016. A letter was issued to the assessee calling for the source of cash deposits, in response to which, the assessee submitted that the cash deposits are out of loan amount obtained from Sri Vishwaguru Society Ltd. Belgaum, supporting, filed a letter of disbursement of loan. The AO found the explanation as not acceptable and proceeded to add such cash deposits of Rs.90,91,000/- on account of undisclosed/concealed income u/s. 69A of the Act and charged to tax the same u/s. 115BBE of the Act. Further, worked out income u/s. 44AD of the Act at Rs.8,48,736/- and added both to the total income of the assessee, determined the same at Rs.1,05,50,620/- as against the returned income of Rs.5,90,880/- u/s. 143(3) of the Act. We find the submission of cash deposits are out of loan amount obtained from Sri Vishwaguru Society Ltd. Belgaum was reiterated before the CIT(A). The

CIT(A) observed that there is nexus between the amount withdrawn from Sri Vishwaguru Society Ltd. Belgaum and the amount deposited in Canara Bank, satisfied with the explanation of the assessee, thereby, directed the AO to delete the addition made on account of undisclosed/concealed income u/s. 69A of the Act. Consequently, the addition of Rs.8,48,736/- made u/s. 44AD of the Act held to be not sustainable as the amount withdrawn from Canara Bank was shown to be utilized for purchase of gold. Aggrieved by the order of CIT(A), the Revenue is before us vide its sole ground challenging the action of CIT(A) in deleting the addition made by the AO u/s. 69A of the Act.

4. The ld. DR, Shri N. Shrikanth submits that the order of CIT(A) is not justified as there was no valid explanation offered by the assessee for the source of cash deposits in the bank account. Further, he argued that the assessee has not proved the withdrawals were the same amount which was deposited after cash gap of 1-3 months and vehemently argued that there was no link established by the assessee between the withdrawals and the deposits. He argued that the AO was not satisfied with the explanation offered by the assessee and argued that the CIT(A) erred in shifting the onus upon the AO for proving that the cash deposits was from explained sources.

5. Heard ld. DR and perused the material available on record. On perusal of the statement of cash deposits in assessee's Canara Bank accounts which is reproduced in para 2 of the assessment order, we note that the assessee made cash deposits from 02-05-2016 to 30-12-2016 for a sum of Rs.1,09,39,300/-. According to the AO, the assessee made cash deposits to the tune of Rs.90,91,000/- between 09-11-2016 to 30-12-2016.

The assessee explained a loan was obtained against the property of 36 Guntas of non-agriculture land situated at Village Honga area of Belgaum Taluka and the value of mortgage declared at Rs.2,16,00,000/-, based on which the Sri Vishwaguru Society Ltd. Belgaum sanctioned the loan of Rs.1,01,55,035/-. The AO opined as *“why the assessee obtained the loan, is it only to re-deposit in the different bank without making any investment and without utilizing for the business? In application for loan submitted to the assessee, the purpose of loan is mentioned as required for business.”* We find that the AO answered to himself that *“normally loans are obtained only when there is a dire financial crises and commitment and only when money is urgently needed and there is no alternative way and not for keeping idle at home. The assessee has withdrawn the above money in 17 installments.”* By above analysis, we find that the AO disbelieved the claim of withdrawal from Sri Vishwaguru Society Ltd. Belgaum as source of deposit during the demonetization period which is evident from para 2 of the assessment order. By reading of the said para, we note that the assessee explained the source of deposits are out of withdrawals from Sri Vishwaguru Society Ltd. Belgaum against loan sanctioned of value of mortgage of non-agriculture land. The AO opined that the assessee mentioned the purpose of loan for business purpose, but however, made cash deposit during the demonetization period which establishes the AO doubted the transaction of withdrawals and non-utilization of the same for business purpose. The AO did not bring on record any evidence to show that the loan obtained from the said Sri Vishwaguru Society Ltd. Belgaum is not genuine and the withdrawals were not available for cash deposits thereby meaning the same were utilized for some other purpose, the cash deposits made were of only undisclosed income of the assessee.

6. The AO reproduced cash withdrawals from Sri Vishwaguru Society Ltd. Belgaum to the tune of Rs.89,06,000/- in para 3 of the assessment order. A reading of the same explains to the tune of Rs.23,00,100/- out of Rs.1,04,81,866/- shows withdrawals from September, 2016 to November, 2016. The withdrawals in September, 2016 and October, 2016 to the tune of Rs.81,81,766/- and in November, 2016 at Rs.23,00,100/-. The AO did not specify the withdrawals made in the month of November, whether specified bank notes consisting of Rs.500/- and Rs.1000/- and also the cash deposits in the month of November from 11-11-2016 to 30-12-2016 are of specified bank notes or not?, he only observed that the cash deposits were made during the demonetization period except that no statements in respect of withdrawals as well as cash deposits with reference to specified bank notes (SBN).

7. Further, the AO reproduced utilization of cash deposits in assessee's bank account towards purchase of gold in para 3.2 of the assessment order. On perusal of the same, the assessee issued cheques to three entities totaling to Rs.88,41,000/- towards purchase of gold which clearly shows the cash deposits were utilized for his business, the source being loan against mortgage of property and nexus showing withdrawal of such amount and subsequently, depositing in the Canara Bank account, which supports the contention of the assessee is correct to the extent the loan obtained for business and utilized the loan proceeds by withdrawing from Sri Vishwaguru Society Ltd. Belgaum and depositing the same in Canara Bank, utilizing the same for its business purpose. By examining the chain of events from sanction of loan, utilization of the loan proceeds, in our opinion, the assessee offered proper explanation showing nexus

between the withdrawals and deposits warranting no addition u/s. 69A of the Act.

8. Further, on perusal of the order of CIT(A), we note that it was held that there is nexus between the amount withdrawn from Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi and the amount deposited in Canara Bank supported by the statement showing the date of amount withdrawn and statement showing the date of deposit in Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi and Canara Bank, respectively. Further, he held the AO has not brought on record to substantiate that the amount withdrawn from Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi was used for some other business. We find the details of withdrawals in the said co-operative society at page 6 and details of deposit in Canara Bank at page 7 of the impugned order. On perusal of the details of withdrawals, as it was started from 02-09-2016 the last being on 08-11-2016 totaling to Rs.1,01,55,035/-. On perusal of the deposits in Canara Bank the first deposit being on 11-11-2016 and the last being on 30-12-2016 totaling to Rs.91,86,000/-. Further, it is noted the CIT(A) examined loan sanctioning letters from the said co-operative society along with the statement showing the dates of withdrawals, held, nexus with the cash deposit in Canara Bank. Further, it is noted the statements issued by the said co-operative society was furnished before the CIT(A) as Annexure-A relating to last withdrawal on 08-11-2016 on three different denominations. The contention of assessee before the CIT(A) was that the *assessee availed secured bank loan of Rs.1,03,99,809/- from Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi and the amount loan was withdrawn on various dates. The said withdrawn amount remained unutilized as to*

fluctuation in gold rate. The said society was requested to withdraw the money whenever there was cash balance for disbursal and if not availed, the society being small one sometimes there will be no cash balance when actually need. The said withdrawals were again deposited in Canara Bank and utilized the same for business purpose for buying gold. On an examination of the said contention, we note that there is no dispute with regard to availing loan and withdrawals from the said Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi, and cash deposits in Canara Bank by the AO. The reasons recorded by the AO was only “why the assessee obtained the loan. Is it only to re-deposit in the different bank without making any investment and without utilizing for the business? In application for loan submitted to the assessee, the purpose of loan is mentioned as required for business”. “In answer, it appears to me that normally loans are obtained only when there is a dire financial crises and commitment and only when money is urgently needed and there is no alternative way and not for keeping idle at home”, in our opinion, were not the cogent reasons in disbelieving the version of assessee that the amounts withdrawn from the said Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi remained unutilized due to fluctuation of gold rate. Further, the amounts deposited in Canara Bank were utilized to an extent of Rs.88,41,000/- as the assessee made purchase of gold which is evident from para 3.2 of the assessment order. The AO did not dispute the same, but however, it was mentioned the said purchases were not included in the total turnover shown by the assessee. Admittedly, the assessee is an individual and partner in M/s. Choudeshwari Jewellers. Therefore, withdrawals from Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi are supported, by availing loan by mortgaged non-agriculture land and the statements issued by the said Shri Vishwaguru

Multi-Purpose Co-operative Society Niyamit, Belagavi. The amounts withdrawn from the said Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi deposited in Canara Bank. The same were utilized for purchasing gold from three entities vide cheques which is not disputed by the AO. Therefore, we find nexus of amounts withdrawn from Shri Vishwaguru Multi-Purpose Co-operative Society Niyamit, Belagavi and that of the cash deposits in Canara Bank which was ultimately utilized for purchasing of gold. Thus, we find the explanation offered by the assessee is accepted and, therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, grounds raised by the Revenue fails and are dismissed.

9. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 19th December, 2023.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th December, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पणजी,
/ DR, ITAT, Panaji.
5. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune