

आयकर अपीलीय 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.: **888/CHNY/2023**

निर्धारण वर्ष/Assessment Year:2017-18

M/s. S.P.R. Drillers,
No.2/92A, Chettithottam,
Ayithakuttai, Elachipalayam Post,
Tiruchengode Taluk,
Namakkal District – 637 202.

The Income Tax Officer,
Vs. Ward 1,
Tiruchengode.

PAN: ABWFS 8387D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri T.S. Lakshmi Venkataraman, CA
: Shri Suresh Guduri, JCIT

सुनवाई की तारीख/Date of Hearing : 02.01.2024
घोषणा की तारीख/Date of Pronouncement : 10.01.2024

आदेश /ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1054538663(1) dated 24.07.2023. The assessment order was passed by the Income Tax Officer, Ward-1, Tiruchengode for the assessment year 2017-18 u/s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.10.2019.

2. The first issue, on jurisdiction, in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in completing the assessment without issuance of notice u/s.143(2) of the Act.

3. Brief facts are that assessment was completed ex-parte u/s.144 of the Act, vide order dated 28.10.2019 and AO treated the return filed by the assessee on 15.02.2019 as 'invalid' because the assessee has not filed return of income within the time allowed in the notice u/s.142(1) of the Act. The AO has recorded this fact in paras 2 & 3 as under:-

“2. On verification of this office records, the assessee has not filed the return of income for the assessment year 2017-18 within the time allowed under Section 139(1) of the I.T.Act i.e.,31.07.2017/30.09.2017. In order to verify the genuineness of the cash deposits, notice under section 142(1) issued on 05.01.2018 calling the assessee to prepare a true and correct return of income in respect of which the assessee is assessable under the Income-tax Act, 1961 during the previous year relevant to the assessment year 2017-18. As per provision of Section 142(1) of the act, the assessee was required to furnish the said return of income as required to be furnished as per the conditions and manner prescribed in Rule 12 of the Income-tax Rules, 1962, on or before 31.03.2018. But the assessee has failed to furnish the return of income for the assessment year 2017-18 under section 139 (on or before 31.03.2018) as valid return.

3. After valid period, the assessee has filed the return of income for the assessment year 2017-18 on 15.02.2019 through electronically. Since the assessee's return was filed after the valid date i.e.31.03.2018, it treated as 'invalid return' and taken-up for scrutiny.”

4. I have heard rival contentions and gone through facts and circumstances of the case. The argument of Id.counsel for the assessee is that once no notice u/s.143(2) of the Act is issued, the assessment order is invalid. I noted the fact that the assessee has not filed any return of income u/s.139(1) of the Act for the relevant assessment year 2017-18. Subsequently, the AO noticed that the assessee has deposited demonetized cash in its bank account and hence, to verify the genuineness of cash deposit, notice u/s.142(1) of the Act dated 05.01.2018 calling the assessee to file return of income was issued. The time allowed vide this notice u/s.142 of the Act by the Department was up to 31.03.2018 but assessee furnished the return of income on 15.02.2019 i.e., almost 10 months after the expiry of time allowed by the Department. Hence, the AO proceeded to frame the assessment u/s.144 of the Act and finally assessment was framed as best judgment assessment u/s.144 of the Act, as the assessee neither filed any reply nor furnished any details. This fact is noted by the AO in paras 2 & 3 of his assessment order, which is already been reproduced in preceding para 3 and further, treated this return as invalid return vide para 8 as under:-

“8. As the above mentioned facts are clearly fit into the provisions of section 144 of the I.T.Act, I am constrained to proceed with the materials available-on-hand and gathered from the banks as well as other agencies, in order to complete the assessment proceedings.

8.1 Before making best judgment order, it is ascertained from the income details (invalid return) and bank account statement(s), the assessee firm is engaged in the business of bore-well drilling during the financial year 2017-18. On perusal of bank account statements, total credits accumulated to Rs.1,36,60,970/- (excluding cash deposits of Rs.23,32,500/- made during demonetization period). Since the assessee has failed to furnish the details called for through this office pre-assessment notice, the entire bank credits of Rs.1,36,60,97/- is taken as business turnover of the assessee for the assessment year 2017-18 and the business income estimated to Rs.10,92,878/- which worked out at the reasonable rate of 8% on total business turnover (8% on Rs.1,36,60,970/-) and assessed to tax.”

Once there is no valid return available, the assessment has to be completed u/s.144 of the Act. Another facet of argument made by the Id.counsel for the assessee is that the Department has made intimation u/s.143(1) of the Act on the return filed on 15.02.2019 vide order dated 12.04.2019, wherein CPC, Bangalore has issued this intimation u/s.143(1) of the Act and regularized the return of income. I don't buy this argument because processing of return u/s.143(1) of the Act is just a formality and not regularization of return of income because AO while framing assessment u/s.144 of the Act dated 28.10.2019 has specifically treated the return as invalid return and framed assessment u/s.144 of the Act. Hence, non-issuance of notice u/s.143(2) of the Act is not fatal to this assessment and assessment is valid as per law. Hence, this issue of assessee's appeal is dismissed.

5. The next issue on merits in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in assessing the cash deposit made in Specified Bank Notes (SBNs) during demonetization period amounting to Rs.23,32,500/-.

6. Brief facts are that the AO during the course of assessment proceedings, based on information received, noted that the assessee has made cash deposits during demonetization period amounting to Rs.23,32,500/- and total cash deposit or aggregate entry is to the extent of Rs.1,59,93,470/-. The AO noted this fact in tabular statement at para 4, as under:-

<i>S. No.</i>	<i>Name of the bank</i>	<i>Total Credits during the financial year</i>	<i>Total cash deposits during the demonetization period</i>
1	<i>Lakshmi Vilas Bank Ltd (A/c No.060836000000504)</i>	<i>Rs.70,60,970/-</i>	<i>Rs.21,12,500/-</i>
2.	<i>Lakshmi Vilas Bank Ltd (A/c No.0726351000008602)</i>	<i>Rs.89,32,500/-</i>	<i>Rs.2,20,000/-</i>
		<i>Rs.1,59,93,470/-</i>	<i>Rs.23,32,500/-</i>

As the assessee failed to explain the source of the cash deposits made during demonetization period of SBNs, treated the SBNs deposit of Rs.23,32,500/- as unexplained money u/s.69A of the Act. Aggrieved, assessee preferred appeal before CIT(A).

7. The CIT(A) also confirmed the action of the AO as the assessee has not furnished any source of cash deposit of Rs.23,32,500/- and

for this, the CIT(A) observed in para 5.4.2 and the relevant finding of CIT(A) reads as under:-

“The appellant has not furnished the source of cash deposits of Rs.23,32,500/- made during the demonetization period. The source of the same thus remains unexplained. Hence, the addition made by the AO as unexplained money u/s.69A of the I.T. Act, 1961 is also sustained.”

8. Even now before us, the assessee apart from making bald statement that the deposit in SBNs during demonetization period from 09.11.2016 to 30.12.2016 is out of the turnover of the assessee and assessee has already declared the turnover at Rs.75,52,940/-, no other source was explained. Even it was not explained that how this cash deposit in specified notes is included in the turnover by the assessee in its return of income. In the absence of any explanation or evidence, I have no alternative except to confirm the addition.

9. The next issue in this appeal of assessee is as regards to the order of CIT(A) estimating the profit rate at the rate of 8% on the total business turnover taking the figure of total cash deposits (excluding the bank deposit in specified notes deposited during demonetization period) of Rs.1,36,60,970/- and assessing the same as income.

10. Brief facts are that the assessee has total credits in the bank account of Rs.1,59,93,470/- and after excluding the cash deposit of SBNs made during demonetization period of Rs.23,32,500/-, the balance cash deposits is Rs.1,36,60,970/- and assessee has disclosed its turnover at Rs.75,52,940/-. The AO treated the entire bank credits excluding SBN deposits at Rs.1,36,60,970/- and applied profit rate at the rate of 8% as income of the assessee and estimated the income at Rs.10,92,870/- and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

11. The CIT(A) considered the assessee's explanation that the assessee has not filed any details and even before CIT(A), assessee has not filed any details or source for the cash deposit of Rs.1,36,60,970/- and hence, he uphold the action of the AO in estimating profit rate @8% treating the same as business turnover instead of Rs.75,52,940/- declared by assessee and then estimated the profit at Rs.10,92,878/ by observing as under:-

“As no details were furnished before the AO, the AO is justified in completing the assessment u/s.144 of the I.T.Act, 1961 on the basis of information available with the AO. As no factual details have been furnished during the appellate proceedings, I have no option but to decide the case on facts available on record. Considering the entire facts and non-compliance by the appellant during the appellate proceedings, I upheld the action of the AO in completing assessment u/s.144 of the I.T.Act, 1961. The

action of the AO in estimating profit @ 8% on the turnover over of Rs.1,36,60,970/- (excluding cash deposits of Rs.23,32,500/-) is upheld on the facts of the case. Accordingly, addition made on this issue of Rs.10,92,878/- is sustained.

Aggrieved, now assessee is in appeal before the Tribunal.

12. I have heard rival contentions and gone through facts and circumstances of the case. The assessee has declared total turnover at Rs.75,52,940/- whereas as per bank statement and admitted position, the total credit in assessee's bank account, excluding the demonetized cash, is Rs.1,36,60,970/-. In the absence of any evidence or any explanation, I have no alternative except to confirm the orders of the lower authorities. Therefore, this issue of assessee's appeal is dismissed.

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th January, 2024 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 10th January, 2024

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.