

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 950/Kol/2023
Assessment Year: 2017-18

Arpita Pal Village - Sattore Jamuria Burdwan - 713336 [PAN: BFZPM2279E]	Vs	Income Tax Officer, Ward - 2(3), Asansol
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Tulsiyan, Advocate & Ms. Puja Somani, A/R
Revenue by :	Shri Sailen Samadder, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/12/2023
घोषणा की तारीख /Date of Pronouncement: 18/01/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the "ld. CIT(A)"] dt. 26/07/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

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

"1. That on the fact and circumstances of the case Ld. C I T (A) /NFAC/DELHI, erred in confirming the addition of Rs.44,50,500/- made by Ld.A.O U/S 69A treating the same as unexplained money and Ld. Appellant authority erred in confirming the order without appreciating the written submission filed before the A.O and further written submission filed before the NFAC.

2. That on the fact and circumstances of the case Ld. A.O failed to appreciate that the assessee is an individual and engaged in trading business of coal and supply of construction materials such as cement, sand, bricks, stone chips during the relevant period and where as she did not maintain

regular books of accounts and return of income was submitted on presumptive basis u/s 45AD calculated @8% of the total turnover.

3. *That on the fact and circumstances of the case Ld. A.O and NFAC/DELHI failed to appreciate that the business was carried in the trade name of M/S. JOYGURU TRADING and procured necessary Trade License from authorities as coal traders and suppliers.*

4. *That on the fact and circumstances of the case Ld. A.O and NFAC/DELHI failed to appreciate that purchases was also made through banking channels and whereas both the authorities considered the deposits but failed to consider the withdrawals.*

5. *That the order made by the A.O was arbitrary and unlawful and whereas such order confirmed by NFAC DELLHI was also unjustified and deserves to be quashed.*

6. *That the appellant craves leave to alter amend or substitute any-ground & grounds before or at the time of hearing of the appeal."*

3. Facts in brief are that the assessee is an individual engaged in the business of trading of coal. Income of Rs. 8,25,870/- declared under the presumptive taxation scheme in the income tax return filed on 29/03/2018. On account of abnormal increase in cash deposit during demonetisation as compared to pre-demonetization period, case selected for scrutiny through CASS followed by validly issuing and service of notice u/s 143(2) and 142(1) of the Act. The ld. Assessing Officer observed that the assessee deposited cash of Rs.42,50,500/- and Rs.2,00,000/- in two bank accounts maintained with HDFC Bank. Notice u/s 133(6) of the Act was issued but no reply was received, the ld. Assessing Officer also observed that gross receipts were declared at Rs.1,05,64,000/- and 8% of the gross receipts i.e., Rs.8,25,870/- was shown as net profit of business u/s 44AD of the Act. The ld. Assessing

Officer also observed that out of the total gross receipts, Rs.38,31,095/- was from trading of coal purchased from ECL on which TCS was also collected by the seller company. An inspector was appointed to go at the address of the assessee and make necessary enquiry and in the inspector's report it is stated that the assessee is engaged in coal trading and other business, was in existence during FY 2016-17. After further examination of the details including the VAT returns, the Id. Assessing Officer came to a conclusion that apart from the transactions of trading of coal from ECL, the remaining transactions are bogus and cash deposited on account of sales, of Rs.44,50,500/- is deemed as unexplained money because the source of alleged cash deposit has not been explained by the assessee. Income assessed at Rs.52,76,370/-.

4. Aggrieved, the assessee preferred appeal before the Id. CIT(A) but failed to succeed as the Id. CIT(A) confirmed the finding of the Id. Assessing Officer taking into consideration the income tax inspector's report.

5. Aggrieved, the assessee is now in appeal before this Tribunal.

6. The Id. Counsel for the assessee took us through the written submissions as well as the paper book containing 55 pages and submitted that the assessee is carrying out the activity of trading in coal and complete details of bills are maintained right from 02/04/2016 till the close of year. He also submitted that the purchase of coal has also been made from various parties including ECL and payments are made through account payee cheques. Reference was also made to the bank statement where the transactions are being

carried out consistently right from June, 2016 onwards. He stated that the assessee is engaged in the business of trading of coal and other business and since the source of the cash deposit is the sale of coal and as the Assessing Officer has not doubted the total sales, then he cannot allege the cash deposits as unexplained. He further submitted that the inspector's report was not made available to the assessee till the passing of the assessment order, thus, violating the principles of natural justice as no opportunity of cross-examination was given to the assessee. In support, reliance was placed in the case of *M/s. SPML Infra Ltd. vs. DCIT (ITA No. 1228/Kol/2018)*; order dt. 17/01/2020 and the decision of the Co-ordinate Bench Delhi in the case of *ACIT vs. M/s. Sur Buildcon Pvt. Ltd. in ITA No. 6174/Del/2013*, in which reliance was placed on the decision of *M/s. SPML Infra Ltd. (supra)*.

7. On the other hand, the ld. D/R vehemently argued referring to the detailed findings of both the lower authorities as well as the inspector's report observing that apart from a small portion of trading of coal entered through ECL, the remaining sales are not verifiable and, therefore, the cash deposited on account of such unverified sales has been rightly treated as unexplained cash deposit.

8. We have heard rival contentions, perused the material placed before us and carefully gone through the decisions relied on by the ld. Counsel for the assessee.

9. Ground No. 1 to 6 challenges the addition of Rs. 44,50,500/- made u/s 69A of the Act for unexplained cash deposit during the demonetisation period in two bank accounts held by the assessee. We

observe that the assessee is into the business of trading in coal and this facts has not been disputed by the revenue authorities also and even the inspector who was directed to visit the address of the assessee, gave a report that assessee is carrying on the business of trading in coal under the name and style of M/s. Joyguru Trading and she also possessed a trade licence in the name of M/s. Joyguru Trading. Also in the ITR, assessee has only claimed that she is engaged in the trading of coal and under the presumptive taxation scheme u/s 44AD of the Act has offered net profit @ 8.02% on the gross sales of Rs. 1,05,64,000/- and the total purchases made during the year also includes coal purchased from ECL at Rs.38,31,095/- from ECL, on which tax at source was collected. This fact shows that the contention of the assessee that she is regularly engaged in the business of trading in coal is correct. The ld. Assessing Officer doubted some portion of the sales which were made in cash but those made through account payee cheques have not been disputed. Now, it is not the case that such transaction is being carried out only during the demonetisation period. Nobody was aware about the declaration of such scheme and it came as a surprise. The assessee has been into the business of trading of coal right from April, 2016 onwards. Copy of bills along with details of each and every sale along with transactions carried out through banking channel round the year clearly states that the assessee is engaged in the trading of coal from April, 2016, onwards. Now, once it is established that the assessee is engaged in the business of trading in coal, then the transactions which have been carried out for the

purchase and sale of coal cannot be doubted only because some of the cash has been deposited during the demonetisation period as the assessee cannot stop its business activity during the demonetisation period and the transactions are to be carried out in a normal way.

10. Under these facts and circumstances, when the assessee is found to be carrying on business of trading coal and has declared income under the presumptive taxation scheme, has maintained complete details of purchase and sale and has furnished details of each and every sale carried out during the year and the part of purchases are through banking channels then such business activity of the assessee cannot be doubted. We, therefore, are inclined to hold that the source of cash deposits during the demonetisation period is the cash available from the sale of goods and, therefore, both the lower authorities were not justified in holding it as unexplained cash deposited. We, thus, set aside the finding of the Id. CIT(A) and delete the impugned addition of Rs.44,50,500/-. Accordingly Ground Nos. 1 to 6 raised by the assessee are allowed.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 18th January, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 18/01/2024

Arpita Pal

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata