

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.: **1318/CHNY/2023**
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Raja,
No.15/31, Loganathan Nagar,
1st Street, Choolaimedu,
Chennai – 600 094.

Vs. The Income Tax Officer,
Non Corporate Ward -19(7),
Chennai.

PAN AEPPR 9257R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S. Ramesh, FCA
: Shri AR.V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 20.02.2024

घोषणा की तारीख /Date of Pronouncement

: 20.02.2024

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/250/2023-24/1056385442(1) dated 21.09.2023. The assessment was framed by the Income Tax Officer, Non-Corporate Ward -19(7), Chennai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 18.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition made by the AO amounting to Rs.12,70,000/- being the cash deposits during demonetization period as unexplained money u/s.69 of the Act and taxed u/s.115BBE of the Act.

3. Brief facts are that the assessee, an individual is a commission agent in potato business. The assessee filed his return of income for the relevant assessment year 2017-18 on 21.02.2018. The assessee's case was selected for scrutiny assessment under CASS for the reason that the assessee has made cash deposit in demonetized currency during demonetization period in the bank account maintained with State Bank of India, Koyambedu, Chennai and State Bank of Mysore, Virugambakkam, Chennai. The AO required the State Bank of India, Koyambedu and State Bank of Mysore, Virugambakkam to give the details of cash deposits made by the assessee during the demonetization period. The assessee stated that cash deposits done during demonetization period in Specified Bank Notes (SBNs) is only Rs.37,57,000/-, which is out of sale of potato and Patti sales of vegetable items. In reply to show-cause notice, assessee filed a letter dated 21.10.2019 stating that cash deposits is from patti sales and

vegetable business and for that he was asked to submit profit & loss account, balance sheet, cash book ledger and bank statement but could not submit. Accordingly, the AO treated the entire cash deposits of Rs.40,73,500/- as unexplained investment u/s.69 of the Act and taxed u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. Before CIT(A), assessee contended that cash deposit during demonetization period was only Rs.37,57,000/- and not as added by the AO of Rs.40,73,500/-. Hence, the unexplained investment of cash deposits made during demonetization period, I will discuss to the extent of Rs.37,57,000/-. The assessee before CIT(A) also explained that the entire deposits during demonetization period i.e., 10.11.2016 to 30.12.2016 is Rs.37,57,000/- out of which a sum of Rs.12,70,000/- being demonetized currency in SBNs and balance cash of Rs.24,87,000/- is in new currency. The assessee before CIT(A) filed the details of old currency as well as new currency, which is depicted in para 7.4 of CIT(A)'s order at page 6. The Id.counsel for the assessee explained that the new currency received during demonetization period from 10.11.2016 to 30.12.2016 of Rs.24,87,000/- was on account of wholesale trade of potato and vegetable, which is cash received as per prevalent

practice of payment by the purchasers. The Id.counsel submitted that the trade recovery outstanding for financial year 2015-16 as on 31.03.2016 is Rs.1,45,000/- from various trade parties and assessee has collected outstanding in SBNs and deposited in the State Bank of India before 31.12.2016. The assessee also explained that the demonetized currency was deposited during demonetization period being cash sales, household money for daily expenditure, trade recovery as on 31.03.2016, trade receivable of the current year and personal saving of family members which is amounting to Rs.12,70,000/-. The assessee has narrated before the CIT(A) and the same is depicted in para 10 of the CIT(A) order at pages 7 & 8. The CIT(A) going through the facts noted that it is beyond human probabilities to remember the details of various denomination currency notes deposited by him on various bank accounts and even there is no evidence submitted that this unaccounted old currency of Rs.12,70,000/- lying with the assessee was deposited in the bank account. Hence, he sustained the addition of Rs.12,70,000/- and appeal of the assessee is partly allowed. Aggrieved, assessee is in appeal before the Tribunal.

5. I have heard rival contentions and gone through facts and circumstances of the case. I noted that the assessee is engaged in

the business of potato trading in wholesale vegetable market and as contended by Id.counsel for the assessee, trading in vegetables is predominantly done in cash only in the wholesale market. The small vendors in this business does not use banking system either to pay or receive the proceeds and hence, the assessee was forced to receive only in cash from the vendors or he has to forego the receivables outstanding from the parties. The assessee has explained that he has received a sum of Rs.24,87,000/- in new currency during the period apart from old SBNs on account of sale of vegetables and potatoes to the extent of Rs.12,70,000/-. The assessee had given details of cash sales, household money for daily expenditure, trade recovery as on 31.03.2016, trade receivables of the current year and personal savings of family members which is amounting to Rs.12,70,000/-. In entirety of facts, I am of the view that even if we will not accept the entire claim of the assessee, I have to make a fair estimate and hence, I accept the cash deposit as explained to the extent of Rs.10,00,000/- and balance sum of Rs.2,70,000/- is treated as unexplained. However, this unexplained amount cannot be assessed as 'income from other source' or u/s.69 of the Act. It has to be treated as 'business income' though the assessee is unable to prove it by filing documentary evidences. Hence, I direct the AO to treat

Rs.2,70,000/- as 'business income' and tax accordingly. The appeal of the assessee is partly-allowed.

6. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court at the time of hearing on 20th February, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 20th February, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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