

**आयकर अपीलीय अधिकरण, बी' न्यायपीठ,चेन्नई**  
IN THE INCOME TAX APPELLATE TRIBUNAL, ' B ' (SMC) BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

आयकर अपील सं./I.T.A. No. 1450/CHNY/2023  
निर्धारण वर्ष/Assessment year : 2017-2018

Sivalingam Natarajan,  
No.856, Nehru Nagar,  
2<sup>nd</sup> Street,  
Vegupatti Main Road,  
Ponamaravathi,  
Pudukkottai Dist. 622 407.

**Vs.** The Income Tax Officer,  
Ward 5,  
Puducherry

[PAN AABPN 4332R]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Ms. N.V. Lakshmi, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri ARV 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 assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057518425 (1), dated 30.10.2023. The assessment was framed by the Income Tax Officer, Ward 5, Puducherry, for the assessment year 2017-2018, u/s.144 of the Income Tax Act, 1961 (in short 'the Act') dated 30.09.2019.

**2.** The first issue in this appeal of assessee is as regards to order of the Id. Commissioner of Income Tax (Appeals) (in short 'the Id. CIT(A) ) confirming the action of the Id. Assessing Officer in making addition of Rs.10,50,000/- as unexplained credit u/s.69A of the Act in regard to cash deposits made during demonetization period in specified bank notes and taxed accordingly u/s.115BBE of the Act.

**3.** Brief facts of the case are that assessee is an individual and doing business in the name of M/s Prophy Film Industries by operating a current account and total business receipts of Rs.1,12,09,082/- including cash deposits during demonetization period. Assessee has not filed any return of income in the relevant assessment year 2017-2018 and therefore notice u/s.142(1) (i) of the Act was issued. But despite that assessee has not filed return of income. Accordingly, the Id. Assessing Officer based on material available and bank account statement collected from State Bank of India where assessee has made deposit of cash including demonetized currency in specified bank notes aggregating to Rs.1,01,59,082/-, proceeded to frame best judgment assessment order u/s.144 of the Act. The Id. Assessing Officer made addition of cash deposit made during demonetization period in specified bank notes in demonetized

currency at Rs.10,50,000/- as unexplained cash deposits u/s.69A of the act and therefore taxed u/s.115BBE of the Act. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

4. Even nothing was submitted before the Id. CIT(A). The Id. CIT(A) passed the order ex-parte since assessee has not complied with any of the notices issued for fixing the appeal and accordingly the Id. CIT(A) confirmed the action of the Id. Assessing Officer by observing as under at paras 8.2 and 8.3

*“8.2 In addition to the above, during the course of appellate proceedings, numerous notices were issued to the appellant calling for written submissions along with documentary evidences in support of his grounds of appeal. However, the appellant has not made any written submissions along with documentary evidences in support of grounds of appeal, though the notices issued to the appellant were delivered to the email of the appellant. The screen shots showing that the notices were delivered to the appellant have been affixed above in this order. Therefore, I do not find any reason to interfere in the order of the assessing officer passed under section 144 of the Income Tax, 1961 dated 30.09.2019 with the assessed income of Rs. 18,62,726/- in respect of addition of Rs. 10,50,000/- under section 69A of the Income Tax Act, 1961 towards unexplained cash deposited by the appellant during demonetization period. Accordingly, this grounds of appeal No. 3 is required to be dismissed.*

*8.3 Therefore, this grounds of appeal No.3 is dismissed”.*

Aggrieved, assessee preferred an appeal before the Tribunal.

5. Before I decide the above issue, I will adjudicate the second issue. The second issue in this appeal of assessee is against the order of the Id. CIT(A) in making addition of business income estimating the cash deposits

made in SBI account during entire period falling in the financial year 2016-2017 relevant to assessment year 2017-2018 and estimating profit @8% and thereby adding the same at Rs.8,12,726/- (excluding demonetized cash which is separately added by the Id. Assessing Officer and dealt in the above ground).

**6.** Brief facts of the case are that the Id. Assessing Officer during the best judgment assessment noted that the total cash deposits made in the current account of SBI of assessee's proprietorship concern and treated the same as business receipts of Rs.1,12,09,082/- excluding cash deposit made during demonetization period a sum of Rs.10,50,000/- balance amount was treated as business receipts of Rs.1,01,59,082/-. The Id. Assessing Officer proposed in the show cause notice dated 26.08.2019 that cash deposit in the bank statement of the assessee during the entire previous year relevant to assessment year 2017-2018 except the demonetized currency be treated as business receipts and the profit is being estimated at 8% and thereby made an addition of Rs.8,12,726/-. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

**7.** The Id. CIT(A) confirmed the action of the Id. Assessing Officer as assessee has non compliant with any of the notices issued as noted by the Id. CIT(A) by giving findings at paras 9.2 and 9.3.

*'9.2 In addition to the above, during the course of appellate proceedings, numerous notices were issued to the appellant calling for written submissions along with documentary evidences in support of his grounds of appeal. However, the appellant has not made any written submissions along with documentary evidences in support of grounds of appeal, though the notices issued to the appellant were delivered to the email of the appellant. The screen shots showing that the notices were delivered to the appellant have been affixed above in this order. Therefore, I do not find any reason to interfere in the order of the assessing officer passed under section 144 of the Income Tax, 1961 dated 30.09.2019 with the assessed income of Rs. 18,62,726/- in respect of addition of Rs.8,12,726/- estimating at 8% on total receipts excluding cash deposits made during demonetization period. Accordingly, this grounds of appeal No. 4 is required to be dismissed.*

*9.3 Therefore, this grounds of appeal No.4 is dismissed''.*

Aggrieved, assessee preferred an appeal before the Tribunal.

**8.** I have heard rival contentions and gone through the facts and circumstances of the case. Before me, Id. Counsel for the assessee stated the order of the Id. Assessing Officer is exparte and best judgment assessment framed u/s.144 of the Act. Moreover the Id. CIT(A) also passed exparte order and she argued that this is in violation of principles natural justice as notices were served by Email by the National Faceless Appeals Centre (NFAC) could not be accessed by the assessee as he is very old and settled in village after winding up of the business. Id. Counsel for the assessee only requested that one more opportunity may be provided so that she can present full facts before the Id. Assessing Officer.

**9.** On the other hand, Id. Senior Departmental Representative objected for setting aside the issue back to the file of the Id. Assessing Officer for a reason that several opportunities were given to the assessee by the Id. Assessing Officer and secondly by Id. CIT(A) but assessee being non co-operative, appeal should not be set aside.

**10.** I have gone through the facts and circumstances of the case. No doubt the Id. CIT(A) and the Id. Assessing Officer has provided enough opportunities but the assessee failed to avail the same. Now the assessee has filed documents before the Bench in his paper book consisting of pages 1 to 135 which can be verified only at the level of the Id. Assessing Officer. So, In the interest of natural justice and going by the facts and circumstances of the case that assessee being a old person and settled in his native village could not be access to his email, hence I set aside the order of the Id. Assessing Officer and that of Id. CIT(A) and remit the matter back to the file of the Id. Assessing Officer for fresh adjudication. For setting aside the appeal, the Id. Counsel of the assessee fairly agreed that assessee will pay a cost of Rs.5,000/- to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras on or before 28.03.2024. The assessee will pay this cost and produce the receipt before the Id. Assessing Officer. In term of the above, the orders

of the lower authorities are set aside and matter restored back to the file of the Id. Assessing Officer for fresh adjudication. Needless to say that the Id. Assessing Officer will allow reasonable opportunity of being heard to the assessee and assessee is also directed to represent his case as and when notice is issued, otherwise adverse view can be taken against the assessee. The appeal of the assessee is allowed for statistical purpose.

**11.** In the result, the appeal of the assessee in ITA No.1450/CHNY /2023 for assessment year 2017-2018 is allowed for statistical purpose.

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

Sd/-

(महावीरसिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष/VICE PRESIDENT

चेन्नई/Chennai

दिनांक/Dated: 20.02.2024.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2.प्रत्यर्थी/Respondent

3..आयकर आयुक्त/CIT

4.विभागीय प्रतिनिधि/DR

5.गार्ड फाईल/GF