

आयकर अपीलिय 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.: **1306/CHNY/2023**
निर्धारण वर्ष/Assessment Year: 2017-18

**Shri Muthu Gounder
Palanisamy,**
91, Mori Kadu Sankari,
Salem – 637 301.

Vs. The Income Tax Officer,
Ward 1(7),
Salem

PAN AKGPP 0039E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S. Sridhar, Advocate
: 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/250/2023-24/1057494142(1) dated 30.10.2023. The assessment was framed by the Income Tax Officer, Ward 1(7), Salem for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 25.12.2019.

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.19,27,000/- being the cash deposits during demonetization period as unexplained money u/s.69A of the Act and taxed u/s.115BBE of the Act.

3. Briefly stated facts are that the assessee is an individual dealing in MRF Tyres (sale of truck tyres in retail) in the name and style of M/s. Kandan Tyres. The assessee filed his return of income for the assessment year 2017-18 on 01.02.2018 and assessee's case was selected for scrutiny assessment under CASS by issuing notice u/s.143(2) of the Act dated 24.09.2018. The AO noticed that the assessee has made cash deposits during demonetization period into his bank account maintained with Indian Bank A/c. No.6394084284. The AO obtained bank statement from bank branch of Indian Bank and details of Specified Bank Notes (SBNs) and on perusal of the same, he noticed that the assessee has made cash deposits of Rs.22,32,000/- in SBNs during demonetization period from 09.11.2016 to 30.12.2016. The assessee was asked to explain the source. He explained the source that the cash deposits made into the Indian Bank account is out of sales made during the month of November, 2016 and December, 2016. He also stated

that the cash deposits are nothing but sales proceeds which resulted out of business transactions. The assessee furnished copies of VAT returns and the AO considering the nature of business of the assessee and principles of natural justice accepted the cash deposits made upto 15.11.2016 amounting to Rs.3,05,000/- as explained and balance cash was added to the returned income of the assessee as unexplained money u/s.69A of the Act and taxed accordingly u/s.115BBE of the Act by observing in para 5.2 as under:-

“5.2 As the assessee has categorically failed to discharge proving the source for the entire cash deposits made during the demonetization period in the above mentioned bank account, I have no other alternative left before me to take the entire cash deposits of Rs.19,27,000/- are treated as unexplained money and assessed under Section 69A r.w.s.115BBE of the I.T. Act, for the assessment year 2017-18 of the assessee.”

4. Aggrieved, assessee preferred appeal before CIT(A) and the CIT(A) confirmed the action of the AO by observing in para 7.2.1 as under:-

“7.2.1 The issue under consideration is the addition on account of cash deposits of Rs.19,27,000/- made by the appellant in his bank account in specified bank notes during the relevant previous year. The onus of proving the source of this cash deposits with support of authentic documentary evidences lie on the appellant. The appellant has merely contended that the said cash deposits of Rs.19,27,000/- Is out of sale of truck tyre, however failed to provide even basic documentary evidences like copy of invoice, purchase bills stock register, etc. to demonstrate that cash sale of truck tyre was made. Unless it is shown by the appellant it cannot be said that the cash deposited is out of cash sales. The impugned cash deposits may or may

not be out of cash sales unless it is so proved by the appellant with support of authentic documentary evidences. The acceptance of sales by the VAT department or even by the A.O, do not lead to acceptance of cash deposits as out of cash sales. It is further noted from date wise details of cash deposits given by the AO. In the assessment order page 2&3 that from 19.11.2016 there is abnormal heavy cash deposits on daily basis like on 22.11,2016 cash deposit of Rs.1,05,500/-, on 23.11.2016 cash deposit of Rs.1,40,000/-, on 24.11.2016 cash deposit of Rs.3,80,000/-, on 25.11.2016 cash deposit of Rs.2,33,000/-, on 28.11.2016 cash deposit of Rs.1,60,000/-, on 29.11.2016 cash deposit of Rs.1,95,000/- on 30.11.2016 cash deposit of Rs.1,40,000/- -were made. It is further noted that before and after these dates, the cash deposits are of normal amount. This pattern of cash deposit therefore do not justify cash sales on the respective dates. Even otherwise as discussed by the AO in para 4 of the assessment order that the appellant's business was not in the category of emergency services like hospital, petrol pump, medical store, etc. and hence the appellant was not supposed to accept the SBN notes from the customers since the same were not legal tenders from 09.11.2016. Therefore it is not acceptable that the appellant has sold tyres in exchange demonetized currency (SBN Notes) even when the appellant was well aware that these currency notes is no more legal tender. It is therefore evident that the appellant has no valid explanation to offer in respect of said cash deposits and thus failed to discharge the onus cast upon him of proving the source of cash deposits in the bank accounts. In the instant case, the appellant is found to be in possession of the impugned cash deposited in the bank account and hence the burden of proof is on the appellant and not on the department to show that he is not the owner of this cash. Even otherwise in case of cash, possession is the evidence of ownership since no person can be in possession of cash belonging to other persons. The appellant's contention that the A.O. has not rejected the books of accounts, it needs to be mentioned that the primary onus of proving the nature and source of cash deposits is on the appellant and where the appellant fails to discharge this onus cast upon-him of explaining the nature and source of cash deposits with support of authentic documentary evidences, the A.O. need not reject the books of accounts before making addition u/s. 69A of the I. T. Act. The appellant's further contention that it is ridiculous to call upon the appellant to prove the genuineness of sales as he is dealing only with MRF brand of truck tyres arid sales are only to truck owners, it may be mentioned that since the appellant urged that the source of cash deposits is out of cash sales, it is necessary that the appellant prove the same with support of

authentic documentary evidences, especially considering that abnormal amount of cash deposits have been made in the bank account during demonetization period. The case laws relied upon by the appellant in the written submission since distinguishable from the facts in the instant case are not applicable. Considering these facts of the case and in the absence of explanation proving the source of said cash deposits the addition of Rs.19,27,000/- made by the A.O. is justified.”

5. I have heard rival contentions and gone through facts and circumstances of the case. Before me, the Id.counsel for the assessee argued that return of income is filed by the assessee along with audited report u/s.44AB of the Act declaring an income of Rs.4,78,679/-. He stated that the books of accounts of the assessee are subjected to tax audit and Form No.3CB & 3CD have been filed. He argued that the assessee has kept complete purchase and sales details, opening and closing stock tally and the complete cash deposits made during demonetization period is out of sale of truck tyres, the trade in which the assessee deals. It was contended that the assessee has reported monthly sale and purchase in GST and paid VAT @ 28%. He stated that once the assessee has produced complete books of accounts, which were never rejected by the AO, now the AO cannot go into the cash deposits and add for the reason that the same is unexplained. The Id.counsel stated that the entire cash deposits is out of sale of truck tyres and the AO himself had accepted part of cash received in

demonetized currency during demonetization period and that to the extent of Rs.3,05,000/-.

6. On the other hand, the Id. Senior DR heavily relied on the assessment order and the order of the CIT(A).

7. I noted that the AO has not rejected the books of accounts and moreover accepted the sales on account of which the assessee had received demonetized currency. As the assessee is in trading of sale of tyres and he has received demonetized currency on account of sale of tyres and deposited in the bank account from 09.11.2016 to 30.12.2016 amounting to Rs.22,32,000/-, the details are brought out in the assessment order. There may be some discrepancy or some element of unaccounted cash being deposited in the account and hence, I make a fair estimate and accept the cash to the extent of Rs.18,00,000/- out of the total cash deposit of Rs.22,32,000/-. Hence, balance cash of Rs.4,32,000/- is being treated as unexplained. For this finding of mine, I place reliance on the finding given by the CIT(A) that there is abnormal heavy cash deposit on daily basis which is given in para 7.2.1 of the CIT(A)'s order, which is reproduced above in para 4. To meet the abnormality, I restrict the addition at Rs.4,32,000/- and delete the

balance addition. However, this income is on account of sale of tyres and it cannot be assessed as 'income from other sources' and it has to be assessed as 'business income'. In term of the above, the appeal of the assessee is partly-allowed.

8. 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. | |