

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री मंजूनाथा. जी, लेखा सदस्य एवं श्री मनोमोहनदास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1464/Chny/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Steel House,
No. 11, Gangai Amman Koil Street,
Kodambakkam, Chennai 600 024.

Vs. The Income Tax Officer,
Non Corporate Ward 19(4),
Chennai.

[PAN:AABFS0085L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 03.04.2024
घोषणा की तारीख /Date of Pronouncement : 03.04.2024

आदेश / O R D E R

PER MANJUNATHA, G., ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 19.10.2023 passed in ITBA/NFAC/S/250/2023-24/1057223180(1) relevant to the assessment year 2017-18. The assessee has raised following grounds:

1. *The CIT(A) erred in disposing of the appeal ex parte without considering the facts of the case and the submissions made in the proper perspective.*
2. MERITS

- 2.1 *The CIT(A) erred in confirming the addition of Rs. 49,21,590 as unexplained cash credit u/s. 68 of the Act made by the AO without considering the submissions made by the appellant.*
- 2.2 *The CIT(A) has failed to note that the appellant has been regularly filing his returns of income.*
- 2.3 *The CIT(A) has failed to note that the appellant is a firm involved in the trading of pipes by purchasing from pipe manufacturing industries, that the firm carries on both cash and credit sales; and that it receives most of its sale receipts in cash and the same is deposited regularly.*
- 2.4 *The CIT(A) erred in upholding the addition of Rs.49,21,590 without giving a reasonable opportunity to be heard; and therefore, the appellant did not have time to furnish the details/break up for the said amount.*
- 2.5 *The CIT(A) ought to have seen that the cash deposited during the months of November and December,2016 are only out of the sales during those months. Also, the CIT(A) failed to note that the sales is consistent when compared with the other months of the FY.2016-17.*
- 2.6 *The CIT (A), dismissed the appeal on the ground that the sales shown in the cash book are inflated and is not genuine, which is not a valid ground but only a surmise.*
- 2.7 *The CIT A failed in confirming the addition on the ground that the appellant is not supposed to be making any sales at all during the demonetization period and also that any such sales made is an invalid tender.*
- 2.8 *In any event, even assuming that it is sale proceeds during the demonetization period, it could not be brought to tax as unexplained money u/s. 69A just because they were SBNS.*

3. Interest u/ss. 234B & 234C:

- 3.1. *The CIT(A) erred in upholding the interest levied u/ss,234B & 234C of IT Act.*
- 3.2. *Since the addition in itself is invalid, the interest levied on account of that shall also be void and is liable to be deleted.*

4. Tax at special rates U/S.115BBE:

- 4.1. *The CIT(A) failed in upholding the tax at special rates levied u/s.115BBE, despite it being not applicable to the AY.2017-18.*
- 4.2. *In any event, the receipts being business receipts is not applicable to the facts of the case.*
5. *The Appellant craves leave to file additional grounds of appeal at or before the time of hearing.*

2. Brief facts of the case are that the assessee has filed the return of income for the assessment year 2017-18 on 27.09.2017 admitting taxable income of ₹.4,58,020/-. The case was selected for scrutiny through CASS. Against statutory notices, the assessee has submitted the details called for on various dates. As per information available on record, the Assessing Officer has noted that the assessee had deposited a sum of ₹.49,21,590/- in cash in account No. 00000032256706743 in State Bank of India, Vadapalani branch during demonetization period. The assessee was asked to explain the source for the cash deposit during demonetization period. After considering the submissions of the assessee, the Assessing Officer has observed that the cash deposited in its account during 10.11.2016 to 31.12.2016 was not out of its turnover during such period and hence a sum of ₹.49,21,590/- deposited by the assessee in demonetized currency during the above period was treated as cash available with the assessee as on 08.11.2016 for which sources are not explained and assessed the same as unexplained investment under section 69 r.w.s. 115BBE of the Income Tax Act, 1961 ["Act" in

short] and brought to tax. On appeal, the Id. CIT(A) decided the appeal on merits and dismissed the appeal of the assessee.

3. On being aggrieved against the exparte appellate order, the assessee is in appeal before the Tribunal. The Id. counsel for the assessee has submitted neither the Id. CIT(A) has considered the detailed facts filed along with grounds of appeal nor afforded reasonable opportunity of being heard to the assessee to substantiate its case before the Id. CIT(A).

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the parties perused the materials available on record and gone through the orders of authorities below. Against the addition made under section 69A r.w.s. 115BBE of the Act, the assessee preferred an appeal before the Id. CIT(A). In page No. 2 of the appellate order, it has been mentioned that notice under section 250 of the act was issued to the assessee. However, no detail of notices issued seeking clarification from the assessee was brought on record. On perusal of the appellate order, we find that the Id. CIT(A) has *suo motu* disposed the appeal without seeking any additional information/explanation in addition

to the facts submitted along with grounds of appeal. Under the above facts and circumstances of the case, we are of the considered view that the assessee shall be afforded one more opportunity of being heard to substantiate its case before the Id. CIT(A). Accordingly, we set aside the appellate order and remit the matter back to the file of the Id. CIT(A) to decide the issue afresh in accordance with law after considering the details as may be filed by the assessee. The assessee is also directed to furnish complete details before the Id. CIT(A) for adjudication.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 3rd April, 2024 at Chennai.

Sd/-
(MANOMOHAN DAS)
JUDICIAL MEMBER

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Chennai, Dated, 03.04.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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