

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G., Accountant Member

आयकर अपील सं./I.T.A. No.1435/Chny/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Saktheemurugan,
7/27, Kumaran Colony, 1st Street,
Vadapalani, Chennai 600 026.

Vs. The Deputy Commissioner of
Income Tax,
Non Corporate Circle 19(1),
Chennai.

[PAN:BCJPS1551C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. G. Vardini Karthik, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 26.03.2024
घोषणा की तारीख /Date of Pronouncement : 10.04.2024

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL 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 13.10.2023 relevant to the assessment year 2017-18.

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2017-18 on 31.10.2017 admitting an income of ₹.95,57,690/-. The case was selected for scrutiny under CASS

and issued notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] dated 24.09.2018 and duly served on the assessee. Subsequently, notice under section 142(1) of the Act calling for details along with annexure was issued on 07.05.2019 & 12.11.2019 and duly served on the assessee. Against the above notices, the assessee filed details before the Assessing Officer. A notice under section 133(6) of the Act dated 14.11.2019 calling for the details of cash deposited was issued to the Branch Manager, State Bank of India, Guindy branch. After analysing the various details, the Assessing Officer has observed that on an average, the assessee has made daily cash sales of about ₹.4,80,000/- (average of cash sales from April 2016 to 8th November, 2016). From the cash book, the Assessing Officer has noted that as on 09.11.2016, the assessee had an opening cash balance of ₹.7,55,675/-. Even if it is assumed that the assessee made more cash sales in the days immediately following the announcement of demonetization and accounting for a 50% rise in cash sales – it is seen on an estimated basis, that he could have reasonably made cash sales of only ₹.7 lakhs approximately. Extending the same calculation, the cash deposits that could reasonably be made in the days immediately following demonetization would be from the assessee's cash in hand as on 09.11.2016 as well as the cash sales from the days following the

announcement, which have been estimated at ₹. 7,33,170/-. Against the opening cash in hand as on 09.11.2016 at ₹.7,55,675/-, the Assessing Officer estimated the excess cash deposit at ₹.28,52,690/- and treated the difference of ₹.20,97,015/- as deemed unexplained cash credits under section 68 of the Act and brought to tax. On appeal, after considering the submissions of the assessee and materials available on record, the Id. CIT(A) confirmed the assessment order.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. counsel for the assessee has submitted that the Assessing Officer has not doubted the purchases made or stock maintained by the assessee. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/findings. Moreover, the Assessing Officer has not rejected the books of accounts while completing the assessment under section 143(3) of the Act. It was further submission that the total turnover as per audited books of accounts for the assessment year 2017-18 for petroleum products was ₹.49,46,54,709/-, the monthly average turnover was ₹.4,12,21,226/- and the daily average sales was ₹.13,74,041/-. Thus, it was submitted that the Assessing Officer has erroneously estimated sales at ₹.7,33,170/- per day and prayed for deleting the addition.

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

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee is a BPCL retailer of selling petroleum products in Irungattukottai, Sriperumbudur in the name and style of M/s. TPRS Fuels and was also doing toughened glass business in the name and style of M/s. Lakshmi Ram Safety Glass at Cuddalore. During the course of assessment proceedings, the Assessing Officer has not rejected the books of accounts of the assessee. The total turnover as per audited books of accounts for the assessment year 2017-18 for petroleum products was ₹.49,46,54,709/-, the monthly average turnover was ₹.4,12,21,226/- and the daily average sales was ₹.13,74,041/-. However, the Assessing Officer has estimated the cash sales in the days immediately following the announcement of demonetization and accounting for a 50% rise in cash sales and approximately worked out the cash sales at ₹.7 lakhs only appears to be not correct.

6. In this case, the statutory audit of books of accounts under section 44AB of the Act has been completed and the Assessing Officer has not rejected the books of accounts under section 145(3) of the Act. The

Assessing Officer has not found any variance of average sales prior to demonetization and post demonetization when compared to the VAT returns filed by the assessee. However, the assessment was concluded based on estimation of sales, unfairly estimating rise in cash sales at 50%. As per the books of the assessee, the total turnover of the assessee was ₹.49,46,54,709/-, the monthly average turnover was ₹.4,12,21,226/- and the daily average sales was ₹.13,74,041/-. Thus, in view of the above facts and circumstances, we are of the considered view that in the absence of any contradictory findings in the books of account, the Assessing Officer is directed to fix the average cash sales at 75% of the daily average sales admitted by the assessee [i.e., 75% of ₹.13,74,041/- instead of estimation of the Assessing Officer at ₹.7,33,170/-] and rework out the excess cash deposit by allowing an opportunity of being heard to the assessee.

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

Order pronounced on 10th April, 2024 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 10.04.2024

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.