

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1228/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Smt. Durga Devi Mundhra Sri Vilas, 18/32, Mahalakshmi Street, T. Nagar, Chennai-600 017.	बनम / Vs.	ITO Non-Corporate Ward-4(3) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAFPD-1061-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri D. Anand (Advocate) -Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl. CIT) - Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	10-04-2024
घोषणाकीतारीख/ Date of Pronouncement	:	25-04-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 29.09.2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30.12.2019. The grounds raised by the assessee read as under: -

1. The order passed by the National Faceless Appeal Centre (NFAC) is erroneous in law and opposed to facts and circumstances of the case.
2. The National Faceless Appeal Centre (NFAC) erred in sustaining addition of Rs.1,85,00,000/- under section 69A of the Income Tax Act.

3. The National Faceless Appeal Centre (NFAC) ought to have seen that addition under section 69A rws 115BBE can be made only when the ingredients of section 69A are cumulatively satisfied. In the instant case the explanation offered by the appellant is supported by documentary evidence. The Department cannot by merely rejecting a good explanation unreasonably, convert good proof into no proof.

4. The National Faceless Appeal Centre (NFAC) ought to have seen that appellant maintains regular books of account and cash book is also maintained at the business premises of the appellant. The learned CIT(A) ought to have seen that total cash available as per the books of the appellant as on 8.11.2016 explains the source of cash deposited into the bank account.

5. The National Faceless Appeal Centre (NFAC) ought to have seen that during assessment proceedings book of accounts including cash book, purchase bills, sales bills, VAT returns, Income tax returns and bank account statements were called for and verified by the assessing officer. In the instant case addition is made by the assessing officer under section 69A only on the ground of suspicion and surmise and not for want of explanation.

6. The National Faceless Appeal Centre (NFAC) ought to have seen that the assessing officer while making the aforesaid addition under section 69A has not followed in letter and in spirit the SOP given to the department in demonetization cases.

7. The National Faceless Appeal Centre (NFAC) ought to have seen that the assessing officer has made addition under section 69A on cash sales made by the appellant, due to reasons that the appellant had not provided Identity proof of the customers to whom cash sales was made. The National Faceless Appeal Centre (NFAC) failed to see that as per rule 114B of the Income Tax Act it is mandatory for the appellant to obtain identity proof only if the cash sales of each transaction Rs.2 lakhs and in the instant case none of the transactions have crossed Rs. 2 lakhs.

8. The National Faceless Appeal Centre (NFAC) erred in sustaining the disallowance of Rs.9,06,599/- made by the assessing officer by invoking section 37 of the Income Tax Act. The said disallowance is wrong both on law and on facts.

As is evident two issues fall for our consideration i.e., (i) Addition u/s 69A; (ii) Interest disallowance.

2. The Ld. AR advanced arguments supporting the case of the assessee which has been controverted by Ld. Sr. DR. Having heard rival submissions, the appeal is disposed-off as under. The assessee being resident individual is stated to be engaged in trading of Gold Bullion in the name of M/s LGD Shop.

3. Assessment Proceedings

3.1 It transpired that the assessee deposited cash during demonetization period. To verify the same, the case was selected for scrutiny and notice u/s 142(1) was issued. The assessee furnished cash book, sales register, purchase register, bank account statement, comparative sales and cash deposited in earlier years.

3.2 The Ld. AO noted that the assessee deposited amount of Rs.185 Lacs during the period from 09.11.2016 to 30.12.2016 and accordingly, the assessee was asked to produce the source of cash deposits. The assessee submitted cash sales register for the period 01.04.2016 to 08.11.2016, 09.11.2016 to 31.12.2016 and 01.01.2017 to 31.12.2017. The Ld. AO noted that there were no cash sales from the period 01.04.2016 to 07.11.2016. In the corresponding period of earlier years also, there was no cash sales. The assessee deposited amount of Rs.159.50 Lacs on 12.11.2016 and the assessee correlated the source of the same with cash sales made on 08.11.2016 to various parties. On verification of sales register, it was noted that the assessee accounted 78 sales entries amounting to Rs.150.32 Lacs excluding sales tax / VAT on 08.11.2016 to accommodate cash deposit of Rs.159.50 Lacs on 11.12.2016. The detail of such sales has been extracted in the assessment order.

3.3 However, Ld. AO rejected the claim of the assessee and held that there were no cash sales since the assessee failed to disclose the identity of the persons to whom cash sales were made on 08.11.2016. The assessee submitted that due to announcement of demonetization by Government of India, there was huge demand for investment in gold and due to rush, the assessee failed to collect the identity of the person to

whom sales were made on 08.11.2016. However, not convinced, Ld. AO held that the aforesaid amount of Rs.185 Lacs was unexplained money u/s 69A and assessable to tax at special rates u/s 115BBE.

3.4 The Ld. AO also disallowed interest expenditure in view of the fact that the assessee claimed interest expenditure of Rs.26.46 Lacs whereas the assessee granted loan of Rs.70.15 Lacs to her son Shri Praveen Kumar Mundhra where no interest receipts were accounted. The Ld. AO computed proportionate disallowance of Rs.9.06 Lacs.

4. Appellate Proceedings

4.1 The assessee reiterated that it was trader in gold jewellery and bullion since 2015 and assessed to TN Vat Act. The assessee maintained regular books of accounts with stock inventory. The books of accounts were subjected to tax audit. As required by Ld. AO, the assessee furnished purchase bills, sales register, bank statement and demonstrated that the cash was deposited in Specified Bank Notes (SBN) for Rs.159.50 Lacs on 11.11.2016 whereas the remaining deposits were in valid currency. The assessee submitted the assessee was a wholesale dealer in jewellery and bullion and did not make retail sale earlier which would explain the fact that there were no cash sales during corresponding period of earlier year. Due to announcement of demonetization, there was huge rush and cash sales were made which were deposited at the first instance on 11.11.2016. The public tried to covert old currencies into articles including gold and silver jewellery and was running from shop to shop to buy goods for these SBNs. The shops were kept open till 12 midnight and those who had stocks sold the stocks accepting these notes. The assessee made cash sales in 82 bills and many bills were signed by the buyers. Since each of the bill was for less

than Rs.2 Lacs, there was no requirement to obtain the name, address or PAN of the buyer. The assessee also submitted that the assessee had sufficient stock to make the sales and stock register was also submitted to Ld. AO. The purchases were evidenced by purchase bills and the stock was sold and all the sales were duly reported in VAT returns. However, Ld. CIT(A) chose to confirm the additions.

4.2 On the issue of interest disallowance, it was submitted that the loan was given in March, 2017 only and the assessee had sufficient credit balance in her capital account to extend interest-free loan to her son. The assessee also submitted ledger to show that it had received funds of Rs.7.25 Lacs from her son and she repaid amount of Rs.77.40 Lacs on various occasions leaving closing balance of Rs.70.15 Lacs. The excess funds advanced were out of own funds and not out of borrowed loans. However, Ld. CIT(A) merely confirmed the disallowance against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee is engaged in trading of bullion. To verify the source of cash deposited by the assessee, the case was scrutinized and certain details were called from the assessee in support of its claim. The assessee deposited cash of Rs.159.50 Lacs in SBNs at first instance on 11.11.2016. The said cash was stated to be sourced out of cash sales made by the assessee on 08.11.2016 immediately after announcement of demonetization by Government of India. The assessee made sale to 82 persons, each of which was less than Rs.2 Lacs and therefore, there was no requirement on the part of the assessee to obtain required particulars viz. name, address and PAN of the buyers. In notice u/s 142(1), the assessee was directed to file the

requisite details and evidences. In response to the same, the assessee furnished cash book, sales register, purchase register, bank account statement, comparative sales and cash deposited in earlier years. The stock moved out of the books of the assessee. The assessee charged VAT on such sales and reflected such sales in the relevant VAT returns which has apparently been accepted by VAT authorities. The assessee has maintained proper books of accounts which are subjected to Tax Audit u/s 44AB. The assessee also maintained quantitative details of traded stock. No single defect has been pointed out by lower authorities in the books of the assessee.

6. We are of the considered opinion that when the sale has been reflected in the books of accounts and offered to tax, adding the same again would amount to double taxation which is impermissible in law. The cash sales proceeds have been credited in the books of accounts and the same form part of assessee's cash book. On these facts, it could very well be said that the assessee's claim was backed up by sufficient documentary evidences. The allegation of Ld. AO is that such abnormal sales could not be achieved by the assessee immediately upon announcement of demonetization by the Government. However, such allegations are bereft of any concrete evidence on record. It is trite law that no addition could be made merely on the basis of suspicion, conjectures and surmises. In the present case, the assessee has duly discharged the burden of establishing the source of cash deposit and the onus was on Ld. AO to disprove the same. However, except for mere allegation and few statistics, there is nothing on record to support the conclusions drawn by Ld. AO that the cash deposited by the assessee was her unaccounted money. There is no finding by Ld. AO that any

particular sales affected by the assessee exceeded threshold limit which cast an additional obligation on the assessee to obtain requisite particulars from the customers. Since cash generated out of sales has been credited in the books of accounts, the provisions of Sec.69A could not be invoked in the present case. Therefore, on the given facts, the impugned additions are not sustainable. By deleting the same, we allow corresponding grounds raised by the assessee.

7. So far as issue of interest disallowance is concerned, the facts that emerges are that the assessee has advanced loan to her son only at the fag-end of this year. In fact, initially the assessee has obtained interest free funds of Rs.7.25 Lacs from her son. Subsequently, she has repaid the loan in excess leaving closing balance of Rs.70.15 Lacs. Further, the fact that the assessee has sufficient capital balance has also not been disputed by lower authorities. No nexus of borrowed funds vis-à-vis loans granted by the assessee has been established by Ld. AO. Therefore, considering all these facts, the interest disallowance is not justified. We delete the same.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 25th April, 2024

Sd/-

(MAHAVIR SINGH)

उपाध्यक्ष / **VICE PRESIDENT**

चेन्नई Chennai; दिनांक Dated : 25-04-2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / **ACCOUNTANT MEMBER**