

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

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकरअपील सं./ ITA No. 277/CHNY/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)**

Shri Palaniappan Maheswaran,
No.96, Pannakadu, Velur Road,
Valarigate, Suriyampalayam Post,
Tiruchengodu,
Namakkal District – 637 209.

Vs. The Income Tax Officer,
Ward 1,
Tiruchengode

[PAN: ANVPM 1287D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri T.S. Lakshmi Venkataraman,
CA

प्रत्यर्थी की ओर से /Respondent by

: Shri AR.V. Srinivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 13.05.2024

घोषणा की तारीख /Date of Pronouncement : 17.05.2024

आदेश / O R D E R

MANU KUMAR GIRI (Judicial Member)

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeals)(NFAC) Delhi [CIT(A)] dated 12.10.2023 for Assessment Year 2017-18.

2. The registry has noted delay of 52 days in filing the appeal. Considering the period of delay and reasons deposed at paras 4(a) to 4(c) of affidavit given by assessee, we find it sufficient cause hence condone the delay and admit the appeal for adjudication.

3. The assessee has raised the following grounds:-

1. On the facts and circumstances of the case the order of first appellate authority dated 12.10.2023 in dismissing the appeal of the appellant is bad in law and is not legally justified.

2. On the facts and circumstances of the case the first appellate authority is not justified in making the addition of Rs.1,49,000/- being cash received by the assessee in SBNs during the demonetization period from 25.11,2016 to 15.12.2016 , even though the above amount was mentioned as an addition in the assessment order of the AO but not taken into account in final computation of total income, which action of the first appellate authority amounts to enhancement of income for which an opportunity should have been given by the first appellate authority in terms sub section 2 to section 251 of the Act. The appellate findings has enhanced the income of the appellant from the assessed income of Rs.17,50,300/- to Rs.18,99,300/- which action of the first appellate authority is not justified.

3. On the facts and circumstances of the case the first appellate authority is not justified in sustaining the addition of Rs.13,30,500/- made by the AO by invoking the provisions of section 69A and 115BBE of the Act and in not considering the detailed written submissions dated 22,08.2023 filed by the appellant.

4. On the facts and circumstances of the case the first appellate authority is not justified in sustaining the action of the AO in invoking the provisions of section 69A r.w.s 115BBE of the Act on the addition of Rs.13,30,500/- when the AO himself has accepted in the assesment order that the appellant is an Agency distributor of Aircel in the name in sale of Mahesh Communication and is also an L.I.C Agent and in view of this finding the entire above receipts pertains to business and invoking the above provisions is bad in law.

5. On the facts and circumstances of the case the lower authorities are not justified in making the addition of Rs,13,30,500/- simply on the ground that the deposits were made in SBNs during the demonetization period without

bringing any materials on record that the above amount represents unaccounted income of the assessee.

6. In view of the above grounds and other submissions to be made at the time of Appeal hearing, the order U/S 250 passed by Commissioner of Income Tax (Appeals),NFAC may be cancelled and justice rendered.

4. At the outset, Ld. Counsel for the assessee has withdrawn the ground No.2. Hence, this ground is dismissed as withdrawn.

5. The brief facts of the case are that the assessee is an individual, carrying in the business of 'Agency distributor of Aircel' in the name & style of 'Mahesh Communication' and also doing LIC agent. Assessee has filed return of income for A.Y.2017-18 on 12.09.2017 declaring a total income of Rs.4,19,800/-. The case was selected for scrutiny under CASS (Limited) on account of '**cash deposit during the year**'. On perusal of SFT information, the assessee has made cash deposits to the tune of Rs.1,80,05,030/- into his SB/Current account maintained with ICICI Bank Ltd, Tiruchengode Branch (bearing a/c Nos.080501503334 & 080505008034) during demonetization period.

6. During the course of assessment proceedings, assessing officer (In short 'AO') found that assessee has made old currencies (SBN note Rs.500/- & Rs.1000/-) to the tune of Rs.13,30,500/- and

deposited in his bank accounts hence treated the same as unexplained money under section 69A of the Act.

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed reply / submissions dated 23.08.2023, however, the Ld. CIT(A) upheld the order of AO on merits without considering the reply of the assessee.

8. On further appeal before us, Ld. Counsel submitted that Rs.13,30,500/- pertains to business receipt of the assessee and income from the same was offered to tax.

9. The Ld.DR, Shri AR.V.Srinivasan, Addl.CIT supporting the order of the AO and the Ld.CIT(A) submitted that the assessee could not produce any material to discharge his onus regarding source of cash deposits.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the record clearly indicate that the written submission/reply of the assessee dated 23.08.2023 was not at all

considered by Ld.CIT(A) by speaking order dealing each points. We are also of the considered view that the assessee also be given chance to produce clinching evidence before the AO to discharge onus as to source of the said deposits in bank accounts.

11. Therefore, without expressing anything on the merit of the case, the issue is restored to the file of AO for *denovo* assessment after granting the assessee adequate opportunity to substantiate his case.

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

Order pronounced in the open court on 17th May, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 17-05-2024

RSR

आदेश की प्रतिलिपि अग्रेषित /Copy to :

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