

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.1398/Chny/2023.
(निर्धारणवर्ष / Assessment Year: 2017-18)

Balasubramaniam Palaniappan,
No.10, Narayanasamy Street,
N.G.G.O. Colony, Surampatti,
Erode 638 009.

Vs. The Income Tax Officer,
Ward 1(5)
Erode.

[PAN: ALJPP 2779F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: None
: Shri ARV Srinivasan, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 15.05.2024

घोषणा की तारीख /Date of Pronouncement

: 21.05.2024

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 11.08.2023 for Assessment Year 2017-18. The assessment was framed by the Income Tax Officer, Ward 1(5), Erode vide order dated 29.08.2019.

2. The assessee has raised the following grounds of appeal:-

"1. The Order of the Learned Commissioner (Appeals) is unfair, illegal and invalid.

2. The Learned Commissioner (Appeals) erred in not considering the factual matrix, the nature of business carried out by the Appellant, the market rate of profit prevailing in the said business and the submissions made during the course of the appeal proceeding.

3. Without prejudice to the generality of the foregoing grounds of appeal, the Learned Commissioner (Appeals) erred in making resort to Section 44AD of the Income Tax Act and computing Business Income at Eight Percent, when the Gross Receipts, as taken by the authorities, during the relevant period is more than Rs. Two Crores.

4. Without prejudice, the Learned Commissioner (Appeals) and the Assessing Officer erred in estimating Business Income at Eight Percent without any basis, logic or comparable standard, more particularly when the resort to Section 44AD becomes illegal and inapplicable and when the prevailing market rate is subject to variation and verification..

5. Without prejudice, the levy of interest under Section 234C at Rs.22,732/- in the Order Giving Effect dated 14/09/2023 is illegal and without cognizance of the settled law that it is leviable only on the Income Returned.

And, for other reasons that may be adduced at the time of hearing, the Appellant humbly prays that the delay in filing the present appeal be condoned, the appeal be admitted for hearing, the grounds of appeal and the respective submissions be considered and justice rendered".

3. The registry has noted delay of 50 days in filing the appeal. Considering the period of delay and reasons deposed at para (4) of affidavit given by assessee, we find it sufficient cause hence condone the delay and admit the appeal for adjudication.

4. The brief facts of the case are that the assessee during the demonetization period deposited Rs.27,14,500/-. A notice under section

142(1) of the Income Tax Act, 1961 (In short 'the Act') dated 30.11.2017 was issued to the assessee. Despite notice was served on the assessee, no return of income was filed. During the assessment proceedings the assessee has not provided any evidences to substantiate the source of deposits of Rs.1,29,31,090/- which includes Rs.27,31,090/- as cash deposits during demonetization hence, assessing officer (In short 'AO') ultimately proceeded ex-parte against assessee u/s 144 of the Act. The AO vide order dated 29.08.2019 made an addition of Rs.1,29,31,090/- as unexplained cash u/s 69A. He also treated the credits of Rs.1,03,38,681/- as assessee's turnover and made an addition of Rs.8,27,094/- as business income being 8% of receipts.

5. Being aggrieved by the assessment order dated 29.08.2019, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed reply / submissions dated 17.03.2021 and 19.07.2023. However, on the basis of assessee's submissions filed, the Ld. CIT(A) vide order dated 11.08.2023 has deleted the addition to the extent of Rs.1,18,96,602/- and sustained the balance addition of Rs.10,34,487/- being 8% of the total amount of Rs.1,29,31,090/-.

6. On further appeal before us, none appeared for the assessee.

7. The Ld.DR, Shri AR.V.Sreenivasan, Addl.CIT relied upon the order of AO.

8. We have heard the Ld.Addl.CIT-DR, perused the materials available on record and gone through orders of the authorities below. The findings narrated in the paras 6 & 6.1 of impugned order are as under:

'6. I have perused the assessment order of the AO and explanation given by him for adding the amount of Rs.1,29,31,090/- in the total income of the appellant. The AO has not given any cogent reasons as to why he is rejecting the contention of the appellant to treat the cash deposits as his business sale proceeds, despite the fact that the AO himself treated the online credits in the bank account of the appellant as business sale proceeds of the appellant and taxed 8% of the total receipts.

I have also considered the submission of the appellant filed during the course of present appellant proceedings. The appellant in his submission stated that in the in statement recorded u/s 131 before the AO, he explained about the credit entries being related to the business receipts of the appellant. But the AO added the total amount of cash deposits of Rs.1,29,31,090/- in the total income of the appellant.

Reliance is placed to the order of the ITAT in the case of Smt. Sridevi Ravi vs. ITO vide ITA No.2716 to 2718/Chny/2018. The relevant part of the abovesaid order is reproduced below:-

"The undisputed facts emerge clearly indicate that the assessee has not disclosed her savings bank account maintained with Bank of India, West Mambalam branch. Further, when the case has been taken up for reassessment, the assessee has come out with explanation that cash deposits found in her bank account is out of contract receipts which was not disclosed to income-tax purpose, however, admitted before the Assessing Officer that net profit may be estimated by applying provisions of section 44AD of the Act. The Assessing Officer has accepted the explanation furnished by the assessee in part and accordingly divided cash deposits found in her bank account into two parts, i.e one from unexplained investments and the other from out of business receipts. Insofar as unexplained investments, the Assessing Officer has arrived at peak credit on a particular date and made addition u/s.69 of the Act as unexplained investments. The balance amount of cash deposits has been accepted as business receipts and has estimated 8% net profit by applying presumptive profit u/s.44AD of the Act. It was the contention of the assessee that once bank credit is accepted as turnover from her business on presumptive basis u/s.44AD of the Act, there is no reason to treat the remaining amount of cash deposits as unexplained investments which is to be taxed u/s.68or 69 of

the Act. We find merit in the arguments taken by the assessee for the simple reason that Assessing Officer himself has admitted the fact that assessee has receipts from her business of civil contract and the same has to be taxed at 8% on presumptive basis u/s.44AD of the Act. Once part of bank credit is accepted as turnover on presumptive basis and has taxed accordingly by applying the provisions of section 44AD of the Act, then there is no reason for the Assessing Officer to take a different view for remaining part of cash deposits found in the same bank account and treat the same as unexplained investments to be taxed u/s.69 of the Act, because it is an admitted fact that the assessee has proved with necessary evidences that she has received cash from business activity of civil contract and interior decoration work. It is also admitted fact that said activity has not been disclosed in income-tax return filed for relevant year and the assessee has not maintained regular books of account for the said activity. The Assessing Officer having accepted the explanation furnished by the assessee regarding her business activity and source of income for cash deposits found in her bank account, he ought to have accepted the explanation furnished by the assessee towards total cash deposits found in her savings bank account.

Therefore, we are of the considered view that Assessing Officer as well as learned CIT(A) were erred in assessing part of cash deposits as unexplained investments to be taxed u/s.69 of the Act and part of cash deposits as receipts from business liable to be taxed u/s.44AD of the Act. Hence, we direct the Assessing Officer to treat the total cash deposits found in her bank account maintained with Bank of India, West Mambalam branch as receipts from her civil contract business and estimate 8% net profit on total receipts as per the provisions of section 44AD of the Act."

6.1 In view of these facts and the above mentioned judicial pronouncement, I am of the opinion that AO was not justified in adding the total amount of Rs.1,29,31,090/- to the total income of the appellant. Therefore, the addition made by the AO is restricted to 8% of the total amount of Rs.1,29,31,090/- i.e. Rs. 10,34,487/-. Therefore, the addition to the extent of Rs. 1,18,96,602/- is hereby deleted and only the addition of Rs.10,34,487/- out of total addition made by the AO amounting to Rs.1,29,31,090/- is hereby sustained. This ground of the appellant is partly allowed".

9. The findings narrated in the paras 6 & 6.1 of impugned order, clearly show that the view taken by the Ld.CIT(A) is reasonable and cogent view. In fact, in para 6 of his order, Ld.CIT(A) while allowing part relief to the assessee has relied upon the order of Co-ordinate Bench decision in the case of *Smt. Sridevi Ravi Vs ITO in ITA No.2716 to 2718/Chny/2018*. We, therefore, do not

wish to interfere with the impugned order dated 11.08.2023 passed by Ld.CIT(A). Before parting with the order, we must note here that we refrain from interfering with the appeal effect order dated 14.09.2023.

10. In the result, appeal filed by the assessee in ITA No.1398/CHNY/2023 for assessment year 2017-2018 stands dismissed.

Order pronounced in the open court on 21st day of 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 :21-05-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

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