

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1629/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

M/s. Sanjay Gold Palace,
Shop No. 16/A, NSC Bose Road,
Sowcarpet, Chennai – 600 079.
[PAN: ADCFS-8067-N]

v. Income Tax Officer,
Non-Corporate Ward 6(3),
Chennai – 600 006.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.05.2024

घोषणा की तारीख/Date of Pronouncement

: 31.05.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, dated 07.12.2023.

2. The sole ground before us is, the Id.CIT(A) has erred in confirming the addition of Rs. 30,00,000/- u/s. 69B r.w.s.

115BBE of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts are that, the assessee M/s. Sanjay Gold Palace is a partnership firm deriving income from business and filed its return of income for the assessment year 2017-18 on 28.09.2017, admitting an income of Rs.2,89,980/-. The case was selected for scrutiny under CASS. Accordingly, notices u/s. 143(2) and 142(1) of the Act was issued to the assessee calling for details of cash deposits during demonetization period. In response to notices, the authorized representative of the assessee submitted bank statements and explained that cash deposits of Rs.30,00,000/- on 14.11.2016 during demonetization period was from the sales made in the month of October and also cash sales from 01.11.2016 to 08.11.2016. However, the Id.AO was not satisfied with the explanation furnished by the assessee and also relying on the judgment of Hon'ble Supreme Court in the case of Kale Khan Mohamed Hanif reported in 50 ITR 1 [1963], having made an addition of total cash deposits of Rs.30,00,000/- to tax u/s. 69 r.w.s. 115BBE of the Act and completed the assessment u/s. 143(3) of the Act on 14.12.2019.

4. Aggrieved by the impugned order, the assessee preferred an appeal before the Id.CIT(A). Before the Id.CIT(A), the assessee reiterated that it was trader in Gold jewellery and bullion and assessed to TNVAT Act. The assessee maintained regular books of accounts with stock inventory. The assessee furnished purchase bills, sales register, cash book and demonstrated that the cash was deposited in SBN was out of sales proceeds of stock on hand. The assessee also relied on the following judgments:

- (i) CIT vs Devi Prasad Vishwnath Prasad [1969] 72 ITR 194 (SC)
- (ii) Mehta Parikh & Co 30 ITR 181 (SC)
- (iii) CIT vs Kailash Jewellery House - ITA 613/2010 Delhi HC
- (iv) Kishore Jeram Bhai Khaniya vs ITO - ITA 1220/Del/2011, ITAT Delhi
- (v) CIT vs Vishal Exports Overseas Ltd -TA No. 2471 of 2009 Gujarat HC
- (vi) New Pooja Jewelers vs ITO - ITA 1329/Kol/2018, ITAT Kolkata
- (vii) CIT vs Jaora Flour and Foods (P) Ltd [2012] 344 ITR 294 22 Madhya Pradesh HC

and pleaded to delete the addition made by the AO. The Id.CIT(A), after considering the submissions made by the assessee and case laws relied upon by the assessee, held that

the assessee's submissions with regard to cash deposits during demonetization period is without any supporting documents and evidences and case laws relied upon by the assessee are not applicable to the facts of the present case. Accordingly, the Id.CIT(A) on relying upon the decision of ITAT Bangalore in the case of Bhoopalam Marketing Services Pvt Ltd vs ACIT in ITA NO. 375/Bang/2022, dated 15.09.2022, sustained the additions made by the Id.AO u/s. 69 r.w.s. 115BBE of the Act and dismissed the appeal filed by the assessee. Aggrieved by the impugned order of the Id.CIT(A), the assessee preferred an appeal before us.

5. The Ld. Counsel for the assessee, assailed that the Id.CIT(A) erred in sustaining the addition made u/s. 69 r.w.s. 115BBE of the Act, even though the assessee has filed all the relevant documents and details to prove its case. The Ld. Counsel for the assessee, stated that the assessee maintained proper books of accounts, stock records and have been furnished during the assessment proceedings. The assessment was concluded by the Assessing Officer without finding any defect in the books of accounts presented and accepted the same.

6. Per contra, the Id.DR, on the other hand relied on the actions of the Assessing Officer and the Id. CIT(A), after considering the submissions has rightly confirmed the addition of cash deposits u/s. 69B r.w.s. 115BBE of the Act and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that the assessee has deposited a sum of Rs. 30,00,000/- in specified bank notes during demonetization period to his bank account. It is admitted from the records that the assessee is engaged in trading business of gold bullion and jewellery. The case was selected for scrutiny to verify the source for cash deposited and called for certain details. The assessee deposited cash of Rs.30,00,000/- on 14.11.2016, after announcement of demonetization by Government of India. The assessee deposited cash out of sale proceeds of gold jewellery collected from its customers which was less than Rs.2 lakhs per person and there was no requirement on the part of the assessee to obtain details like name, address and PAN of the buyers. In response to notice u/s. 142(1) of the

Act, the assessee had furnished cash book, sales register, purchase register, bank statements along with stock registers for the relevant period. The stock moved out of the books on account of sales made by the assessee has established from stock register. The VAT returns for the relevant period reflected such sales which have been accepted by the VAT authorities. The assessee has maintained proper books of accounts which are subjected to tax audit u/s. 44AB of the Act. The assessee also maintained quantitative details of the stock and furnished before the lower authorities. The books of accounts of the assessee have been accepted by the lower authorities while framing the assessment and not rejected by pointing out any defects.

8. On perusal of the records and facts and circumstances of the case, we are of the considered opinion that when the sales 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 made by the assessee have been credited in the books of accounts and the same form part of the assessee's cash book. On these facts, it could be very well said that the assessee claim was backed up

by relevant evidences. Thus, the assessee has discharged the burden of proving the source of the cash/SBN deposited in the bank and the Assessing Officer failed to rebut the same. The allegations/statistics relied upon by Assessing Officer to take an adverse view is not backed up by relevant evidence/material and therefore the impugned action of authorities below cannot be countenanced. Moreover, since cash generated out of sales has been credited in the books of accounts, the provisions of section 69A could not be invoked in the present case. The assessee's reliance on the coordinate bench decision in the case of Smt. Durga Devi Mundhra vs ITO in ITA No. 1228/Chny/2023, dated 25.04.2024 is squarely applicable to the present case on hand, wherein the Tribunal held as under:

"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."

9. Therefore, on the given facts, the impugned additions are not sustainable in the eyes of law and hence, the same is deleted by allowing the grounds raised by the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 31st May, 2024 at Chennai.

Sd/-

(एबी टी वर्की)

(ABY T VARKEY)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर. रघुनाथा)

(S. R. RAGHUNATHA)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF