

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

श्री एबी टी वकी, 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.: **965/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

Karuppaiah Selvaraj,  
CW. 11, New Bus Stand  
Building,  
Erode – 638 001.

Income Tax Officer,  
v. Ward -1(1),  
Erode.

**[PAN: AXWPS-1752-L]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate (Erode)

प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 07.05.2024

घोषणा की तारीख/Date of Pronouncement : 19.06.2024

**आदेश /ORDER**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal instituted by the assessee is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 25.08.2023 against the order of the Ito, Ward -1(1), Erode, dated 30.12.2019.

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

*"1. The orders of the Learned Commissioner of Income Tax (Appeals) as well as the Learned Assessing Officer are unfair, unconscious of the delicate factual matrix and hence, illegal. "*

2. *The Learned Commissioner (Appeals) erred in not considering the submissions advanced by the Appellant in due perspective.*

3. *The Learned Commissioner (Appeals) erred in not following or at least not properly distinguishing the decisions cited by the Appellant, more particularly the decisions of the Hon'ble Chennai Tribunal.*

4. *The Learned Commissioner (Appeals) erred in laying more emphasis on the fact of nonproduction of FIR of the police station, which Report, even if produced, will be a reflection of the factual narration by the Appellant, thereby making no significant difference and thus, erred in not considering the factual claim of the Appellant along with the copy of complaint produced during the assessment proceeding itself.*

5. *Further, the Learned Commissioner (Appeals) erred in rejecting the factual claim of the Appellant on the ground that the Appellant failed to produce his VAT Returns for the said period, without considering that the Commissioner himself or herself, having powers, as extensive as the Assessing Officer, could have obtained necessary particulars from the Commercial Taxes Department, in the light of the mutual exchange of information between the Income Tax and Commercial Taxes Department.*

6. *Further, the Learned Commissioner (Appeals) erred in rejecting the claim of the Appellant on the ground of non-production of VAT Returns, which was never asked from him, thereby taking advantage out of the taxpayer's lack of expertise and awareness of the technicalities.*

**Application for submission of additional evidence(s):**

*The Appellant hereby prays the Hon'ble Tribunal to permit him to produce additional evidence in the form of VAT Returns for the said period. The Appellant submits that the same was not required to be submitted by either of the authorities. In fact, for the first time, it was referred to by the Commissioner (Appeals) in the order u/s. 250 dated 25/08/2023.*

*Further, the Accountant of the Appellant who was handling all aspects relating to filing of returns died unfortunately. Hence, the Appellant could not obtain or produce the returns during the assessment or appeal proceedings.*

*Now, after perusing the appeal order and understanding that the case of the Appellant could be effectively and easily proved by*

*producing the said returns, the Appellant has managed to obtain copies of the same.*

*Hence, the Appellant humbly prays for the leave of the Hon'ble Tribunal to produce the said returns at the time of the appellate proceedings.*

**Evidences: VAT Returns**

*And, for other reasonable and just grounds and reasons, that may be adduced at any time before the disposal of this appeal, the Appellant humbly prays that the appeal may be admitted, submissions and pleas be considered and justice rendered.”*

3. The brief facts are that, the assessee is an individual, carrying on the business of wholesale and retail trade in Electronic goods and helmets at Erode, Tamilnadu. The assessee filed his return of income for the assessment year 2017-18 on 03.01.2018 by declaring a total income of Rs.4,90,250/-. The case was selected for complete scrutiny under CASS. The Assessing Officer issued notice u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) on 17.09.2018 and notice u/s. 142(1) of the Act on 30.07.2019 to the assessee. The assessee filed a letter stating that the cash and bank books have been lost in transit by enclosing a copy of the complaint to the police authorities.

4. During the assessment proceedings, the Assessing Officer issued a summon u/s. 131 of the Act and the statement of an assessee was recorded and passed an assessment order

on 30.12.2019. The relevant extract of the Assessing Officer's order is given below:

*"4.1 In response to summons, the assessee appeared on 19.12.2019 and statement was recorded from him. The important points captured in the statement have been translated and furnished below:*

*"The assessee in the statement deposed that the books of accounts for the F. Y. 2016-17 was maintained by him and he went to meet his advocate. He parked his vehicle leaving behind the account books in his vehicle and when he came back the accounts books were missing and he had sent the letter of complaint to the police through registered post on 26.01.2018. He was further asked about filing FIR with the police and the assessee has stated that the police authorities informed him that enquiry is going on and he will be informed as and when the books are traced by them. He was asked about the total deposit of Rs.1,84,98,000/- during the demonetisation and the assessee was requested to explain the source of deposit of Rs.1,84,98,000/-. The assessee stated that the amount pertains to sale in the course of his business. The assessee was further requested whether the sale of Rs.1,84,98,000/- has been shown in the cash book and sales book. The assessee stated that he had shown Rs.1,84,98,000/- in the cash book and sales book and also as per the answer to question number 5 that he has lodged complaint with police authorities. In the answer to the same question the assessee stated that he will submit his books as and when it is found".*

*4.2 It is evident from the paragraph above the assessee never made an effort to submit cash book and other documentary evidences in support of cash deposit made during the demonetisation period. It is also pertinent note the assessee has sent his complaint by post rather than going to the police station directly and lodging an FIR. The assessee has stated that he has sent letter to the police authorities on 26.01.2018 but he has not taken any efforts to retrieve the data that is lost. It is also to be noted that a business man with a turnover of Rs.3,81,41,252/-, loan from finance - Rs.51,61,080/-, loan from bank - Rs.1,85,83,431/- will not maintain any accounts as a backup is not business expediency and defies logic .*

*4.3 In spite of repeated request the assessee has failed to explain conclusively the sources of deposit of Rs.1,84,98,000/- during the*

*demonetisation period. Further he has stated that the sources for the deposits are sales only and the same could not be substantiated with relevant books and documents. The assessee has stated that he had lost the cash book and bank book but the assessee can support his claim by furnishing original sales bills and purchase invoices. The original invoices and Sales bills were called for vide notices and summons. In view of the above, I am constrained to treat the amount of Rs.1,84,98,000/- deposited during demonetisation as unexplained and undisclosed and brought to tax u/s 69 of the Income Tax Act, 1961.*

*5. It is also pertinent to note, the assessee sold two plots of land for a total consideration of Rs.77,11,000/- against the guideline value of Rs.91,14,500/-. The assessee has worked out capital gain on the guideline value.*

*6. After careful consideration of the facts and submissions made by the assessee the Assessment completed as under:*

<b>Returned Income</b>	<b>Rs. 4,90,250/-</b>
<b>Add: Addition as in Para No. 4</b>	<b>Rs. 1,84,98,000/-</b>
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<b>Assessed Income</b>	<b>Rs. 1,89,88,250/-</b>
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5. Aggrieved by the impugned order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A) and filed before him inter alia the financials along with tax audit report u/s. 44AB of the Act and also brought to his notice that the assessee has been filing regularly return of income and offering 8% u/s. 44AD of the Act and in the relevant assessment year offered net profit of 6.93% on gross receipts of Rs.3,83,69,372/-.

6. However, the Id.CIT(A) without giving opportunity to the assessee has rejected the explanation/relevant documents filed by the assessee to prove the deposits and have confirmed the action of Assessing Officer for having not provided the GST returns filed for justifying the deposits made to bank account in relation to the turnover declared.

7. This action of the Id.CIT(A) cannot be accepted and he ought to have granted opportunity to the assessee and should have directed the assessee to produce such documents. Having not done so, we find there is failure of nature justice.

8. Be that as it may, it was also brought to our notice that the Assessing Officer has not given proper opportunity to prove the deposits during the assessment proceedings. We note that the assessment was framed on 30.12.2019 and assessee was summoned only on 19.12.2019 (i.e., 11 days before assessment order was passed). In such circumstances, we find force in the submissions of the Ld. Counsel for the assessee that the assessee did not get proper opportunity before the Assessing Officer.

9. In such scenario, relying on the decision of Hon'ble Supreme Court in the case of Tin Box Company vs CIT, [2001] 249 ITR 216 (SC), we set aside the impugned order of Id.CIT(A) and restore the issue back to the file of the Assessing Officer with a direction to the assessee to be diligent and file relevant documents/written submissions and Assessing Officer to frame assessment order in accordance with law, after hearing the assessee.

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

Order pronounced in the open court on 19<sup>th</sup> June, 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 19<sup>th</sup> June, 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