

आयकर अपीलिय 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.: **754/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2012-13

Sudhagar,
No.37, Mariamman Koil
Street,
Pillaiyarkuppam Bahour Po,
Pondicherry – 607 402.

[PAN: CYFPS-5732-J]

(अपीलार्थी/Appellant)

The Income Tax Officer,
v. Ward -3,
Pondicherry.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 18.06.2024

घोषणा की तारीख/Date of Pronouncement : 26.06.2024

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 2012-13, vide order dated 30.01.2024.

2. The grievance of the assessee are firstly against the action of the Id.CIT(A) in upholding the action of the Assessing Officer determining Rs.49,22,525/- (8% of the total sales at

Rs.6,15,31,820/-) as business income of the assessee and secondly against confirming the addition of Rs.3,78,91,040/- in respect of cash deposits u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts are that, the assessee an individual was engaged in the business of wholesale trading in edible oil as well as acted as a consignment agent for the same product during the assessment year 2012. The assessee did not file return of income under 139(1) of the Act. However, the Assessing Officer noted that huge amount of cash was deposited in his bank accounts maintained with ICICI bank during the year under consideration; and therefore, notice u/s. 148 of the Act was issued to the assessee on 29.03.2019. The Assessing Officer noted that no return of income was filed by the assessee u/s. 148 of the Act. The notice u/s. 142(1) of the Act dated 19.11.2020 was issued to assessee to furnish details of cash deposits in bank account and source of the same along with the documentary evidence. The assessee replied on 14.09.2021 to draft assessment order dated 10.09.2021 as reproduced below:

"Ref: Reply to Draft Assessment order.

I am a dealer in edible oils. The following details are provided to you for your proposal:

- 1. Cash deposited in the bank account related to sale proceeds.*
- 2. Details of bank account*
 - a) ICICI Bank Current Account No. -623305025106*
 - b) ICICI Bank Saving Account No.- 623301523102*
 - c) Bank statement enclosed for the abovementioned accounts.*
- 3. All cash deposits made in savings and current account relates to Business Proceeds. I am a dealer in edible oil. The sale Proceeds are deposited in Bank Accounts.*
- 4. I have given books of accounts to an auditor for audit U/s 44AB*
- 5. I was infected with COVJD 19 and in home quarantine. Proof for the same is enclosed.*
- 6. To prove that I was doing business, I am herewith enclosing the VAT return copies for the year2011-12.*
- 7. I am also enclosing the CST registration Certificate. Kindly give me 15 day time to submit the audited accounts and audit Report."*

4. However, the Assessing Officer brushed aside the reply and simply did not accept the submission of the assessee (Supra) and concluded the assessment u/s. 147 r.w.s. 144B of the Act, on 15.09.2021 by making an addition of cash deposits of Rs.3,78,91,040/- u/s. 68 of the Act, as the assessee failed to furnish any explanation for source and nature of these cash deposits. Further, the Assessing Officer computed the business income of the assessee at Rs.49,22,545/- on presumptive basis at 8% on total sales at Rs.6,15,31,820/-, since, the assessee

had not declared any business income inspite of having such huge turnover. Aggrieved by the impugned action of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

5. The Id.CIT(A) called for the remand report of the Assessing Officer and the same had been furnished to assessee and obtained the reply from the assessee also. The Id.CIT(A) confirmed the impugned action of the Assessing Officer by holding the additions made u/s. 68 of the Act and also considering the business income as 8% of the turnover of the assessee as correct. Aggrieved by the action of the Id.CIT(A), the assessee has preferred the appeal before us.

6. We have heard both the parties and perused the records. The assessee an individual has ventured into business of trading in edible oil as well as he was a consignment agent for a months' time for the same edible oil business. However, it is noted that he was engaged in this business only for 3-4 months. In order to prove that he was a wholesale trader of edible oil, he has filed VAT returns for the months of April 2011 to March 2012 (refer paper book nos. 24 to 83) (except for the months of July, August, September and November, 2011 the

assessee has filed a NIL returns of VAT for other months). It is noted that the assessee has neither filed return u/s. 139(1) of the Act nor u/s. 148 of the Act. However, the assessee filed before the Assessing Officer the profit and loss account and balance sheet and other documents like VAT returns and bank statements to prove his business. The Assessing Officer, after going through the documents has accepted the sales turnover of Rs.6,15,31,820/- (refer Page No.90 of paper book/profit and loss account) and has determined the net profit @8% of the same making the addition of Rs.49,22,545/-. Further, it is noted that the assessee's modus operandi of business was that the supplier would supply the goods/oil to the location/places of assessee's customers (viz Pondicherry, Villapuram, Thiruvannamalai, Erode, Hosur, Pennadam of Tamilnadu) and they in-turn would deposit purchase consideration to the assessee's bank account at the ICICI Bank branches existing at their place. Further, the Assessing Officer taking note of the cash deposits made in assessee's bank account has made another addition of the entire cash deposits to the tune of Rs.3,78,91,040/- u/s.68 of the Act, which action cannot be countenanced for the simple reason that the assessee has been able to explain that cash deposits were made by the assessee's

customers located at various places in Pondicherry, Villapuram, Thiruvannamalai, Erode, Hosur, Pennadam of Tamilnadu and which fact is corroborated from perusal of the bank statements which would reveal that cash deposits were made from such places and it is important to note that immediately after the deposits are made (by the customers of the assessee) the assessee would remit through RTGS/transfer to his suppliers viz Ruchi Soya Industries Ltd, KTV Health Food Pvt Ltd, Sri Ganapathy Traders, Sri Muruga Rajendra Oil Industries etc towards purchases made. The VAT returns as well as the bank statements corroborates the fact that the assessee was in the business of edible oil and therefore in the light of the evidence we find that assessee was into wholesale trading business of edible oil as submitted (Supra) and that the entire business happened only for 3-4 month's time. It was also noted that the assessee has earned other than this income commission to the tune of Rs.1,84,100/- as a consignment agent in the same business. In such a scenario, addition made u/s. 68 of the Act cannot be countenanced i.e., the addition of cash deposits to the tune of Rs.3,78,91,040/- because these cash deposits are trade receipts and therefore it cannot be added u/s. 68 of the

Act. Therefore, we direct the deletion of amount of Rs.3,78,91,040/-.

7. Now the addition which survives is only Rs.49,22,545/-, which is 8% of the total sales shown by the assessee to the tune of Rs.6,51,31,820/-. The Id.AR of the assessee submitted that since the assessee has been able to discharge the burden that he was doing business as a trader and since the Assessing Officer has accepted the sales figure then it is common knowledge that without purchases, no sales takes place. In such a scenario, only reasonable profit from the transactions can be added in the hands of the assessee. In this regard, we note that assessee was a wholesale trader in the business of edible oil, only for 3-4 months which fact is evident from the VAT returns placed at page no. 24 to 83 of the paper book, as well as the bank statements filed at page no. 16 to 21 of the paper book. For computing the reasonable profit our attention was drawn to page no. 90 of paper book, wherein the profit and loss account was found placed and we find from the perusal of the same that the assessee has shown gross profit of Rs.4,79,157/- and has booked expenditures on bank charges, salary, VAT interest etc to the tune of Rs.1,62,862/-. However,

since the assessee has not placed any evidence to prove the expenditure, we are inclined to add the gross profit shown by the assessee to the tune of Rs.4,79,157/- as his business income which includes the commission on 'consignment sales' to the tune of Rs.1,85,100/- also. Therefore, the ground of the assessee to delete the impugned addition of Rs.49,22,245/- is partly allowed by restricting the addition to Rs.4,79,157/- as business income. The Assessing Officer is directed to give relief accordingly to the assessee in accordance with law.

8. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26th 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 26th June, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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