

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.705/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Supriti Swananda Samudra, 47/2, Vitthal Prasad Taware Colony Aranyeshwar Road, Parvati, Pune, Maharashtra-411009 PAN : AYDPS3255N	Vs.	ITO, Ward – 5(2), Pune
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	N O N E
Department by :	Shri R.Y. Balawade
Date of hearing :	28-05-2024
Date of Pronouncement :	26-06-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 06.02.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [“CIT(A)”] pertaining to Assessment Year (“AY”) 2017-18.

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

- “1] The Ld. AO has erred in determining the income of the appellant at Rs.18,46,740/- making the ex-parte additions without considering the actual facts. The additions made are patently illogical and unsustainable in law and the same may please be deleted.
- 2] The Ld. AO ought to have appreciated that out of total amount mentioned in the asst. order, only Rs.1,46,000/- deposited on 13.11.2016 was in the form of old currency notes and all subsequent deposits in bank were in new currency notes and thus, the addition made as unexplained deposits u/s. 69A of the Act was not justified.
- 2.1] The Ld. AO/CIT(A) failed to appreciate that the cash deposits on 13.11.2016 amounting to Rs.1,46,000/- was out of cash in hand as

on 08.11.2016, which was very reasonable as compared to nature of business. Thus no addition is even warranted for said amount.

- 3] *The Ld. AO/CIT(A) erred in estimating income @ 31% on total deposits without appreciating that a significant part of the deposits were in respect of money transfer business with minimal commission. The gross income from such money transfer business is already reflected in 26AS and therefore estimation at such a higher rate is not justified.*
- 3.1] *Without prejudice, income may be estimated only on sale receipts from internet café / ice- cream parlour business and not on the receipts from money transfer business.*
- 3.2] *The Ld. AO/CIT(A) is not justified relying upon the profit ratios of the earlier years as there was change in composition of different businesses having different margins during the year under consideration.*
- 4] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

3. Briefly stated the data collected by the Income Tax Department under 'Operation Clean Money' revealed that the assessee had deposited cash of Rs.10,48,500/- in her bank accounts during the demonetization period (9th November, 2016 to 30th December, 2016) in old currency (Rs.500/- and Rs.1000/- notes) but had not filed her income tax return for AY 2017-18. Despite notice(s) issued to her, the assessee neither filed income tax return for AY 2017-18 nor any details. The Ld. Assessing Officer ("**AO**") however issued notice u/s 133(6) of the Income Tax Act, 1961 (**the "Act"**) to ICICI Bank Ltd. and obtained the details of her Current Account No. 033705006538 which revealed that during the previous year relevant to AY 2017-18 she had made cash deposit of Rs.11,12,100/- out of which Rs.10,48,500/- was deposited during the demonetization period. Apart from that Rs.25,74,972/- was received by her through transfer entry and cash deposits. Thus, total of Rs.36,23,472/- was received by her in her bank account during the previous year relevant to AY 2017-18.

4. The Ld. AO found from the records that during AYs 2015-16 and 2016-17 as also in subsequent AY 2018-19, the assessee had filed her return u/s. 44AB of the Act being Proprietor of M/s. Sagar Net Café and Sagar Art Palace, wherein she had declared average profit percentage of 31%. Due to none compliance of notice(s) issued by the Ld. AO to the

assessee, the Ld. AO proceeded to complete the assessment ex-parte u/s 144 of the Act.

5. The Ld. AO, in the absence of explanation as to the source of cash deposits aggregating to Rs.10,48,500/- added to the income of the assessee u/s 69A r.w.s. 115 BBE of the Act being unexplained investment made by the assessee in her bank accounts in the form of cash deposits. He further added business income of Rs.7,98,240/- being profit rate of 31% applied on deposits/credits of Rs.25,74,972/- found in her ICICI Bank Account during the year. Accordingly, the Ld. AO computed total income of Rs.18,46,740/- in assessment order dated 30.09.2019 passed u/s 144 of the Act.

6. Aggrieved, the assessee challenged the matter in appeal before the Ld. CIT(A). During the appellate proceedings also, there was none compliance of notice(s) of hearing. So, the Ld. CIT(A) decided the appeal on the basis of material available in the records. Before the Ld. CIT(A), ground was taken by the assessee that out of total amount mentioned in the assessment order, only Rs.1,46,000/- deposited on 13.11.2016 was in the form of old currency notes and all subsequent deposits in bank were in new currency notes and thus addition made as unexplained deposits u/s 69A was not justified. It was also the assessee's case that the said cash deposits on 13.11.2016 of Rs.1,46,000/- was out of cash in hand as on 08.11.2016 which was reasonable having regard to the nature of assessee's business. In this regard, the Ld. CIT(A) in para 7.1 of his appellate order observed as under :

"7.1 However, in the interest of justice, AO is directed to verify whether cash deposit in SBN was Rs.1,46,000/- or Rs.10,48,500/-. If verification reveals that cash deposit in SBN during demonetization period was only Rs.1,46,000/- then addition of the amount of Rs.9,02,500/- will stand deleted from the addition of Rs.10,48,500/-. However, the same will be added to the amount of Rs.25,74,972/- as business turnover to work out profit from it. It has already been held by AO that the non-SBN cash deposits and non-cash credits in the bank account constituted business receipts/turnover of assessee's business."

6.1 It was also contended in the assessee's ground of appeal before the Ld. CIT(A) that the Ld. AO erred in estimating income @ 31% on total deposits without considering that the part of deposits were only payments

made in money transfer business as mediator/agent and was not part of turnover of the assessee. Without prejudice it was also contended that income may be estimated only on sale receipts from internet cafe/ice-cream parlour business along with commission portion from money transfer business. The Ld. CIT(A) rejected the above contention of the assessee for want of necessary evidence in support thereof. He upheld the Ld. AO's action of treating non-SBN deposits/credits as turnover/business receipts and application of 31% profit rate thereof.

7. Dissatisfied the assessee is in appeal before the Tribunal and all the grounds of appeal related thereto.

8. The appeal came up for hearing before us on 28.05.2024. None appeared for the assessee though Ld. DR, Shri R.Y. Balawade attended the hearing.

9. We have heard the Ld. DR and perused the records and the material available therein. It is obvious that the Ld. AO as also the Ld. CIT(A) have passed ex-parte orders. On the issue of cash deposits in SBN – whether it was Rs.1,46,000/- as claimed by the assessee or Rs.10,48,500/- as per the Ld. AO, the matter has been restored by the Ld. CIT(A) to the Ld. AO for due verification and modification of the assessment order in pursuance to such verification. We endorse his directions to the Ld. AO in this regard.

10. So far as the remaining issue of addition of Rs.7,98,240/- under the head 'business' is concerned, we observed that the contentions raised by the assessee before the Ld. CIT(A) have been rejected by the Ld. CIT(A) merely for want of supporting evidence. The Ld. AO did not have occasion to consider these contentions as the assessee's plea on record is that all the details had been submitted before the predecessor Ld. AO and the assessee was under the impression that no more details/evidence is required to be submitted to the successor Ld. AO. Under such circumstances, we are of the view that it would be in the interest of justice and fair play if this issue is restored back to the file of Ld. AO for decision afresh after considering the contentions raised by the assessee before the

Ld. CIT(A), in accordance with law after allowing reasonable opportunity of being heard to the assessee. We order accordingly.

11. In the result, the appeal of assessee is treated as allowed for statistical purpose.

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

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th June, 2024.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune