

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 Nos.: **1456 & 1458/Chny/2023**

निर्धारण वर्ष / Assessment Years: 2013-14 & 2015-16

Vellingiri,  
55/79, Kuppanna Chettiyar  
Street,  
Palladam Road,  
Tirupur – 641 604.

Income Tax Officer,  
v. Ward -2(1),  
Tirupur.

**[PAN: AEKPV-1257-N]**

(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 : 28.06.2024

**आदेश /ORDER**

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

These appeals by the assessee are filed against the common order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment years 2013-14 & 2015-16, vide order dated 16.10.2023. Since, the issues permeating in both the appeals are similar/identical, we take up the appeal for assessment year 2013-14 as the lead case which result will be followed for assessment year 2015-16.

2. The main grievance of the case is against the action of the Id.CIT(A) in confirming the action of the Assessing Officer and dismissing the appeals of the assessee.

3. The brief facts are that, the assessee deals with the second hand sales of two wheelers and four wheelers on commission basis and according to the assessee customers who wishes to sell their vehicle, park it in his premises and then he gets the vehicles checked by technicians and gets it cleaned and repairs/replace the parts at his own cost and then sells the vehicle with a small profit. According to him, the buyer of the vehicle hands over cash as sale consideration which in turn he deposits in his bank account; and within one or two days, he withdraws and makes the payments to the owner of the vehicle. Thus, according to the assessee, he makes a small commission from such sale transactions. The Assessing Officer taking note that assessee has deposited cash of Rs.69,89,160/- for assessment year 2013-14 and Rs.75,25,900/- for assessment year 2015-16 reopened the assessment and he treated the entire cash deposits of Rs.69,89,160/- as unexplained money for assessment year 2013-14 and likewise added Rs.75,25,900/- for assessment year 2015-16 u/s. 69A of the Act. Aggrieved, the

assessee preferred an appeal before the Id.CIT(A), which was confirmed. Aggrieved, the assessee is before us.

4. At the outset, the Id.AR of the assessee placed the assessment orders of the assessee for the earlier assessment years 2011-12 and 2012-13 (immediately preceding years) passed by AO u/s. 143(3) of the Act dated 29.12.2018 and 26.12.2019 respectively. The Id.AR submitted that a perusal of the assessment orders would reveal that Assessing Officer reopened the assessments for those years by taking note of similar cash deposits in assessee's bank account and after scrutiny and verification of the modus operandi of the business of the assessee accepted that assessee received only a small commission from purchase and sale of second-hand two wheelers and four wheelers and after having convinced himself, accepted net profit for assessment year 2011-12 at 1.69% on total deposits at Rs.94,10,150/- and accepted the return filed by the assessee at Rs.1,55,090/-, and likewise for assessment year 2012-13, the Assessing Officer accepted the profit of the assessee of Rs.1,59,390/-, wherein assessee had made deposit of Rs.32,65,520/- (net profit @4.88%). In light of the aforesaid facts, the main plea of the assessee is that since there is no change in facts or law and the business remaining the same,

as per the rules of consistency, the assessee's income may be estimated at an average net profit for both the years.

5. Per contra, the Id.DR opposed the prayer of the assessee and submitted that assessee has deposited cash of Rs.69 lakhs in bank account and neither files the return of income nor responds to the Assessing Officer's notices. Therefore, addition was restored to by Assessing Officer and such action of assessee does not deserve any kind of leniency and therefore wants us to confirm the order of the Id.CIT(A).

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. From the perusal of the material placed on record, we noted that the assessee is into the business of purchase and sale of two wheelers and four wheelers from which he earns a small commission. This fact has been verified and accepted by the Assessing Officer for the earlier two assessment years (AYs 2011-12 & 2012-13) after scrutiny assessments (supra). We note that in those two assessment years also the Assessing Officer had reopened the assessment taking note of the cash deposits in the bank account. We note that in assessment year 2011-12, there was a cash deposit

of Rs.94,10,150/- and the Assessing Officer after verification of facts accepted the return, wherein the assessee showed net profit of 1.69% i.e. Rs.1,59,090/-. Likewise for assessment year 2012-13, the assessee had filed return showing net profit of 4.88% on the total cash deposits of Rs.32,65,520/- i.e., Rs.1,59,390/-, which also has been accepted by the Assessing Officer after scrutiny assessment u/s. 143(3) of the Act.

7. In the light of the aforesaid facts and since, there is no change in the business activity of the assessee and no change in facts or law could be pointed out by the Ld.DR, we apply the rule of consistency and is of the opinion that the entire cash deposits in the bank account cannot be added in the hands of the assessee as unaccounted money u/s. 69A of the Act. A perusal of the bank statements shows that immediately after the deposits there is withdrawal/payment which shows that the assessee was depositing the sale consideration from the buyers (of second-hand vehicles) and deposits the same in his bank account; and after one or two days withdraws the purchase cost of the vehicle, (after retaining the commission) and hands over same to the owner of the vehicle. Therefore, considering the facts and circumstances of the case, we are inclined to estimate the net profit of the assessee and taking

note of the earlier assessment orders in the assessee's own case as noted (Supra), we estimate the net profit @5% on total cash deposits for assessment year 2013-14 of Rs.69,89,160/- and similarly for assessment year 2015-16 @5% on total cash deposits of Rs.75,25,900/- and direct the Assessing Officer to delete the addition of Rs.69,89,160/- and Rs.75,25,900/- and estimate the income @5%.

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

Order pronounced in the open court on 28<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 28<sup>th</sup> June, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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