

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 520/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Seven Energies Limited, Vs. Income Tax Officer
HIG 85, Phase 5, KPHB Colony, Ward 3(1)
Hyderabad. Telangana – 500085. Hyderabad
[PAN:AAOCS4784N]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Assessee

राजस्व द्वारा/Revenue by: Shri M Naveen Kumar, DR

सुनवाई की तारीख/Date of hearing: 13/06/2024

घोषणा की तारीख/Pronouncement on: 05/07/2024

आदेश / ORDER

Aggrieved by the order dated 21/03/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Seven Energies Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Assessee is engaged in the business of solar power. It filed its return of income for the assessment year 2017-18 on 6/11/2017 declaring a loss of Rs. 5, 76, 360/-. During scrutiny, learned Assessing Officer noted that there were cash deposits to the tune of Rs. 33.75 Lacs in the account of the assessee during the monetization period. Assessee explained to the learned Assessing Officer that during the month of April/May, 2016 they withdrew certain amounts to the tune of Rs. 45 lacs, for the purpose of settling wages and other petty expenditure which remained payable due

to litigation at sites, and also due to ongoing negotiations with the parties. According to the assessee, in that pursuit some amount of cash remained with the assessee and due to demonetization they got back the cash and deposited into the bank.

3. According to the learned Assessing Officer there were deposits on 19/11/2016, 21/11/2016 and 24/11/2016 at the rate of Rs. 5 Lacs on each occasion and on 8/12/2016 there was a deposit of rupees 18.75 Lacs, totaling Rs. 233.75 Lacs; whereas there were withdrawals of 5 Lacs each on 21/4/2016, 27/4/2016, 30/4/2016, 5/5/2016 and 7/5/2016, and Rs. 10 Lacs each on 4/5/2016 and 6/6/2016 totaling rupees 45 Lacs. Learned Assessing Officer stated that a sum of Rs. 5 lakhs withdrawn on 21/4/2016 was immediately transferred and therefore, such sum is not available to be shown as a source to the deposits made during the modernization period. In respect of the balance amount that was withdrawn, learned Assessing Officer stated that these sums were withdrawn by one Narsimlu and Santhosh and there is no evidence on record to show that the same cash was available with the assessee till now my/December, 2016 to be deposited back into the bank. Learned Assessing Officer, accordingly, added the entire cash deposits during the monetization period to the tune of Rs. 33.75 Lacs to the income of the assessee.

4. Assessee preferred appeal before the Learned CIT(A) and pleaded the same, but the Learned CIT(A) also did not believe the version of the assessee that the earlier withdrawals are the source for the deposits holding that there is no proof for the same. Hence the assessee filed this appeal contending that the authorities failed to consider the audited financial statements and the bank statements furnished by the assessee to appreciate his contention that there was no additional income that remains unexplained. The cash deposits made in the months of November/December are purely out of the cash on hand, but not any additional income.

5. Per contra, Learned DR argued that there was no reason for the assessee to accumulate the withdrawn amount without exhausting the same and going for the next withdrawal, and the very fact that the assessee kept the funds idle in cash itself runs contrary to the ordinary course of human conduct, and therefore, the authorities rightly rejected the contentions of the assessee and made and sustained the additions.

6. I have gone through the record in the light of the submissions made on either side. There is no dispute of the fact that there were some transfers of funds by the Directors and withdrawals from bank by the assessee between 21/4/2016 and 7/5/2016 totaling to Rs. 45 Lacs, which according to the assessee were withdrawn for the purpose of settling the various and other petty expenses which remains unpaid due to some ongoing litigation and negotiations, such funds were available in cash with the assessee and due to the sudden demonetization, the unspent amounts were deposited bank into the account of the assessee. It is only on suspicion the authorities held that the assessee, being a business concern, will not keep the fund is idle without utilisation and the withdrawals about 6 months prior to the demonetization, will not constitute an acceptable source to explain the deposits during the demonetization period.

7. Through a catena of decisions, the judicial of opinion is that no addition could be made under section 68 of the Act on the sole reason that there is a time gap between the date of withdrawal from bank account and redeposit the same into the bank, unless the learned Assessing Officer demonstrates that the amount in question was used by the assessee for any other purpose. Gordhan vs ITO in ITA No. 811/Del/2015 and ACIT vs. Baldev Raj Charla 121 TTJ 366 (Delhi) are to cite a few. Even if we accept the contention of the learned Assessing Officer that out of the total withdrawal of rupees fortify Lacs, the Rs. 5 Lacs withdrawn on 21/4/2016 was not available to the assessee to make a deposit during the monetization period, still the balance of Rs. 40 Lacs is sufficient to account for the deposits of Rs. 33.75 Lacs. Spending or otherwise of the withdrawn

amount is only a matter of suspicion entertained by the authorities. No addition could be made based on suspicion. There is no reason not to believe the plea of the assessee that the withdrawn amounts were meant to be spent towards wages and other petty expenses, but due to the ongoing litigation the payment could not be materialized, leaving that amount in the hands of the assessee. In the circumstances, there is no reason for me not to believe this as a probable, and to accept the withdrawals as a source explaining the deposits. I, therefore, accepting the same, direct the learned Assessing Officer to delete the addition. Grounds are accordingly answered.

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

Order pronounced in the open court on this the 5th July, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,

Dated: 05 /07/2024

pvv/SPS

Copy to:

- 1 Seven Energies Ltd, HIG 85, Phase 5 KPHD Colony, Hyderabad 500085
- 2 Income Tax Officer Ward 3(1), 727, Signature Towers, Sy. No.6(P) of Kondapur, Sy.37(P) of Kothaguda, Opp: Botanical Gardens, Serilingampally(M) RR Distt. 500084
- 3 Pr. CIT - Hyderabad
- 4 DR, ITAT Hyderabad Benches
- 5 Guard File

By Order