

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं  
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं. ITA No.428/Chny/2024**  
**(निर्धारणवर्ष / Assessment Year: 2018-19)**

<b>Shri Nachimuthugownder Balasamy Karthikeyan</b> 66, Kovalan 2 <sup>nd</sup> Street, Teachers Colony, Erode-638 011.	<b>बनम/ Vs.</b>	<b>ITO</b> International Taxation Ward, Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AOTPK-3606-H</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri S.Sridhar (Advocate) Erode - Ld.AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri Nilay Baran Som (CIT) - Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	20-06-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	10-07-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of final assessment order of learned Assessing Officer (AO) passed u/s 147 r.w.s. 144C(13) pursuant to the directions of Ld. Dispute Resolution Panel-2, Bengaluru-3 (DRP) u/s 144C(5) dated 15.12.2023. The sole grievance of the assessee is confirmation of certain addition of cash deposits and unexplained investments. The assessee being non-resident individual transacted in Bitcoins.

The grounds of appeal read as under: -

1. The impugned order is bad and erroneous in law.
2. Non-mentioning of the status of the appellant in the order u/s. 148A(d) dated 31/03/2022 and in the draft order u/s. 144C(l) dated 29/03/2023 renders the entire proceedings null and void.
3. When notice u/s. 148A(b) dated 24/03/2022 gave time for response on or before 30/03/2022, it makes the entire proceedings null and void, as the mandate of SEVEN CLEAR DAYS is not given.
4. The entire proceedings are null and void, since the mandate of Section 151A, right from the issue of notice u/s.148A(b) dated 24/03/2022 till the issue of notice u/s.148 dated 31/03/2022, has been totally violated.
5. When the very reasons recorded, resulting in the issue of notice u/s. 148A(b), is bit coin transactions and when the additions made in the impugned order do not include the above reason, the entire assessment is null and void, as the reasons recorded cease to exist.
6. The impugned order is one of the finest examples of exhibiting violation of principles of natural justice, as the written submissions with explanations and evidences filed were not considered in proper perspective.

2. The Ld. AR advanced arguments by taking support of various documents as placed on record and assailed the impugned additions. The Ld. CIT-DR, on the other hand, pleaded for confirmation of impugned additions. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

### **Draft Assessment Order and Proceedings before Ld. DRP**

3.1 The assessee being non-resident did not file its return of income. Pursuant to receipt of information that the assessee transacted in Bitcoins, a notice u/s 148A(b) was issued on 24.03.2022 on the ground that the assessee transacted in Bitcoins for Rs.18.60 Lacs. In the absence of any reply, an order was passed u/s 148A(d) on 31.03.2022 which was followed by statutory notice u/s 148 on same date. The assessee filed return and admitted income of Rs.2.40 Lacs. The same was proposed to be determined at Rs.41.67 Lacs in draft assessment order dated 29.03.2023. In this order, Ld. AO proposed addition of cash deposit for Rs.16.63 Lacs, made addition of unexplained investment u/s

69 for Rs.2.42 Lacs & Rs.18.55 Lacs respectively and also determined business income of Rs.1.66 Lacs.

3.2 In the return, the assessee reflected sale of Bitcoins for Rs.19.05 Lacs and computed business income of Rs.0.44 Lacs. The opening stock and purchase was quantified at Rs.2.42 Lacs and Rs.16.19 Lacs respectively. The Ld. AO extracted the transaction from bank statements in its order and excluded certain transactions and re-worked sale and purchase figures.

3.3 The purchase figure was revised to Rs.40.05 Lacs whereas sale was quantified as Rs.25.71 Lacs. The Ld. AO proposed addition of 8% on turnover. The assessee did not show any closing stock and therefore, it was to be inferred that the assessee sold entire Bitcoins stock. After considering assessee's reconciliation, the purchase figure was arrived at Rs.41.53 Lacs. The entire purchase was taken to be sold and Ld. AO estimated income of 8% on Rs.41.53 Lacs. The same came to be Rs.3.32 Lacs. After adjusting amount of Rs.1.66 Lacs as offered by the assessee, the balance amount was treated as unaccounted business income. The opening stock of Rs.2.42 Lacs was treated as unexplained investment u/s 69 on the ground that there was no evidence for purchase.

3.4 It was further noted by Ld. AO that there was credit of Rs.14.33 Lacs and Rs.4.22 Lacs in ICICI Bank Account on 23.05.2017 and 30.05.2017 respectively for which there was no previous purchase transaction. Accordingly, the aggregate amount of Rs.18.55 Lacs was treated as unexplained investment u/s 69.

3.5 The addition of cash deposit stem from the fact that there was cash deposit of Rs.15 Lacs in ICICI Bank Account on 11.05.2017. The

assessee submitted that it was engaged in arbitrage activity on peer-to-peer trading platform for cash with a minimum price margin of 1-3%. On 11.05.2017, trade was made with multiple member of Lbtc Portal and cash was consolidated and deposited in the bank account using the handler nbkarthi (userid). The list of user handlers / buyers with trade reference Id was also submitted. However, the assessee could not retrieve old trade receipts. Therefore, Ld. AO treated the same as unexplained money u/s 69A. There was another deposit of Rs.1.63 Lacs which were similar treated. The assessee maintained that these deposits were recorded in bank account and therefore invocation of Sec.69A was not justified.

3.6 The Ld. DRP, vide directions dated 15-12-2023, upheld the action of Ld. AO. These directions were carried out in final assessment order dated 06-01-2024. Aggrieved, the assessee is in further appeal before us.

#### **Our findings and Adjudication**

4. First, we take up the issue of assessment of business income. It could be seen that the assessee has determined sales figures of Rs.19.05 Lacs whereas Ld. AO has taken the same at Rs.41.53 Lacs. The reconciliation, in this regard, has been placed on the assessee on page-13 of assessment order. The assessee has submitted that withdrawal of Rs.6.80 Lacs on 19.05.2017 represent amount returned to M/s Sana Trading Co. out of money lent by them to the assessee. The assessee also submits that amount credited on 23.05.2017 for Rs.14.33 Lacs and Rs.4.22 Lacs credited on 30.05.2017 has not been considered by Ld. AO. However, we find that no supporting evidences could be adduced by the assessee, in that regard. In such a case, the

determination of business income, in our considered opinion, could not be faulted with. However, at the same time, it could be noted that the aggregate credit of Rs.18.55 Lacs represent business transaction which has already been considered while estimating the business income of the assessee. Even otherwise the business income has been computed on the presumption that entire purchases were sold during the year. Therefore, separate addition of Rs.18.55 Lacs stand deleted whereas the estimation of additional income for Rs.1.66 Lacs stand confirmed. For the same reasons, separate addition of opening stock for Rs.2.42 Lacs is not warranted. The same stand deleted. The business income so computed by Ld. AO would be subjected to normal rate of taxes.

5. The cash deposits represent deposit of Rs.15 Lacs & Rs.0.63 Lacs made by the assessee on 11.05.2017 & 12.05.2017 respectively. The assessee has explained that he was engaged in arbitrage activity on peer-to-peer trading platform for cash with a minimum price margin of 1-3%. On 11.05.2017, trade was made with multiple member of Lbtc Portal and cash was consolidated and deposited in the bank account using the handler nbkarthi (userid). The list of user handlers / buyers with trade reference Id was also submitted. However, Ld. AO rejected the aforesaid claim in the absence of supporting documents and trading receipts. We are of the opinion that once this fact is accepted that the receipts arose out of arbitrage activities, the full addition thereof would not be justified. Therefore, we direct Ld. AO to estimate profit rate of 3% on cash deposit of Rs.15.63 Lacs. The same would be assessable as business income which would be subjected to tax at normal rates. The addition of Rs.1 Lacs stand deleted since there are prior withdrawals which is evident from bank statement of the assessee as placed on record.

6. The Ld. AR has not pressed for adjudication of legal grounds and accordingly, the same stand dismissed.

7. In the result, the appeal stand partly allowed.

*Order pronounced on 10<sup>th</sup> July, 2024*

**Sd/-**  
**(MANU KUMAR GIRI)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 10-07-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF