

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.: **954/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

Income Tax Officer,
74/74A, White House Street,
N R T Nagar, Theni,
Tamil nadu – 625531.

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

v. Annadurai Mallika,
No. 22-10W, V O C Street,
Bodinayakanur,
Theni – 625513.

[PAN: BWKPM-9453-Q]

(प्रत्यर्थी/Respondent)

: Shri. R. Vikneswaran, JCIT
: Shri. K. Mahesh Manickham, CA

सुनवाई की तारीख/Date of Hearing : 04.06.2024

घोषणा की तारीख/Date of Pronouncement : 10.07.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal instituted by the revenue is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 18.07.2023.

2. The sole issue raised by the revenue is that the Ld. CIT(A) erred in deleting the addition of Rs.4,01,74,500/- made

U/s.69A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), made by the Assessing Officer.

3. The brief facts are that, the assessee is an individual carrying on the business of trading in cardamom on commission basis. The assessee filed his return of income for the assessment year 2017-18 on 13.09.2017, admitting a total income of Rs.6,36,020/-. The case was selected for scrutiny and notice u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 12.09.2018 was issued. During the course of assessment proceedings, the case was posted for hearing be seeking to produce books of accounts along with relevant details and documents. On perusal of bank statements and other records, the Assessing Officer found that the assessee has maintained regular books of accounts and books were not audited u/s. 44AB of the Act, though the turnover exceeds the threshold limit for audit u/s. 44AB of the Act. Further, the VAT returns are filed by the assessee disallowing the turnover of Rs.35,03,38,982/- in the name and style of M/s. Vela Traders. The assessee had maintained seven bank accounts and have made cash deposits being the sale

transactions to the tune of Rs.1,14,15,74,344/- as detailed below:

Name of the bank	A/c no	Total deposit amount during the year in Rs
Tamilnad Mercantile Bank	180150050800313	10,25,07,247.00/-
ICICI Bank, Kattapana	052305000949	7,64,95,772.00/-
ICICI Bank, Theni	622505022739	9,13,30,538.00/-
Union Bank of India	335201010035092	57,80,36,499.00/-
Karur Vysya Bank	111513500001122	15,55,39,397.00/-
Punjab National Bank	4373002100000934	11,44,98,759.00/-
Axis Bank	914020049327942	2,31,66,132.00/-
TOTAL		114,15,74,344.00/-

Further, the assessee has stated that the net profit in this line of business is only 1%, but in order to achieve the high target of sales the assessee had reduced the profit to 0.09% and transacted the maximum level of turnover.

4. Based on the above information and the details received from the ADIT (Inv.), Unit-2, Madurai vide report dated 27.09.2018, during the demonetization period, the assessee has deposited Rs.4,01,74,500/- of SBN currency in the following bank accounts as detailed below:

Name of the bank	A/c no	Total amount of SBN deposited in Rs.
Tamilnad Mercantile Bank	180150050800313	1,21,97,620/-
Union Bank of India	335201010035092	1,73,66,000/-
Karur Vysya Bank	111513500001122	93,55,000/-
Axis Bank	914020049327942	12,56,000/-
TOTAL		4,01,74,500/-

5. Therefore, added Rs.4,01,74,500/- as unexplained money u/s. 69A of the Act and concluded the assessment by making the following additions:

Total income returned	Rs. 6,36,020/-
Total income is determined at 1% of the total sales (being total deposit made in the banks – SBN Notes deposited during demonetization period) (Rs.114,15,74,344-Rs.4,01,74,500 = 110,13,99,844)	Rs.1,10,13,998/-
Less: Income already offered as commission	Rs. 10,54,120/-
	Rs. 99,59,878/-
Total undisclosed income assessed u/s. 69A of the Act	Rs.4,01,74,500/-
Total income Assessed	Rs.5,07,70,398/-

Aggrieved by the impugned order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

6. However, the assessee did not participate in the appeal proceedings, inspite of many opportunities by issuing notices by Ld.CIT(A) / NFAC, Delhi. The Id.CIT(A) concluded the appeal

proceedings passing the exparte order dated 18/07/2023 based on the merits of the case as below:

*"7.2 On merits: As stated above there was no compliance by the appellant during appellate proceedings. The appeal is being decided accordingly. In para 3 of the assessment order, the Assessing Officer has accepted that appellant is doing trading of cardamom and has received cash and from which the payments were made through RTGS to auction center. As the AO has himself observed that the assessee received cash and for making payment through RTGS, it is necessary to deposit in Bank account. Against total turnover of about 114 Cr., the cash deposit during demonetization period is about 4 Cr. only. In view of the facts of the case and clear acceptance of the AO about cash receipts, the addition of Rs.4,01,74,500/- made u/s 69A of the Act is **Deleted** as the same represents business transactions.*

*Further, net profit of 1% is applied on the gross entries of Rs.1,14,15,74,344/- resulting in net profit of Rs.1,14,15,743/-. As the appellant has declared income of Rs.10,54,120/- the net addition is restricted to Rs.1,03,61,623-. The grounds of appeal are **'Partly Allowed'**.*

Aggrieved by the impugned action of the Id.CIT(A), deletion of the addition, which was made by the AO as unexplained money of Rs.4,01,74,500/- U/s.69A of the Act, the Revenue preferred an appeal before us.

7. The Ld.DR stated that, the Ld.CIT(A) has failed to note that the assessee has not proved the source for cash deposit made in SBN to the tune of Rs.4,01,74,500/- during the demonetization period. The Ld.DR assailed the action of Ld.CIT(A) for accepting deposits of SBN made during the

demonetization period from the trade receipts, without producing any books of accounts by the assessee.

8. The Ld.DR also stated that the Ld.CIT(A) erred in holding that the cash deposit made in SBNs are out of trade receipts when the assessee has disclosed her turnover at Rs.35,03,38,982/- only in the VAT return filed but cash deposit made in banks by the assessee is Rs.114,15,74,344/- and hence prayed for quashing the impugned action of the Ld.CIT(A) and confirm the order of the AO.

9. Per contra, the Ld. counsel for the assessee stated that, the assessee is dealer in cardamom and deals the same on the basis of commission apart from trading the goods in his own name. The assessee is a registered dealer under VAT act and hence cardamon buyers from other states approach her for purchase of cardamom. In the process he is obligated to settle the dues to the sellers or auction centres after collecting the amounts form the buyers. The difference between the VAT turnover shown and the amount deposited to bank accounts are those remitted by the agents of the buyers. These transactions are not the turnover of the assessee and she is entitled only to

commission or brokerage on the same and hence, the said difference has not been declared as turnover in the VAT returns filed by the assessee.

10. Further, the Ld. Counsel brought to our notice that, the commission due to him depends on the quantity and quality of the cardamom, where the assessee gets about 0.10% to 0.30% of the sale value. The Ld. Counsel asserted that, the action of the Ld.CIT(A) in deleting the impugned addition is in order and has made the following observations in the order :

"As the AO has himself observed that the assessee received cash and for making payment through RTGS, it is necessary to deposit in Bank account. Against total turnover of about 114 Cr., the cash deposit during demonetization period is about 4 Cr. only. In view of the facts of the case and clear acceptance of the AO about cash receipts, the addition of Rs.4,01,74,500/- made u/s 69A of the Act is Deleted as the same represents business transactions."

Therefore, the action of the Ld.CIT(A) be upheld and the appeal of the revenue be dismissed.

11. We heard both the parties and gone through the orders of the authorities below. It is an admitted fact that, the assessee is a dealer in cardamom and registered under VAT act and declared the turnover to the VAT department. During the

assessment proceedings the assessee has accepted for an addition of 1% of the total deposits of Rs.114.15 Crores towards business profit of trading along with commission earned on the other than trading transactions, which are also deposited to the bank account. It is noted that, the AO has made an addition of Rs.4,01,74,500/- as unexplained money U/s.69A of the Act, even though the net profit of the business was estimated based on the transactions, by excluding the cash deposit made during the demonetization period.

12. It is noted that, in the first appellate proceedings the assessee did not participate. However, the Id.CIT(A) has passed an exparte order deleting the impugned addition of Rs.4,01,74,500/-, which led the revenue to file this appeal before us. In the facts and circumstances of the case and as the appeal has been adjudicated exparte by the Ld. CIT(A), to meet the ends of natural justice and relying on the decision of Hon'ble Supreme Court in the case of Tin Box Company vs CIT, [2001] 249 ITR 216 (SC), we are of the considered view that the order of the Ld.CIT(A) is set aside and issue is remitted back to the file of the AO. The AO is directed to frame the assessment of this issue alone after providing reasonable

opportunity to the assessee and the Ld.counsel has undertaken to participate in the assessment proceedings diligently and the assessee is at liberty to provide necessary evidences to prove the nature and source of the cash deposit before the AO.

13. In the result the appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 10th July, 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 10th July, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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