

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1259/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2013-14)

ITO Non-Corporate Ward-9(1) (i/c) Chennai-34.	बनाम/ Vs.	Shri Kuppusamy Sudankumar Old No.36 (New No.4), New Bungalow Street, Chintadripet, Chennai-600 002.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. CTMPS-1821-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Ms. Samantha Mulla mudu (Addl.CIT) -Ld. Sr. DR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR

सुनवाईकी तारीख/ Date of Hearing	:	24-07-2024
घोषणाकी तारीख / Date of Pronouncement	:	08-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 17-08-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] on best judgment basis u/s 147 r.w.s 144 of the Act on 29-03-2022. The registry has noted delay of 11 days in the appeal, which stand condoned. The grounds raised by the Revenue read as under:-

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.
2. The learned CIT(A) have erred in holding the entire deposits are Sale receipts and entire debits are purchase, without any documentary evidences such as Purchase or Sales Bills, it was merely presumed that there must have been purchases and there must have been sales done by the assessee's father.
3. The learned CIT(A) erred on the ground to treat the cash deposit and credit represent sales trading in steel in absence of no corroborative evidence.
4. The learned CIT(A) erred in considering that debits appearing in the bank statement represents purchase in view of the fact that in absence of purchaser details, no cross verifications from the purchaser could be made.
5. The learned CIT(A) erred in accepting the assessee's submission that deposited money was utilized to pay the creditors. However, detailed list of creditors was never furnished.
6. The learned CIT(A) had erred in taking the peak credit as income from other sources. As there are NO cash withdrawals immediately prior to the cash deposits.
7. The learned CIT(A) erred in holding that the cash deposits are made out of the sales receipts as incriminating evidence such as vouchers I receipts or transportation charges etc was made available.
8. The learned CIT(A) ought to have not accepted that all the transaction has been done by Shri T. Kuppuswamy (alias) T.K.Samy the father of the assessee, in the name of the assessee.
9. Without prejudice to above, the learned CIT(A) ought to have considered that in the absence of books of account and audit report, the assessee has to offer income not less than 8% of the turnover.
10. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

At the time of hearing, the revenue withdrew ground no.9. In the remaining ground, the grievance of the revenue is qua relief provided by Ld. CIT(A) on quantum additions as made by Ld. AO in the assessment order.

2. The Ld. Sr. DR advanced arguments and assailed peak credit methodology as accepted by Ld. CIT(A) in the impugned order. The Ld. AR, on the other hand, drew attention to various documents as placed on record and pleaded for dismissal of the appeal. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. The assessee was a non-filer. The revenue, having received information that the assessee deposited cash in his bank accounts, issued notice u/s 148 on 31-03-2021. The assessee was directed to substantiate the source of cash deposit in the bank account. The assessee, inter-alia, submitted that the transactions in the bank account were carried out by his father Shri T. Kuppuswamy who was trading in steel and steel products. In addition to his own business, the father opened bank account in the name of the assessee to carry on this business. However, the father expired on 08-10-2020 during Covid-19. Under these circumstances, the assessee furnished certain documents in support of computation of income. These include cash flow statement, Profit & Loss Account, Balance Sheet and Computation of total income. It was submitted that there were cash sales of Rs.166.24 Lacs and amount of Rs.48.75 Lacs was withdrawn from the bank. Both these were used to make deposit in the bank accounts. However, rejecting the same, Ld. AO added cash deposit of Rs.210 Lacs as undisclosed money u/s 69A r.w.s. 115BBE and framed the assessment.

4. During appellate proceedings, the assessee, reiterating its submissions, drew attention to the fact that there were payments from the bank to steel suppliers. The assessee also assailed the application of Sec.69A to the facts of the case. The Ld. CIT(A) concurred that Ld. AO added entire cash deposit which was deposited in small fractions during the entire year. The perusal of bank statement would show that there was payment to certain parties from time to time and the payments were in cheque only. Considering all these facts, Ld. CIT(A) held that addition of Rs.210 Lacs was not justified but the same could be restricted to peak credit only which was worked out to be Rs.20.01 Lacs. Accordingly, the

impugned addition was restricted to that extent and the balance addition was deleted. Aggrieved, the revenue is in further appeal before us.

5. The material facts are not in dispute. Without going into the question as to who carried out the aforesaid transactions, we are of the considered opinion that when there are cash deposits in the bank account on one hand and payment to sundry creditors / steel suppliers on the other hand then in such a scenario, entire cash deposits could not be held to be unaccounted income of the assessee. The perusal of bank account would, prima-facie, establish that the bank operator has carried out certain business activity of steel trading in the aforesaid bank account. The assessee has also furnished certain financial documents to support the same. The copies of the same have been placed on record. In the Profit & Loss Account, the assessee has reflected sales turnover of Rs.181.30 Lacs and arrived at Net Profit of Rs.10 Lacs. The same has been offered to tax. However, the assessee is unable to substantiate its claim fully. Under such a scenario, it would be more prudent to estimate profit margin on sales turnover rather than to estimate the income on peak credit basis. We estimate the same @12.5% of sales turnover of Rs.1,81,30,380/-. The net addition thus sustained by us comes to Rs.22,66,300/-. The balance addition stands deleted. We order so.

6. The appeal stands partly allowed in terms of our above order.

Order pronounced on 8th August, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

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

चेन्नई Chennai; दिनांक Dated :08-08-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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