

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथ, लेखक सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.770/Chny/2024
निर्धारण वर्ष /Assessment Year: 2017-18

The Asst. Commissioner of
Income Tax,
Corporate Circle-1(1),
Chennai.

Vs. Avilaa Exports Pvt. Ltd.,
Old No.269, New No.126,
4th Floor, Thambu Chetty Street,
Mannady, Chennai-600001.
[PAN: AAJCA 2473K]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri Akshit Jain, C.A
: Shri A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 19.06.2024

घोषणकी तारीख /Date of Pronouncement

: 30.08.2024

आदेश / ORDER

PER S.R. RAGHUNATHA, A.M. :

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals), [NFAC], Delhi [hereinafter "CIT(A)] in DIN & Order No.ITBA/NFAC/S/250/2023-24/1060339451(1), dated 31.01.2024. The assessment was framed by the Assessing Officer for the Assessment Year 2017-18 u/s. 147 r.w.s 144 r.w.s 144B of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 15.01.2022.

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2. The grounds of appeal raised by the Revenue are as under:

“1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The Ld CIT(A) has erred in concluding that the Deposits / credits Assessee's Bank Accounts are nothing but sales/ turnover receipts if the Assessee ever without any supporting documents and evidences except some party lists and basic details, thus rendering the Order of the Ld CIT(A) perverse.

3. The Ld CIT(A) has erred in deleting the addition without either ascertaining further facts from the Assessing Officer or cause further enquiry to establish factual correctness of his decision.

4. Given the fact that, the assessee furnished certain details only towards the fag end of the assessment, the Ld. CIT(A) ought not to have concluded that AO has failed to make any enquiries when there is no scope for the same and therefore, the matter may be remitted back to the AO for verification and scrutiny.

5. 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.”

3. The brief facts of the case are that, the assessee is a private limited company engaged in the business of export of pulses and spices in the name and style of M/s. Avilaa Exports Private Limited. The assessee is a 100% exporter and is part of the Government of India recognized Star Export House. The assessee-company had e-filed its return of Income u/s 139(1) of the Act on 31.10.2017 admitting a total income of Rs.57,64,200/-. The case of the assessee-company was initially completed u/s 143(1) of the Act. Subsequently, a notice u/s 148 of the Act, was issued by the A.O on 31.03.2021 requiring the assessee to file a fresh return of income u/s 148 of the Act. Further,

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due to errors in the new income tax portal, the assessee-company was not able to file return in response to notice u/s 148 of the Act. This issue brought before the A.O. Further, the computation of total income, financials and other particulars were submitted before the A.O indicating that the return filed u/s 139(1) of the Act shall be considered as return filed in response to notice u/s 148 of the Act.

4. The Ld. A.O has passed an order u/s. 143(3) r.w.s 147 of the Act dated 29.03.2022 holding as under:

“18. A show cause notice along with Draft Assessment order was issued to assessee on 26.3.2022. The assessee was requested to furnish its reply on or before 28.3.2022. The assessee has submitted its reply vide letter dtd. 28.03.2022 in response to show cause notice dated 26.3.2022. The reply of the assessee has been perused carefully but not found acceptable on the basis of the facts of the case and discussion made in the following para.

18.1 In its reply the assessee has stated about its objection over the reopening of its case u/s.148 of the Act. This contention of the assessee has been adequately addressed in previous objection rebuttal order based upon the facts of the case and record available in the file. S6, this issue does not require further discussion.

18.2 The assessee has also submitted that in previous year also it has turnover / gross income in hundreds of crore but important consideration in the present case of the assessee for A.Y. 2017-18 is not about questioning / verifying the turnover but for large value non cash transaction in the bank account of the assessee and moreover there has been large value of amount being credited in its account.

18.3 The assessee has argued that it has huge turnover but could not bring on record as what are the source of such huge banking transaction involving domestic and abroad credit as which are its client / parties from whom such credit has been received. Further, the onus the assessee to provide cogent justification and business exigency to accept such huge banking credit in its amount especially name and other details as well as genuineness of amount received from countries outside India.

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18.4 The assessee has submitted documents but on perusal of the same, it could not found to be self explanatory and corroborative to the claim being made by the assessee. Had reasonable justification supported by documentary evidence been provided by the assessee, then claim of the assessee could have been considered on merit. However it is humbly stated that in the opinion of the assessing officer, the huge amount of credit in the bank account of the assessee remained unexplained under the provision of section 68 of the Act. Hence the amount of Rs.1388331016/- is added back to the total income of the assessee as per the provisions of Section 68 of the Act rws 115BBE taxed @60% and added back to the total income of the assessee. Penalty u/s, 271AAC(1) of the Act is separately initiated.

19. Subject to the above, the total income of the assessee for the A.Y. 2017-18 is computed as under :-

Particulars	Amount (Rs.)
Return Income	57,64,200
Add: Unexplained cash credit u/s. 68 of the Act rws 115BBE taxed @60% as discussed above	138,83,31,016
Total income	139,40,95,216
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Rounded off to	139,40,95,220
	=====

20. Assessed u/s. 143(3) rws 147 rws 144B of the Act at Rs.139,40,95,220/-, Issued demand notice. Issued penalty notice u/s. 272A(1)(d) of the Act for non compliance to the notice u/s. 142(1) of the Act dated 12.1.2022 and 15.1.2022. Issued penalty notice u/s. 271AAC(1) of the Act.”

5. Aggrieved the assessee preferred an appeal before the Ld.CIT(A)-NFAC on 16.04.2022. After considering the written submissions of the assessee along with the audited financials, tax audit report, monthly GST returns filed and the verification of bank statements with the reconciliation of turn over with the bank credits, the appeal of the assessee has been allowed by holding as under:

“5.3 Further, grounds numbered 1 to 3 are interlinked and primarily concern the 68 of the Act, which constitutes the main issue in this

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appeal. In the assessment order, the AO noted that the appellant company is a 100% exporter engaged in the business of pulses and spices. The appellant company filed the return of income under section 139(1) on 31.10.2017, declaring a total income of Rs.57,64,200/-, Subsequently, the company's case was reopened with the issuance of notice under section 148 of the Act on 31.03.2021. The appellant, vide its submission dated 13.03.2022, requested the AO to consider the return filed under section 139(1) as the return filed in response to the notice under section 148 of the Act due to the inability to file a return under section 148 on account of an technical glitches in the Income Tax Portal. However, the AO stated in the assessment order that there was no cooperation from the assessee during the assessment proceedings and detailed that until the date of passing the assessment order, the assessee had not filed its return of income in response to the notice under section 148 of the Act. Therefore, the AO had no option but to treat the return filed under section 139 as non-est and proceed with passing the order as per the Act. On perusal of assessment order, it is observed that the assessee company received a substantial credit in its bank account amounting to Rs.138,83,31,016/-. The assessee received funds from various entities, which were reported as Suspicious and non-genuine. Hence, the AO proceeded to add the same as unexplained cash credit under section 68 of the Act in the hands of the assessee while framing the assessment under section 144 r.w. section 147 of the Act in the absence of satisfactory explanation from the appellant's side.

The appellant submitted before the AO, as evidenced from the assessment order itself that the Source of the credits in the bank accounts of the assessee company was due to the huge turnover of the company. During the assessment proceedings, the assessee, vide reply dated 29.03.2022, explained in detail the party-wise receipts in the bank accounts and highlighted the fact that the turnover of the company during the year was Rs.178 crores and the credits in the bank accounts were actually consideration received from the said turnover. The bank receipts were due to export sales made, and the same were duly accounted for in the books of accounts of the company. Thus, it is noted that there is no dispute between the AO and the assessee that the alleged amount of addition of Rs.138,83 crores constitutes cash credits received in the bank accounts held by the appellant company during the year. The said bank receipts were received from parties to whom sales was made and the sales with respect to the same have been shown as income as it is credited in the trading and profit and loss account. The turnover of the appellant company during the year under consideration was Rs.178,81,73,712/- as per the audited financial statements and return of income filed for AY 2017-18 and the credits received in the bank were the sales consideration only. The appellant company submitted that it was not the first occasion wherein the appellant company had achieved such a huge turnover and that the

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company was regularly maintaining and achieving such huge turnover on the yearly basis. The following are the details of the turnover:

AY	Turnover
14-15	1,42,87,04,088.00
15-16	1,60,79,51,656.00
16-17	1,67,26,75,062.00
17-18	1,78,81,73,712.00

From the above, it can be seen that the appellant company has, in the past, maintained and achieved turnover of a similar quantum. The appellant company further stated that all the above turnover was achieved 100% through exports, and the credits in the bank are nothing but the realization of the said sales made. In Support of its claim, the appellant has now submitted, as well as before the AO, the bifurcation of the said turnover along with party-wise receipts in the bank accounts. After perusal of the audited balance sheet and profit and loss account for the year under appeal, it is noticed that the appellant has shown a net profit of Rs.62,16,351/- after declaring total sale receipts (gross) at Rs.178,81,73,712/-, as against the purchase of stock-in-trade of Rs.175,17,29,026/- which is in accordance with return of income filed for AY 2017-18. The turnover of Rs.178.81 crore is duly reflected in the audited Trading and Profit and Loss account of the appellant company, which can also be seen from return of income filed under section 139(1) of The Income Tax Act, 1961 for the year under appeal. The assessee has consistently maintained the stock of Rs.168.54 crores for FY 2015-16, and for FY 2016-17, it was maintained at Rs.175.17 crores, and the sale turnover is part of the stocks maintained, which is not disputed by the Assessing officer during the assessment proceedings. The AO has not pointed out any specific adversity but made a generalized addition without considering the factual aspects and primary evidence. The AO has also failed to make further inquiries on the information filed, and the assessee has discharged the initial burden placed by submitting the information and details. It is reiterated that the source of credits in the bank account of the appellant company was the proceeds of the turnover, which are reflecting in the profit and loss account of the appellant company. Thus, the addition under section 68 made by the AO, ignoring the evidence submitted during the course of assessment proceedings, is beyond the jurisdiction of the AO as the turnover is already reflected in the books of the assessee. Moreover, the gross sale receipts cannot be brought to tax, specifically when it was specifically proved with evidence explaining in detail the party-wise receipts in the bank accounts, that the credit in the bank accounts of the assessee company are nothing but the realization of sale proceeds and duly recorded in the books of

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accounts. Hence, it can be conclusively said that the turnover of the appellant company for the year under consideration was duly considered as income as Sales Turnover, and therefore, the addition of the same has resulted in double taxation of the same revenue. Once the amount is declared as turnover, it cannot be treated as unexplained cash credit under section 68 of the Act, and if the sales turnover is added under section 68 of the Act, that will amount to double taxation, once as sales and again as unexplained cash credit, which is against the principles of taxation. Therefore, the addition made under section 68 amounting to Rs.138,83.31.016/- is hereby deleted. Accordingly, ground No.1 and 3 pertaining to the said addition are allowed."

6. The Ld. DR assailing the action of the Id. CIT(A)-NFAC stated that, the Ld. CIT(A) has erred in concluding the deposits / credits in assessee's bank accounts are nothing but sales receipts and deleting the additions. The Ld. DR relied on the order of the AO and prayed for setting aside the order of Ld. CIT(A).

7. Per contra, the Ld. A.R of the assessee asserted the action of the Ld. CIT(A) and stated that the assessee had furnished all the details / evidences before both the authorities in respect of the huge credits in the bank accounts of the assessee and thereby the Ld. CIT(A) has allowed the appeal of the assessee. Further, the Ld. AR also stated that the bank credits to the tune of Rs. 138.83 Cr. has been made out of the trade receipts on account of exports sales made during the assessment year to the tune of Rs. 178.81 Cr. which has been clearly shown in the audited profit and loss account as on 31.03.2017. The same has been further supported by monthly GST

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returns filed with the GST authorities. These amounts have been collected from the trade debtors and deposited to the bank accounts of the assessee. Further, the Ld. AR stated that the export turnover incentive has been received in the form of duty draw back which has been shown as income in the profit and loss account apart from showing the same in the account of the assessee as receipts. In light of the above argument, the Ld. AR prayed for upholding the order of the Ld. CIT(A) and requested for dismissing the appeal of the Revenue.

8. We have heard both the parties and perused the material available on record and the orders of the lower authorities. The assessee is a company dealing in business of export of pulses and spices as 100% exporter and is part of the Government of India recognized 'Star export house'. The Assessee had filed its return of income for the impugned assessment year U/s.139(1) of the Act by declaring a total income of Rs.57,64,200/-. The return was also processed U/s.143(1) of the act and accepted the same. During the assessment year 2017-18, as per the details available on record, the assessee company has huge credits in their bank account aggregating Rs.138,83,31,016/- and based on such information notice U/s.148 was issued and later the assessee could not file the return due to technical

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glitches. However, the assessee filed the details of computation of total income, financials and other particulars were submitted before the AO. The Assessee also filed the details of Turnover achieved for the 3 preceding assessment years along with the present assessment year as below:

AY	Turnover
14-15	1,42,87,04,088.00
15-16	1,60,79,51,656.00
16-17	1,67,26,75,062.00
17-18	1,78,81,73,712.00

9. In support of the turnover achieved of Rs.178.81 crores, the assessee furnished the monthly GST returns filed correlating with the financials reported and explained that the source for credits in bank account is out of the export turnover of the assessee. However, the AO, NFAC concluded the assessment considering the income filed in the original return of Income U/s.139(1) by making the addition of bank credits as “unexplained cash credits” to the tune of Rs.138,83,31,016/- by passing an order U/s.143(3) r.w.s.147 of the Act.

10. Before the Id.CIT(A), NFAC, the assessee submitted that the AO has erred in treating the credits found in the bank account of the assessee as ‘unexplained cash credits’ and explained the source of deposits made was from the turnover of export of pulses and spices to

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the tune of Rs.178,81,73,712/-, which has been achieved during the A Y 2017-18. The said turnover was supported by the monthly GST returns filed by the assessee and correlated with the audited financials of the company. Further, the assessee stated that, the company has been regularly achieving huge turnover in the past assessment years also. The assessee also stated before the Id. CIT(A) that the turnover achieved, which is the source of huge credits in the bank account was already existing in the income tax website in the return of Income filed u/s.139(1) along with the financial statements duly audited by the statutory auditors of the company along with tax audit report filed U/s.44AB of the Act by providing the details of current and previous turnovers, gross profit, net profit and stock on hand for the respective years. Considering the facts, documents and evidences furnished by the assessee the Id.CIT(A) deleted the additions made by the AO by allowing the appeal of the assessee.

11. We note that, from the records filed by the assessee and on perusal of the audited financials, the company has been achieving the huge turnover of exports including the current assessment year 2017-18, wherein the turnover was Rs.178.81 crores. The assessee has also earned 'duty drawback' to the tune of Rs.2,02,16,297/- during the assessment year, which is paid to the exporters by the Government of

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India for promotion of exports, in proportion to the export turnovers of the company. Further, it is noted that assessee had deposited the following amounts to the bank accounts during the relevant Assessment year:

Kotak Mahindra bank	
<i>Receipts from Sales (Sundry debtors)</i>	<i>2,02,16,297</i>
<i>Duty drawback from Govt. of India</i>	<i>2,10,954</i>
<i>Bank charges reversed</i>	<i>1,02,61,59,606</i>
ICICI Bank OD account	
<i>Receipts from Sales (Sundry debtors)</i>	<i>9,36,990</i>
<i>Building rent received</i>	<i>18,112</i>
<i>Bank charges reversed</i>	<i>74,34,68,310</i>
Total	1,79,10,10,269

12. It is pertinent to note that the assessee has more credits in their bank account during the assessment year, which has been shown as business receipts than the amount mentioned in the notice issued u/s.148 i.e. Rs.138.83 crores. Therefore, we are of the considered opinion that, the assessee has proved the source of the huge bank deposits made during the assessment year.

13. Considering the facts of the case and the orders of the lower authorities, we find no infirmity in the order of Id.CIT(A) in deleting the additions made U/s.68 of the Act as unexplained cash credit and does not require any interference and hence we dismiss the appeal of the revenue.

14. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 30th August, 2024.

Sd/-
(एबी टी. वर्की)
(**ABY T. Varkey**)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 30th August, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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

Sd/-
(एस. आर. रघुनाथा)
(**S.R. Raghunatha**)
लेखा सदस्य /Accountant Member