

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.707/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Bharati Vilas Malusare, Bhingaloli, Mandangad-415203, Maharashtra PAN : AYMPM7126P	Vs.	Commissioner of Income-tax (Appeals), National Faceless Appeal Centre
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Prasad S. Bhardari
Department by :	Shri B.S. Rajpurohit
Date of hearing :	04-07-2024
Date of Pronouncement :	25-09-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 28.12.2023 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**“CIT(A)”**] pertaining to Assessment Year (**“AY”**) 2017-18.

2. The assessee has raised the following solitary ground of appeal :-

“There were cash withdrawals already in the banks before the demonetization period and the same cash has been deposited in the bank, The assessing officer has not considered the same while passing the assessment order. The Assessing officer has also deemed the net profits of business at 10% of the total cash deposits which is not true and fair in the said case.”

3. It is a case of assessment framed u/s 144 of the Income Tax Act, 1961 (**the “Act”**). Briefly stated, the facts of the case are that the assessee is an individual and did not file her return of income for AY 2017-18. Statutory notice(s) u/s 142(1) of the Act along with questionnaire were issued which were duly served upon the assessee. A show cause notice dated 06.12.2019 was issued to the assessee granting her the final opportunity to represent her case and informing that if she does not comply to the said show cause notice, the assessment shall be completed by passing best judgment assessment order u/s 144 of the Act on the

basis of material available on record. The assessee was requested to comply on or before 10.12.2019. However, she failed to respond. There was no compliance by the assessee. Based on the information/data available on record, the Ld. Assessing Officer (“AO”) found that the assessee had deposited cash of Rs.11,15,000/- in the relevant AY 2017-18 in her saving bank account with Bank of India (A/c No. 140310110007964) during demonetization period. The Ld. AO noticed that the assessee had deposited a total amount of Rs.55,30,202/- excluding cash deposit during demonetization period (FY 2016-17) relevant to AY 2017-18. For the lack of compliance in response to notice(s) issued u/s 142(1) of the Act as also to the show cause letter requesting the assessee to submit the necessary explanation regarding the source of cash deposits in her bank account (along with details of denomination of currency deposited during the period of demonetization) and after obtaining information from Bank of India that during the relevant AY the assessee had deposited cash of Rs.11,15,000/- in her bank account during the demonetization period, the Ld. AO added the same to the income of the assessee u/s 69A of the Act. As regards other credit entries excluding the amount of cash deposited during the demonetization period appearing in the bank statement for the entire FY 2016-17 relevant to AY 2017-18, the Ld. AO estimated 10% of credits i.e. Rs.5,53,020/- as business income of the assessee and added the same to the total income of the assessee under the head “profit and gains from business and profession”. Accordingly, the Ld. AO completed the assessment ex-parte u/s 144 of the Act on total income of Rs.16,68,020/- on 11.12.2019.

4. The assessee challenged the ex-parte order of the Ld. AO before the Ld. CIT(A) who too decided the appeal of the assessee ex-parte for non-compliance of notice(s) of hearing dismissing the appeal of the assessee. The relevant observations and findings of the Ld. CIT(A) reads as under :

“6.3 I have carefully considered the issue under dispute and examined the same in the light of the facts and circumstances of the case as emanating from the impugned assessment order u/s.144 of the Act and relevant provisions of the statute.

6.4 As seen from the assessment order, on perusal of bank statement, the assessee has deposited a sum of Rs.11,15,000/- in the bank by way of cash during demonetization period i.e., 09.11.2016 to 31.12.2016 and credits of Rs. 55,30,202 (excluding the cash deposits made during the demonetization period) other than demonetization period i.e., in the FY 2016-17 relevant to the AY 2017-18. During the course of assessment proceedings, the assessee was asked to furnish the sources of cash deposited during the demonetization period along with the documentary evidence. However, the

assessee did not respond to the notices including the show cause notice issued by the AO. Therefore, the AO treated the cash deposits of Rs.11,15,000/- as unexplained money u/s.69A for the IT Act. As regards other credit entries of Rs. 55,30,202/- appearing in the bank statement for the entire financial year(excluding the cash deposits made during the demonetization period), as the assessee did not furnish any details, the AO estimated 10% of Rs. 55,30,202/- which works out to Rs.5,53,020/- as the income of the assessee for A.Y2017-18 from business activities.

6.5 I have given my thoughtful consideration to the issue under dispute and found that the AO made the impugned addition based on appreciation of factual matrix of the case.

6.6 At the outset, it is an admitted fact that consequent to demonetization of SBNs i.e., Rs.500/- and Rs.1000/- notes, i.e., w.e.f. 09.11.2016, it has become illegal to transact in SBNs while conducting business operations or for that matter any other activities in exchange of SBNs.

6.7 Further, the assessee failed to substantiate the nature and the source of the cash deposit made during the demonetization period with necessary documentary evidence.

6.8 All three limbs of Section 69A of the Act stands qualified in the case of the assessee, i.e.

- (i). the assessee was found to be owner of the Money;*
- (ii). such Money was not recorded in the books of accounts; and*
- (iii). its nature and source is not identifiable.*

6.9 Further, even during the course of present appellate proceedings, the assessee has failed to rebut the findings of the AO despite giving sufficient time and multiple opportunities. Under the circumstances, in the absence of details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of Rs. 11,15,000/- u/s 69A warranting no interference of the appellate authority. Thus, the ground raised by the assessee on this issue is dismissed.”

5. The Ld. AR submitted that there was no intentional non-compliance of the notice(s) issued by the Ld. AO as well as Ld. CIT(A). He submitted that the reason for the non-compliance is mainly due to the assessee's lack of knowledge about the tax laws. He submitted that the notice(s) were served electronically and the assessee being a lady is not techno-savvy personnel, the same could not be complied by her. He submitted that given an opportunity the assessee is in a position to submit all the details/documents/evidence to substantiate its case. He, therefore, urged that the matter may be sent back to the file of Ld. CIT(A) for adjudication afresh on merits of the case.

6. The Ld. DR had no objection thereto.

7. We have heard the submissions of Ld. Representatives of the parties and perused the records. It is an admitted fact that due to non-compliance of statutory notice(s) issued by the Ld. AO he proceeded to complete the assessment ex-parte. The Ld. CIT(A) upheld the order of Ld. AO for the reason that even during the course of appellate proceedings the assessee failed to rebut the findings of Ld. AO and despite giving sufficient time and multiple opportunities, the assessee failed to substantiate the nature and source of the cash deposits made during demonetization period with necessary documentary evidences.

8. On the facts and in the circumstances of the case and in the interest of justice and fair play, we deem it proper to set aside the order of Ld. CIT(A)/NFAC and restore the matter back to his file for adjudication afresh and pass speaking order on merits after allowing reasonable opportunity of being heard to the assessee who shall provide the requisite support in terms of submitting the relevant documents/evidences as may be required/called upon. We order accordingly.

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

Order pronounced in the open court on 25th September, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th September, 2024.

रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune