

आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL 'A' 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.: 1363/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2017-18

Smt. Mahalingam Sumathi,

7/155A, Indhira Nagar,
Mettur, Salem-636 401.

[PAN:CTZPS-8862-A]

Income Tax Officer,

v. Ward -1(8),
Salem.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri S. Sridhar, Advocate (Erode)

प्रत्यर्थीकीओरसे/Respondent by

: Smt. T.M.Suganthamala, Addl.CIT

सुनवाईकीतारीख/Date of Hearing

: 30.07.2024

घोषणाकीतारीख/Date of Pronouncement

: 01.10.2024

आदेश/ ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) for the assessment year 2017-18, vide order dated 03.04.2024.

2. The assessee has raised the following grounds of appeal:

1.The impugned Order is illegal, unsustainable and liable to be quashed.

2.The Learned Commissioner (Appeals) erred in not properly and holistically considered the submissions filed by the Appellant.

3.Without prejudice, the Learned Commissioner (Appeals) erred in not considering the key submission of the Appellant that in the absence of

maintenance of books of accounts, the invocation of Section 69 A is out of place.

4. Without prejudice, the Learned Commissioner (Appeals) erred in not considering that the Appellant is not the owner of the sums deposited in the Bank Account, when he or she specifically acknowledged the fact of carrying business during the relevant period and also affirming the computation of Business Income out of similar deposits made during the non- demonetization period.

5. Without prejudice, the Learned Commissioner (Appeals) erred in not considering that the exercise of the Assessing Officer in bifurcating the credits in the Bank Accounts into Cash Deposits during Demonetization Period and Other Credits is illegal and condemned by several decisions of the Hon'ble Tribunal itself.

6. Without prejudice, the Learned Commissioner (Appeals) erred in not considering the VAT Returns and Registration Certificate filed by the Appellant and their implication regarding the factum of conduct of business during the demonetization period also and the level of turnover generated during the year.

7. Without prejudice, the Learned Commissioner (Appeals) erred in not considering that there is no real basis for estimating the Business Income of the Appellant at 8 percent."

3. Brief facts are that the assessee is an individual, had not filed her return of income for assessment year 2017-18. As per information available with the department, the assessee had made cash deposits in specified bank notes (SBNs) during demonetization period and hence, notice u/s.142(1) dated 09.03.2018 was issued to file her return of income on or before 31.03.2018. However, the assessee had not complied with the requirement of filing valid return of income for assessment year 2017-18. Subsequently, many notices were issued, including pre-assessment notice dated

01.11.2019, but the assessee failed to respond and hence, the Assessing Officer framed assessment on best judgement basis vide order u/s.144 of the Act dated 15.11.2019 holding as under:-

"7. In the above circumstance, the assessment is completed with the following additions:

(i) Total amount of cash deposits during the 'Demonetization period (i.e. From 9th November, 2016 to 30th December, 2016)'- The statement of bank account maintained by the assessee during the year under consideration [i.e. prior to demonetization period (01/04/2016 to 07/11/2016), during demonetization period [09/11/2016 to 30/12/2016] and post demonetization period [31/12/2016 to 31/03/2017 have been examined. The assessee had made total cash deposits of Rs.14,54,000/- during the 'Demonetization period (i.e. From 9th November, 2016 to 30th December, 2016) as discussed in para no.5. Further, the assessee failed to furnish any explanation for the source of the said cash deposits in spite of providing several opportunities as mentioned in para 3. Hence, in the absence of any plausible explanation, the assessment is completed treating the entire cash deposits during demonetization period as unexplained and unaccounted income in the hands of the assessee u/s 69A of the I.T.Act and taxed the same at the rates specified under section 115BBE of the Income tax Act.

Addition u/s 69A. Rs. 14,54,000/-

Since the assessee has concealed his income, penalty proceedings u/s.271 AAC(1) of the Act in respect of unexplained income is hereby initiated.

(ii) Business Income- It is also considered that, though the assessee had not offered any explanation for the credits and cash deposits made into the bank, it is illogical to state the entire credits and cash deposits, into the bank account as unexplained income of the assessee for the A.Y. 2017-18. Since the assessee is doing the business, which could be seen from bank statement itself. Hence, after taking into account of the facts as discussed in para 6, the total amount of Rs.1,06,64,248/- (i.e. total credit (inclusive cash deposits), during the F.Y. 2016-17 minus cash deposits during the 'Demonetization period from 9th November, 2016 to 30th December, 2016) taken as sales turnover of the assessee's business for the F.Y.

2016-17 for assessment purposes. Therefore the net income of the assessee is estimated @ 8% of sales turnover, which is worked out to Rs.8,53,140/-and added in the income of the assessee as unaccounted business income.

Addition: Rs. 8,53,140/-

Since the assessee has not offered the above income from business, by filing a valid return of income within the due date prescribed, the act of the assessee attract penalty proceedings u/s 270A of the IT Act, 1961 and penalty proceedings u/s 270A for under reporting of income is initiated separately. Since the assessee has not produced/maintained books of account, penalty proceedings u/s 271A is also initiated.

Subject to the above discussion, total income of the assessee for the assessment year 2017-18 is assessed u/s.144 of the Act and the assessment is completed by computing the taxable income as under.

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|--|----------------------|
| 1. Income assessed u/s 69A r.w.s. 115BBE of the Act as discussed in Para No.7(i) of the above. | Rs.14,54,000 |
| 2. Income from business as discussed in para No.7(ii) of the above | Rs. 8,53,140 |
| Total income assessed | Rs.23,07,140" |

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(A). On perusal of written submissions and order of the Assessing Officer, the CIT(A) sustained addition of Rs.7,70,000/- u/s.69A r.w.s 115BBE of the Act and further, though confirmed estimation of business income of the assessee @ 8% of turnover, the amount of turnover should be Rs.1,21,18,748/- excluding cash deposit of Rs.7.70 Lakhs and directed the Assessing Officer to redo the assessment accordingly by holding as under:-

"6.7 The assessee claimed that once it is accepted that credits including cash deposits in his bank accounts during the year under consideration are related to his business and taxed u/s. 44AD on presumptive basis, then treating the credits on account of cash deposits during demonetization period as unexplained money u/s. 69A of the Act and other credits as turnover is illegal and unfair. The said claim would have been found to be acceptable in a normal year but not for the year under consideration due to announcement of demonetization of SBNs. Regarding the sources of cash deposits made by the appellant in SBNs during demonetization period, there are two things to be proven here, either the appellant had cash balance in SBNs prior to demonetization or he had accepted, SBNs after announcement of demonetization in his regular course of business where he was allowed to accept SBNs. The appellant has failed to submit any evidence on either count to prove his claim. The assessee claimed that the above amount relates to business however no documentary/evidence has been submitted to substantiate assessee has also not Income, his claim. The t submitted details to compare the cash deposit pattern every month during last two years to justify the high cash deposits during demonetization period. The assessee has also not submitted any details for giving the benefit of telescoping of business profits to cash deposits into the bank, Thus, the assessee has not discharged his primary onus to explain satisfactorily with supporting evidences about the nature and source of cash deposited in SBNs during demonetization period either during assessment proceedings or during appellate proceedings. Therefore, the AO was justified in not treating the aforesaid cash deposits of Rs. 7,70,000/- as business receipts.

6.8 The facts and finding of the case laws relied upon by the assessee are different where in those cases, those assessee explained the relation of the deposits with the business, but not in present case, the assessee has not explained satisfactorily about the nature and source of SBNs deposited during demonetization period.

6.8.1 The Hon'ble Tribunal in the case of Sridevi Ravi (supra) for AY 2009-10 to 2011-12 has given the finding it is an admitted that the assessee had proved with necessary evidences that she had received cash from business activity of civil contract and interior decoration work. In that case, the year under consideration was also not demonetization year. Further, no such evidence has been submitted by the assessee in the present case and the year is also demonetization year.

6.8.2 The Hon'ble Tribunal in the case of Smt. Saraniyaa Karthick (supra) has given the finding that the assessee had submitted that

during demonetization period, the clients approached with demonetized currency to book tour packages and such cash was deposited in the bank account; that such receipts constitute business receipts and nothing else. In the present case, no evidence about of source of SBNs has been given by the assessee.

6.8.3 In the case of Mahendra Kumar (supra), that assessee was an exempted entity and allowed to receive the demonetized currency between 09.11.2016 to 30.12.2016 against the sale of medicines. In this case, the assessee was not an exempted entity.

6.8.4 In the case of Thomas Eapen (supra) for AY 2015-16, the Hon'ble ITAT observed that this is not a case, where the Assessing Officer has doubted the gross receipts or gross turnover of the assessee and in fact, accepting the same, estimating income @ 8% on the same at presumptive rate, he preferred to make further addition under section 68/69A of the Act. The ITAT in that case held that since the scheme of presumptive taxation has been formed in order to avoid the long drawn process of assessment in cases of small traders II traders or in cases of those businesses where the incomes are almost of static quantum of all the businesses, the Assessing Officer could have made the addition under section 69A of the Act, once he had carved out the case out of the glitches of the provisions of section 44AD of the Act and no such exercise has been done by the Assessing Officer in this case.

In that case, the year under consideration was also not demonetization year. Further, in the present case, the Assessing Officer had not accepted entire credits as turnover and had estimated income @ 8% on credits excluding cash deposited of Rs. 14,54,000/- at presumptive rate. Thus, in this case, the AO had carved out the case out of the glitches of the provisions of section 44AD of the Act.

6.8.5 In the case of Gregory Francis D'Silva (supra), the Hon'ble Tribunal held that the burden u/s.69A of the Act is only to give a satisfactory explanation and the facts and circumstances of a given case would be sufficient to draw an inference that receipts can be attributed to only business and no other source. In that case, there are no cash deposits in SBNs. Further, in the present case, as stated above, the assessee failed to explain to the satisfaction of the AO that cash deposits in SBNs can be attributed to only business and he had so much cash in hand as on 09.11.2016 in SBNs,

6.9 The assessee has relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs HERSH WASHESHER CHADHA, ITA No. 676/2023 dated 12/12/2023 to contend that sec. 69A is not applicable in this case. However, it is found that in that case, the

Hon'ble Delhi High Court had kept that question open and has dismissed the appeal as there was no substantial question of law raised by the revenue. The Relevant para is as under:

*7. Admittedly, in the present case, the respondent/assessee is a Non-Resident Indian and his source of income in India being from interest on bank accounts and interest on income tax refund, he is not obliged to maintain any books of account in India. It appears to us prima facie that the expression "if any" specifically used in Section 69A of the Act amplifies that where books of account are not maintained, it would not be possible to invoke this provision. **But as mentioned above, learned counsel for appellant/revenue requested to keep this question open to be agitated in some better case. We accede to this request.***

.....

8. In view of the aforesaid it is held that there is no substantial question of law raised by the appellant/revenue in this appeal for being considered by us. Accordingly, the appeal stands dismissed.(emphasis supplied.)

6.10. The Hon'ble Supreme Court in the case of Krishan Kumar [2019] 107 taxmann.com 464 (SC) has dismissed the SLP against High Court's order where High Court upheld Tribunal's order confirming addition made by the AO u/s.69A on ground that during relevant year, assessee made cash deposits of more than Rs. 37 lakhs in saving bank account whereas its entire sales as per VAT return was only Rs. 9.65 lakhs.

6.11 In view of above facts, as no satisfactory explanation has been offered by the assessee about the nature and source of cash deposits in SBNs amounting to Rs 7,70,000/- in his bank account during demonetization period, the AO was justified in treating it as deemed to be the income of the assessee for the year under consideration u/s 69A of the Act read with sec. 115BBE of the Act. Thus, the addition of Rs 7,70,000/- is upheld. The assessee gets partial relief in this issue.

6.12. With regard to the estimation of income at Rs, 8,53,140/- being 8% of the total credits excluding cash deposits during demonetization period, the assessee has not furnished any evidence to justify that what is the net profit earned by him during the year under consideration. The assessee has not submitted any details of total sales, total purchases, stock register or return of income for AY 2017-18. In the absence of any document, I am of the opinion that there was no other option with the AO than to estimate net profit at a certain percentage and estimation at 8% of the turnover appears to

be not unreasonable in view of provisions of sec. 44AD of the Act. Therefore, the action of the AO to estimate business income at 8% of the turnover is upheld. The turnover in this case shall be taken as entire credits of Rs. 1,21,18,748/- excluding cash deposited in SBNs of Rs.7,70,000/-. The AO is, therefore, directed to rework the income from business as directed above."

Aggrieved, now the assessee is in appeal before us.

5. The Ld.AR for the assessee stated that the CIT(A) has erred in not considering the key submissions of the assessee in absence of maintenance of books of account by invoking provisions of section 69A of the Act. He further submitted that both the lower authorities have erred in not considering partial deposits as business receipt for the purpose of estimating net profit @ 8% following provisions of section 44AD and made addition of partial amount as unexplained cash deposits during demonetization period. The action of the lower authorities by bifurcating credits in bank accounts as cash deposits during demonetization period and other period in the same assessment year, which is illegal in the eyes of law. In support of the claim, the Ld.AR relied on several decisions of the Tribunal itself. Further, the Ld.AR stated that estimating net profit of business @ 8% unilaterally made by the Assessing Officer and confirmed by the CIT(A) is against the principles of natural justice. In light of the above, the Ld.AR pleaded that matter may be remitted back to the

file of the Assessing Officer to compute the income from business of the assessee @ 4% of net profit of the turnover.

6. Per contra, the Ld.DR stated that since the assessee is a non-filer of return of income and not complied with the notices. Therefore, the Assessing Officer was forced to pass ex-parte order and she supported orders of the lower authorities and prayed for dismissal of the appeal.

7. We have heard rival contentions and perused materials available on record and gone through orders of authorities below. The assessment order is an ex-parte order. In the assessment order, Ld. AO made addition for cash deposits to tune of Rs.14.54 Lakhs U/s.69A of the Act and estimated business income @ 8% on the entire credits in the bank account reducing the amount of Rs.14.54 Lakhs. On appeal, the Ld. CIT(A) confirmed the addition of Rs.7.70 Lakhs for want of proof of cash deposits and agreed for estimation of 8% of turnover, however directed the AO to consider entire credit of Rs.1,21,18,748/- for estimation of net profit, excluding Rs.7,70,000/-. According to the Ld. AR the estimation of net profit @ 8% is very unreasonable, and also pleaded to consider the entire bank deposits as turnover without any discrimination for

the cash deposits made of Rs.7.70 Lakhs during demonetization period and to estimate the net profit @ 4% on the same. We noted that the assessee is a non-filer and not maintained books of account and carried on the business in the name M/s.Sumathi Agency, dealer in cement, which has been observed by the AO and stated that the payments in the bank account have been made to the suppliers of Cement. The assessee also filed the corresponding registration certificate and VAT returns before the Ld.CIT(A) during the appellate proceedings. On perusal of bank statements of the assessee the deposit of Rs.14.54 Lakhs made during the demonetisation period for almost 50 days is in line with the regular monthly deposits during the entire period for the F.Y.2016-17. Further, the assessee has deposited regular cash and cheques to her bank account throughout the year on account of sale proceeds / business transactions. On perusal of the records, it is an undisputed fact that the assessee has carried on business of trading in cement and filed monthly VAT returns as per TNVAT Act, and we find that it is not the case of the Revenue that assessee has any other source of income other than the dealership in cement. In such a scenario, it would be unsafe to saddle the assessee with the aid of the deeming provision u/s. 69A of the Act, the entire specified bank note deposits during demonetization period. Having found from the

contemporary evidence in the form of invoices/VAT return, it cannot be said that the specified bank notes were not from trade receipts. Since, the Assessing Officer has accepted the turnover (minus specified bank notes deposits) as the trade receipt, we are of the opinion that specified bank notes deposited should be treated as trade receipt and therefore, addition u/s. 69A would not warrant and directed to be deleted. We are agree with the AO that it would be reasonable to estimate the income of the assessee @ 8% of the entire deposits made in the bank during the A.Y. treating it as turnover. In the peculiar facts and circumstances of the case, we direct Ld. AO to estimate the net Income @ 8% of entire credit made in the bank account, treating it as a turnover and the same would be assessed as business income only. The balance addition is deleted. The Ld. AO is directed to re-compute the income of the assessee accordingly.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the court on 01st October, 2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस. आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 01st October, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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