

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.306 /Chny/2023
निर्धारण वर्ष /Assessment Year: 2020-21

Arun Kumar
No.99/48, V.V.Koil Street,
Choolai,
Chennai-600112.
[PAN: AUTPK 0322J]

Deputy Commissioner of
Income Tax,
Central Circle-3(4),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri N.Arjun Raj, Advocate.
: Shri V.Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 31.07.2024

घोषणा की तारीख /Date of Pronouncement

: 23.10.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/M/250/2022-23/1049524542(1) dated 08.02.2023 of the Learned Commissioner of Income Tax [herein after "CIT(A) for the assessment years 2020-21. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 08.02.2023 passed by CIT(A), Chennai.

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2.0 The first issue arising in this case in respect of ground of appeal no.2 to 7 is regarding addition of Rs.22,80,500/- on account of cash seized during search upon assessee treating the same as explained money u/s 69A and corresponding invocation of section 115BBE done by the AO vide his order dated 28.09.2021. Brief factual matrix of the case as emanating from assessment order is that the assessee has been engaged in the business of trading of old clothes on Pan India basis. A search action was conducted upon the assessee leading to seizure of cash of Rs.22,80,500/-. On being confronted during the course of search, the assessee through its sworn statement submitted that said cash represented his unaccounted income. In response to question, he had stated that *"No sir, I have not maintained any books of account for the above mentioned cash amount because of the nature of my business. This is my unaccounted income"*. In para-3 of his order the Ld. AO has recorded that, the assessee vide its submission dated 22.09.2021 had stated that the sum of Rs.22 lakhs has been admitted as "other income" in the return of income filed for the AY-2020-21. In the above background the AO concluded that provisions of section 69A r.w.s 115BBE are clearly attracted in the case. He proceeded accordingly making the impugned addition of Rs.22,80,500/-. The Ld. First Appellate Authority confirmed the order

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of the Ld.AO after considering and comprehensively analyzing all the submissions made by the assessee before him. It was held that the primary onus to substantiate that the unaccounted cash was out of business was upon the assessee itself. It was for the assessee to have explained the modus operandi for the generation of this cash. The Ld. CIT(A) observed that section 69A r.w.s. 115BBE is fully applicable in his case. It also refuted the claim of the assessee that the Ld. AO in para-3 of his assessment order accepted that the impugned cash is in the form of business income observing that no such finding has been given by the Ld.AO. On the issue of Ld. AO not discharging its burden of proof, the Ld. CIT(A) observed that the same was primarily upon the assessee. The Ld. CIT(A) observed that twin conditions of section 69A that the cash found was unaccounted and remained unexplained satisfactorily were satisfied in the case to justify their invocation. The Ld. CIT(A) further observed that section 115BBE is not a deeming provision but one which comes to force automatically in a case where 69A is attracted.

3.0 The Ld. Counsel for the assessee argued that the hypothesis of Ld. AO and the CIT DR is incorrect. It was stated that the assessee had admitted that seized cash was business receipts and therefore application of section 69A r.w.s 115BBE is unwarranted. The Ld.

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Counsel primarily repeated the arguments taken before the Ld. First Appellate Authority. The Ld. Counsel filed a chart indicating turnover and corresponding business income of the assessee from AY-2015-16 to AY-2020-21 to allude that the seized cash has apparent linkage with the business turnover. The Ld. DR vehemently opposed contentions of the assessee and relied upon the orders of authorities below. The Ld. DR submitted that the case is covered by the decision of Hon'ble Madras High Court Thiru A.J.Rameshkumar 139 taxman.com 190. It was urged that in the impugned case Hon'ble High Court has held that if the assessee fails to lead satisfactory evidence in support of its claim, a presumption qua his guilt can be taken to make an addition. The Ld. DR also placed reliance upon the decision of Hon'ble Madras High Court in the case of SVS Oil mills 418 ITR 442. The Ld. AR would like to make us believe that the impugned cases are distinguished.

4.0 We have heard rival submissions in the light of material available on records. On the controversy of assessing officer admitting in para-3 of his order that the impugned cash is a business receipt, we do not find any such finding given by the assessing officer. It is trite law that the primary onus of explaining the source of any cash, bullion, jewellery or valuable found during search proceedings is upon the taxpayer. A plain reading of section 69A establishes that if

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the assessee fails to offer any explanation or an unsatisfactory explanation, the assessing officer would proceed to invoke deeming provision of assuming that the same is undisclosed income of the taxpayer. We have noted that the assessee has failed to discharge its primary responsibility. The subsequent submissions by the assessee made during assessment proceedings would not come to its rescue. It is also an undisputed fact of the case that the assessee has himself, through its return of income filed for AY-2020-21, disclosed an amount of Rs.22 lakhs as other income and this fact was also admitted by him vide his submission dated 22.09.2021 made before the AO during the assessment proceedings. Thus, there is no connection between business of the assessee and unaccounted cash found during the search proceedings. Accordingly, we are of the view that no interference is required to be made in the order of Ld.CIT(A) at this stage. The order of Ld.CIT(A) is therefore confirmed and the grounds of appeal Nos. 2 to 7 are dismissed.

5.0 Grounds of appeal no. 1 & 8 have been found to be general in nature and devoid of any meritorious adjudication.

6.0 Through ground of appeal no.9 the assessee has contested that it was not given proper opportunity by the Ld. AO and hence principle of natural justice were violated. No evidence has been brought out on

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record by the assessee in support of this ground of appeal. Para-2.1 of the assessment order indicates that the assessee was issued notice u/s 143(2) as well as u/s 142(1) along with questionnaire which were responded by the assessee. No case of denial of any opportunity has therefore been made out. It is also noted that no such controversy was raised by the assessee before the Ld. First Appellate Authority. Accordingly the ground of appeal no.9 is also dismissed.

7.0 In the result, the appeal of the assessee is dismissed.

Order pronounced on 23rd, October-2024.

Sd/-
(मनु कुमार गिरि)

(Manu Kumar Giri)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 23rd, October-2024.
KB/-

Sd/-
(अमिताभ शुक्ला)

(amitabh shukla)

लेखा सदस्य /Accountant Member

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