

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1499/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Jayalakshmi Fireworks, 169, Keelaavarampatti Street, Post Box No.39, Rajapalayam-626 117.	v.	The ITO, Ward-1, Virudhunagar.
[PAN: AAFJ 7214 R]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.P.M. Kathir, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Dr. Samuel Pitta, JCIT
सुनवाईकीतारीख/Date of Hearing	:	19.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.10.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 28.03.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. Grounds of appeal raised by the assessee are as under:

1.1 The order of the CIT(A) is erroneous as the same is opposed to law and facts and thus liable to be set aside.

2.1. The CIT(A) erred in upholding the addition of Rs.28,12,500/- as unexplained cash credit u/s. 68 of the Act.



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2.2. The CIT(A) erred in failing to note that the addition of cash deposits of Rs.28,12,500/- made by the AO is illegal, incorrect and the same is liable to be deleted in full.

3.1. The CIT(A) failed to notice that fresh deposits of Rs.2,44,877/- were received from relatives. The CIT(A) erred in upholding the addition of Rs.2,44,877/- made by the AO and the same is liable to be deleted in toto.

4.1. The CIT(A) erred in upholding the disallowance of PF and ESI remitted invoking the provisions of Sec. 36(1)(va) of the Act.

5.1. The AO erred in taxing the additions of Rs.28,12,500/- and Rs.2,44,877/- at 60% u/s. 155BBE of the Act.

6 Any other ground/s that may be raised at the time of hearing.

3. At the outset, the Ld.AR of the assessee brought to our notice that the assessment has been framed by the AO without giving proper opportunity to the assessee. Relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT reported in [2001] 249 ITR 216 (SC), he submitted that since assessee didn't get proper opportunity before the AO, the additions made especially addition of Rs.28,12,500/- as unexplained cash credit u/s.68 of the Income Tax Act, 1961 (hereinafter in short "the Act") [Ground Nos.2.1 & 2.2] and the addition of Rs.2,44,877/- [Ground No.3.1] which was nothing but deposits from the relatives has been added without any proper enquiry being made. Therefore, he pleaded that one more opportunity may be granted to the assessee before the AO.

4. The Ld.AR also drew our attention to Ground No.4.1, which is against the action of the Ld.CIT(A)/AO disallowing ESI remittances claimed to have been deposited by the assessee in the Employees State Insurance Account on the ground of delay in depositing the same i.e. after



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the due date prescribed in the ESI Act. Drawing our attention to the provisions of the ESI Act, he submitted that contribution towards ESI for the month of June, 2017 onwards, should be by 15.07.2017, which came into force only from June, 2017 onwards, whereas in the relevant year under consideration, it is 21st of the next month i.e. assessee has to make the insurance payment/remit the insurance-premium by 21st date of the next month. In other words, as per ESI Act in force, the due date was 21st of next month and not 15th of the next month which came into force only from the month of June, 2017 i.e. by 15.07.2017. In this regard, we note that the AO noted that assessee has claimed an amount of Rs.2,42,471/- as total ESI paid in its P& L account for AY 2017-18. On verification of the date of payment for ESI paid, according to the AO, some of the amounts remitted was after the due date which comes to Rs.71,848/-. Therefore, he disallowed the same and treated it as business income of the assessee and made an addition of Rs.71,848/-. On appeal, the same was confirmed. The assessee has brought to our notice the ESI Circular dated 03.07.2017 which encloses the copy of Gazette of India, Part-III, Sec 4 containing Notification No.N-12/13/1/2016- P&D dated 01.07.2017, which amended Regulation 31, which prescribed that ESI contribution in respect of any employee to be paid within 15 days of the last day of the calendar month in which contributions fall due, which came into effect only from the month of



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June, 2017 which stipulates the period of remittances of ESI contribution by 15th of next month i.e. 15.07.2017. Thus, we note that ESI (General) Regulations, 1950 was amended by Regulation, 2017, w.e.f. June, 2017 and before the amendment, the due date was 21st of next month. Keeping this in mind, when we looked into the chart given by the AO (as submitted by the assessee), the AO has erroneously taken the due date as 15th of the next month, whereas it should have been 21st of the next month till June, 2017. Therefore, the AO to verify the relevant facts and if it is found that the assessee has remitted the ESI remittance of Employees' before 21st of next month, then no disallowance is warranted. Therefore, we set aside this issue back to the file of the AO for verification and to pass order in accordance to law.

5. Coming to the plea of the assessee regarding Ground Nos.2 to 3.1 [addition of Rs.28,12,500/- u/s.68 of the Act i.e. cash deposits during demonetization period and addition of Rs.2,44,877/- received as deposits from the relatives].

6. It is noted that the AO has added the Specified Bank Notes (SBNs) deposited during demonetization period to the tune of Rs.28,12,500/- u/s.68 of the Act on the ground that the assessee failed to prove the nature and source of the SBNs deposited during demonetization period. According to the AO, the assessee has deposited the invalid SBNs from



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the period of 9th November, 2016 to 31st December, 2016 and since, it was declared invalid tender, he gave show cause notice to assessee. The AO has taken note that the assessee's total cash transaction in the relevant AY was more than Rs.3 Crs. and found that the assessee has deposited SBNs to the tune of Rs.28,12,500/- during demonetization period and therefore, he added the same. According to the assessee, assessee's reply/relevant documents has not been considered/verified by the AO which fact is discernable from taking note of the replies given by the assessee dated 26.12.2019 [acknowledged by the AO at Page Nos.12-13 of the Assessment order] and the AO has hurriedly passed the order on 28.12.2019. We note that the assessee's contentions/submissions have not been considered properly by the AO, while framing assessment order. Therefore, we are of the opinion that the addition of Rs.28,12,500/- & Rs.2,44,877/- needs to be restored to the to the file of the AO, for *de novo* assessment by relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Co. (Supra). Hence, we set aside the impugned order of the Ld.CIT(A) and restore the following issues back to the file of the AO for fresh assessment:

- i) addition of Rs.28,12,500/- u/s.68 of the Act
- ii) deposits from relatives Rs.2,44,877/-
- iii) ESI of Rs.71,848/-



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7. The AO may take the aid of the verification unit to verify the facts as asserted by the assessee to substantiate the nature & source of the additions made by the AO in the 1st round and after hearing the assessee.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 09th day of October, 2024, in Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09th October, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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