

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ ITA No. 1802/Chny/2024
निर्धारण वर्ष /Assessment Years: 2017-18

Mr.Lazer Gnanapragasam,
Old No.101, New No.163/27
Puliadithammam,
Puliadithammam Post,
Sivagangai Dist,
Tamil Nadu-630551
[PAN: APIPG9941H]

The Income Tax Officer,
Ward-1, Karaikudi,

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri P.S.Prabhakar, CA

प्रत्यर्थी की ओर से /Respondent by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 04.11.2024

घोषणा की तारीख /Date of Pronouncement

: 08.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1064595069(1) dated 02.05.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 02.05.2024 passed by NFAC, Delhi.

2.0 At the outset, the Ld. Counsel for the assessee informed that it wishes to withdraw and consequently not press the additional grounds of appeal which it had filed under Rule-11 of ITAT Rules. The request of the assessee has been accepted and the additional grounds of appeal filed stands dismissed as withdrawn.

3.0 The first issue which emanates from the grounds of appeal is regarding the addition of Rs.14,16,000/- made by the Ld. AO on account of unexplained cash deposits in assessee's bank account and which has been sustained by Ld. First Appellate Authority. The Ld. Counsel for the assessee submitted that the assessee is in the business of Vehicle Contractor and during the previous year under consideration it had received gifts from his wife and father which were deposited in its bank account. The Ld. AO held the premise that it is improbable for assessee's relatives to withdraw cash and for the assessee to deposit the same to his bank accounts as the same could have been done by way of bank transfer. He therefore held it as unexplained cash deposits. The Ld. First Appellate Authority confirmed the order of the Ld. AO holding identical premises, including the absence of gift deed etc. makes the genuineness of transactions difficult for acceptance. The Ld. Counsel or the assessee argued that execution of gift deed would not make the gift per se in

genuine if there are supporting circumstantial evidences. It was explained that there have been cash withdrawals from the bank accounts of donors and absence of bank transfers would not make gift per se as in genuine. It was also argued that the Ld. AO has not doubted the credit worthiness of the donors. In support of its contentions, the Ld. Counsel for the assessee placed reliance upon decision of the coordinate bench of this tribunal in ITA No.1295/Chny/2024. The Ld. DR placed reliance upon the orders of authorities below.

4.0 We have heard rival submissions in the light of material available on records. At the outset, the reliance placed by the Ld. Counsel for the assessee upon decision of the coordinate bench of this tribunal in ITA No.1295/Chny/2024 has been found to be misplaced on account of facts being clearly distinguished. However, we have noted that the Ld. AO has primarily made the addition on account of absence of bank transfer. As there is no prohibition on cash gifts, their genuineness cannot be doubted merely on account of transactions not routed through banking channels. We also find that the Ld. AO has not doubted the credit worthiness of the donors. According to the information available on records, the donors being assessee's father and his wife are retired government servant and government employee respectively and hence can be safely presumed to

have sufficient credit worthiness to extend the impugned gifts. There is also no contemporaneous law which mandates that gifts should be preceded by gift deed and therefore the hypothesis of gifts being in genuine cannot be taken. Accordingly, we are of the view that the revenue has not been able to bring sufficient evidence on records to establish the genuineness of impugned cash deposits in assessee's bank accounts of Rs.14,16,000/-. Accordingly, the order of Ld. CIT(A) is set aside and the grounds of appeal raised by the assessee are allowed. We direct the Ld. AO to delete the addition of Rs.14,16,000/- made on account of cash deposits in assessee's bank account claimed to have an nexus with the gifts made by his father and wife. Accordingly, all the grounds of appeal raised by the assessee on this issue are allowed.

5.0 The next issue pertains to an addition of Rs. 19,25,219/- made by the Ld. AO on account of payment of monthly instalment to Indusind Bank in respect of car loans taken by the assessee. The Ld. Counsel for the assessee submitted that the controversy has primarily arisen on account of a defective certificate issued by the Indusind Bank. It was argued that the Ld. AO had stated that out of the six instalments only one could not be explained and therefore he proceeded to make the impugned addition. The Ld. Counsel for the assessee invited our attention

to page No.47 of bank's certificate placed in the paper book filed by it, issued by Indusind Bank. It was stated that the bank has incorrectly written the word "correct balance" and that it should be actually written as "incorrect balance". The Ld. Counsel or the assessee therefore argued that matter may be restored to the file of the Ld. AO for limited verification of this issue with the Indusind Bank and to decide accordingly. The Ld. DR fairly conceded that there does appear to be a case of some confusion created by the bank and that the issue can be resolved by the Ld. AO only after holding independent enquiries.

6.0 We have heard rival submissions in the light of material available on records. We have noted that there exists some connection between the controversy at hand and possibly a deficient certificate issued by the Indusind Bank. We also hold the view that the matter can be effectively examined at the end of the Ld. AO. We therefore set aside the order of lower authorities on this issue and we direct the Ld. AO to readjudicate the matter by obtaining a fresh certificate from the Indusind Bank and decide accordingly. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bounden upon the assessee to comply with the notices issued by the Ld. AO. The grounds of appeal raised by the assessee on this issue are therefore allowed for statistical purposes.

7.0 Another issue raised by the assessee through its grounds of appeal are with reference to additions being made by the Ld. AO u/s 69A and the action of Ld. CIT(A) of its confirmation invoking provisions of u/s 69. In view of the discussions made in preceding paragraphs we are of the view that the impugned grounds of appeal have become academic in nature and hence devoid of any further adjudication.

8.0 In the result, the appeal raised by assessee is partly allowed for statistical purposes.

Order pronounced on 8th, November-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 8th, November-2024.

KB/-

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

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