

आयकर अपीलिय 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 Nos.701, 743 to 745/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

M/s. Covai Marketing, 16/30, Meyyanur Road, Salem-636 004.	v.	The DCIT, Circle-1(1), Salem.
[PAN: AAGFC 9345 N]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.H. Yeshwanth Kumar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Gouthami Manivasagam, JCIT
सुनवाईकीतारीख/Date of Hearing	:	13.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	08.11.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against orders of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 19.02.2024/20.02.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. First, will take up ITA No 701/Chny/2024 against Ld CIT(A) order dated 19.02.2024; and note that the main grievance of the assessee is against the action of the Ld.CIT(A) confirming the following actions of the AO (i) making an addition of Rs.19,28,069/- as unexplained money on



:: 2 ::

account of deposit of cash during the demonetization period and ii) estimating @ 8% turnover of Rs.25,08,35,922/- i.e. Rs.2,00,66,873/-.

3. The brief facts are that assessee M/s. Covai Marketing was a Partnership Firm engaged in the business of wholesale marketing of Pesticides; and in the year under consideration i.e. AY 2017-18, there was no business carried out by the Firm, and hence, it didn't file return of income (RoI). However, the AO received information that in assessee's bank account, cash was deposited to the tune of Rs.19,28,069/- during the demonetization period, so he issued statutory notices and having gone through the reply of the assessee noted that assessee claims to be dissolved (partnership firm has been dissolved on 15.12.2013 i.e. AY 2014-15) and accordingly, PAN de-active request was given to the Department. [According to the assessee, on dissolution of the Partnership Firm, it's assets & liabilities were taken over by Proprietary Concern M/s Coval Marketing, which has paid the due taxes to the Department from AY 2014-15 to AY 2017-18]. It was brought to the notice of the AO during the assessment proceedings in August, 2019 that the assessee firm was constituted by two partners i.e. Shri T. Sivasakthivelan & Smt. S. Sujatha. And Smt S. Sujatha retired from Partnership Firm and therefore, the Firm got dissolved on 15.12.2013 and thereafter i.e. on 16.12.2013, Shri T. Sivasakthivelan [PAN ABCPV 3323 R] took over the assets & liabilities of the erstwhile firm [M/s.Covai



:: 3 ::

Marketing] along with bank accounts operated by the Firm and was running the business as a proprietary concern named M/s.Covai Marketing. Accordingly, it was submitted that the two bank accounts in which it has been alleged that cash deposits were made where that of the proprietary concern run by Shri T. Sivasakthivelan from 16.12.2013, which are as under:-

Name of the Bank	Account Number
Tamilnadu Mercantile Bank	281150050800017
Tamilnadu Mercantile Bank	028700150950126

4. It was also submitted before the AO that Shri T. Sivasakthivelan (Proprietor) has been duly filing RoI in his individual capacity for AYS 2014-15 to 2017-18 showing the income of the proprietary concern M/s.Covai Marketing and filed the PAN details of Shri T. Sivasakthivelan along with acknowledgement of RoI, Audit Report in Form 3CB, Balance Sheet and schedules attached to it and also attached copies of the aforesaid bank accounts and respective ledger accounts of the bank in the books of the Proprietor. And also pointed out to AO that the confusion caused about cash-deposit in assessee's bank-account was because the banks didn't update the KYC, even though the dissolution of assessee-Firm was brought to its notice, they [bank] didn't change the bank-account holders name as that of Proprietary Concern instead of assessee-Firm. Despite knowing the aforesaid relevant facts pertaining to the issue in hand, the AO took note that in the two bank accounts supra, merely



:: 4 ::

because the bank accounts in question reflected the erstwhile Firm's PAN, and there was transaction of more than Rs.25 crs and out of which, cash deposits made during the demonetization period was to the tune of Rs.19,28,069/-, the AO didn't accept the assessee's contention that the bank account was not operated by it and has been operated by the proprietary concern. And the held the same [cash-deposits] to be that of the assessee-firm and made addition of Rs.19,28,069/- as unexplained money (cash deposits during the demonetization period) and estimated income of the assessee @ 8% of the turnover of Rs.25,08,35,922/- at Rs.2,00,66,873/- as unaccounted business income by framing the assessment order on 09.12.2019.

5. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to confirm the same by holding as under:-

During the course of assessment proceeding, it was noticed that the appellant had made the following cash and credit deposits in the bank accounts:

Bank & Account No.	Pre-demonetization period (From 01/04/2016 to 08/11/2016)	Demonetization period (From 09/11/2016 to 30/12/2016)		Post-demonetization period (From 31/12/2016 to 31/03/2017)
		Cash Deposits	Other credits	
Tamilnadu Mercantile Bank	Total transaction including cash and other credits			Total transaction including cash and other credits
281150050800017	4,34,49,028/-	8,06,430/-	29,44,352/-	1,02,63,227/-
028700150950126	16,55,88,160/-	11,21.639/-	93,74,018/-	1,92,23,137/-

From the above, total cash deposits of Rs. 19,28,069/- was found during the demonetization period in both the bank account and total cash deposits & other credit of Rs.25,08,35,922/- excluding cash deposits during demonetization period was found deposited by the appellant during the financial year 2016-17. Hence, the addition was made by the AO on the basis of above observation with an assessed income of Rs. 2,19,94,942/- as under:



:: 5 ::

1. Cash deposit during demonetization period of Rs.19,28,069/-treating the same as unexplained money u/s 69A of the IT. Act.

2.8% of total cash deposits and other credits of Rs.25,08,35,922/- during the F.Y. 2016-17, excluding cash deposits during demonetization period which arrived at Rs.2,00,66,873/- was added as unaccounted business income of the appellant.

Finding and decision of the case:

The appellant, during the course of appellate proceedings, submitted its details/documents along with vide his written submission dated as detailed in para no.

3. The submission of the appellant are duly considered and adjudicated as under:

The appellant vide its written submission, mainly stated that the appellant firm had closed its business on 15th December, 2013, closing its commercial operations and the firm was recognized as proprietorship concerned in the name of Sri. T Sivasakthivelan under the same name and style of appellate firm M/s Covai Marketing, who is assessed to tax under PAN: ABLPV3323R. The appellant has also stated that the purchase and sells of proprietary concerned business were accounted in the name of Sri. T Sivasakthivelan, who was continuing the business with the same name and style of appellant firm M/s Covai Marketing, which was recognized as proprietary concern after closure of business of appellant firm.

The act of keeping the PAN of the appellant active and doing business under proprietary concern in the name of Sri T Sivasakthivelan, who was one of the partner of the appellant firm, with the same name and style of appellant firm M/s Covai Marketing is showing suspicious intention of the appellant and one of the question under concern. If the business of the appellant was closed by December, 2013, the information in this respect could have been furnished immediately before the department, requesting for deactivation of its PAN. But unfortunately, the appellant firm failed to do so. In fact the appellant was not willing to submit/surrender its PAN before the department for deactivation so that unauthorized transaction could be made in the name of appellant firm in order to avoid taxation under IT Act. Further, continuing the proprietary concern business in the name of Sri T Shivasakthivelan with the same name and style of appellant firm M/s Covai Marketing, shows the appellant's clear intention of avoiding tax by doing unauthorized transaction.

The Proprietary concern business was started by one of the partner of the appellant firm Sri T Shivasakthivelan and all the business related transaction was done in the same bank account no. of the appellant firm as the KYC norms of the bank account was not changed from appellant firm to proprietary concern business in the name of Sri T Shivasakthivelan. The KYC norms was found changed from the name of appellant firm to proprietary concern business of Sri T Shivasakthivelan on 09/08/2017, after the financial year 2016-17 under concerned. During the complete financial year 2016-17, unauthorized transactions in the form of cash deposits and other deposits, were done in the bank account of appellant firm, which was found during the course of the assessment proceedings. The intention behind not keeping the KYC updated of the bank account under the individual PAN of Sri. T Sivasakthivelan, was to hide the transaction of the appellant firm M/s Covai Marketing during the FY 2016-17. The act of not getting updated the KYC norm of the bank account of the appellant firm to individual PAN of Sri T Sivasakthivelan of proprietary business, was after



:: 6 ::

thought process of the appellant so that transaction of the appellant could be made hidden. But when the case was taken up for scrutiny/verification of cash deposits and other credits in the bank account, the appellant had no other option but to admit the same as transaction in the bank account of proprietary concern business in the name of Sri T Sivasakthivelan.

Considering the above facts and circumstances of the case it can be said that the transaction in the bank account which was found in the form of cash deposits and other credits, were actually transaction of the appellant firm and not the transaction in the name of proprietary concern business in the name of one of the partner of the appellant firm as claimed by the appellate during the course of assessment proceedings as well as during the course of the appellate proceedings. Therefore, the appeal of the appellant in the ground that the said transaction was not in the name of the appellant firm is dismissed.

6. Aggrieved, the assessee is in appeal before this Tribunal.

7. We have heard both the parties and perused the material available on record. We note that M/s.Covai Marketing was a Partnership Firm consisting of two partners viz., Shri T. Sivasakthivelan & Smt. S. Sujatha (husband & wife respectively). The firm got dissolved on 15.12.2013 (refer Deed of Dissolution at Page Nos.2-4 of the paper book) and the entire assets & liabilities of the erstwhile firm was transferred to Shri T. Sivasakthivelan who took over the business and merged it with the proprietary concern M/s.Covai Marketing. The erstwhile firm had two bank accounts maintained with the Tamil Nadu Mercantile Bank Ltd., ending with A/c No. 00017 & 50126[as noted supra]. After the dissolution, the Proprietor Shri T. Sivasakthivelan applied for change of KYC with the banker and in the meantime was operating the bank accounts in respect of transaction of the proprietary concern namely M/s.Covai Marketing.



:: 7 ::

8. Meanwhile, the AO received information that in the Tamil Nadu Mercantile Bank Ltd., there were cash deposits to the tune of Rs.19,28,069/- during the demonetization period (AY 2017-18) in the following accounts:

Account No.	demonetization period (From 01/04/2016 to 08/11/2016)	(From 09/11/2016 to 30/12/2016)		demonetization period (From 31/12/2016 to 31/03/2017)
		Cash Deposits	Other credits	
Tamilnadu Mercantile Bank	Total transaction including cash and other credits			Total transaction including cash and other credits
281150050800017	4,34,49,028/-	8,06,430/-	29,44,352/-	1,02,63,227/-
028700150950126	16,55,88,160/-	11,21,639/-	93,74,018/-	1,92,23,137/-

9. The AO noted that these bank accounts were maintained by the assessee firm (that got dissolved on 15.12.2013) and asked the assessee to file RoI, pursuant to which, assessee filed RoI belatedly showing 'Nil' income and also brought to his notice that it has already been dissolved on 15.12.2013 and that its assets & liabilities as well as business along with bank accounts were taken over as such by Shri T. Sivasakthivelan and continued running the business but as a proprietary concern in the name of M/s.Covai Marketing. It was also brought to our notice that two bank accounts maintained with Tamil Nadu Mercantile Bank Ltd., is being operated by the proprietary concern since 16.12.2013; and that Shri T. Sivasakthivelan (Proprietor of M/s.Covai Marketing) has been regularly filing RoI showing the income of the proprietary concern for AY 2014-15 onwards. It was also brought to the notice of the AO that Shri T. Sivasakthivelan [PAN No. ABCPV 3323 R] had filed RoI for AY 2017-18 on



:: 8 ::

31.10.2017 declaring total income of Rs.25,93,010/-. However, the AO didn't agree only because the assessee-firm didn't cancel/surrender its PAN and didn't bring the fact of dissolution of Firm to his notice and therefore, went ahead and estimated the income @ 8% of total turnover of Rs.25,08,35,922/- at Rs.2,00,66,873/- as well as made addition of cash deposit of Rs.19,28,069/-. On appeal, the Ld.CIT(A) has reiterated the action of the AO.

10. Before us, the Ld.AR placed contemporaneous evidence i.e. Assessment Order passed u/s.147/144B of the Act in the case of Shri T. Sivasakthivelan who is the proprietor M/s.Covai Marketing [proprietary concern], which took over assets & liabilities and business of M/s. Covai Marketing firm on dissolution from 15.12.2013 onwards. A perusal of the Assessment Order dated 14.09.2021 made u/s.147 read with section 144B of the Act, reveals that the AO has re-opened the assessment of Shri T. Sivasakthivelan on the following reasons:

"1. A notice u/s 142(1) of the I.T. Act dated 13.03.2018 was issued in the case of M/s Covai Marketing against the PAN:AAGFC9345N and the same was duly served on the assessee, requiring him to file a return of Income for the A.Y.2017-18 on or before 18.02.2018.

2. During the course of proceedings u/s 142(1) the assessee's authorized representative submitted a letter dated 23.08.2019 which is reproduced as under:

"... M/s Covai Marketing is a Partnership firm consists of following partners, Sri T. Sivasakthivelan (ABCPV3323R) and S. Sujatha (AZOPS4867L). The firm was closed its business at the end of March 31, 2014. Thereafter no business in the firm.

The entire business of the firm with all its Assets and Liabilities was under taken by the erstwhile partner Sri. T. Sivasakthivelan from 01.04.2014.



:: 9 ::

... The said bank accounts were disclosed in the proprietorship concern of Sri. Sri T. Sivasakthivelan. Thus the entire transaction in the bank account were reflected in the books of proprietor concern and the same was disclosed in the return of income of Sri T. Sivasakthivelan."

3. For verification, a letter sent to Tamilnadu Mercantile Bank regarding the change in PAN no. from AAGFC9345N to ABLPV3323R of the M/s Covai Marketing. Subsequently, the TMB submitted a reply that as per their records M/s Covai Marketing has changed its constitution as Partnership concern to Proprietary concern from 09.08.2017 and also the bank submitted a copy of retirement deed.

4. Further it is seen from the Retirement deed that the second partner Smt Sujatha W/o T. Sivasakthivel retired on 31 December 2013 and the business of M/s Covai Marketing is allocated to Sri T SIVASAKTHIVELAN

5. On verification of Income tax return of Shri T SIVASAKTHIVELAN for the A.Y. 2017-18, it is found that he has not disclosed cash deposits details related to Tamilnadu Mercantile Bank bearing account numbers (1) 281150050800017 (1) 028700150950126 during the demonetization period which the assessee's authorized representative claimed in the above mentioned letter. Also the case of Shri T. Sivasakthivel is not selected for scrutiny for the A.Y. 2017-18, therefore for the protection of interest of Revenue, the sources of cash deposits is to be verified and to be taxed as per the provisions of Income Tax Act, 1961.

6. Having perused the maternal evidences available, I am satisfied that the source of cash deposited during the demonetization period is to be verified and to be taxed as per the provisions of the Income Tax, 1961.

7. Based on the materials evidences available and figures admitted in the Return of Income, the requirements to initiate proceedings u/s 147 of the IT Act are clearly attracted in the assessee's case. For the AY 2017-18, the source of cash deposits during the demonetization period of Rs.19,28,069/-is to be verified. Therefore, I have the reason to believe that income taxable under Income Tax Act, 1961 had escaped Assessment within the meaning of provisions of section 147 of the I.T. Act 1961 for the AY 2017-18 and it necessitates reopening of the assessment u/s 147 of the I. T. Act."

11. A perusal of the reasons (supra) reveals that the during the course of assessment proceedings of the present assessee i.e., assessee-Firm, the AO confronted it about the nature & source of cash deposits during the demonetization period and, pursuant to which, the assessee-firm brought to his notice vide letter dated 23.08.2019 that the M/s.Covai Marketing was dissolved and consequently, it closed its business at the end of March, 2014 and thereafter, no business was carried out by the assessee-firm. And that thereafter, the entire business of the erstwhile



ITA Nos.701, 743 to 745/Chny/2024
(AY 2017-18)
M/s. Covai Marketing

:: 10 ::

firm was taken over by Shri T. Sivasakthivelan in his individual capacity from 01.04.2014 and that the bank accounts (supra) was disclosed in the books of the proprietary ship concern of Shri T. Sivasakthivelan and thus, the entire transaction in the bank accounts were duly reflected in the books of the proprietary concern and thus, disclosed in the return of income filed by Shri T. Sivasakthivelan for AY 2017-18. And that the AO after perusal of the Dissolution Deed, noted that the second partner Smt. S. Sujatha has retired on 31.12.2013 and the business was taken over and thereafter, run by M/s.Covai Marketing proprietary concern of Shri T. Sivasakthivelan. Further, in the reasons recorded (supra), the AO noted that Shri T. Sivasakthivelan has not disclosed the cash deposits during the demonetization period in the aforesaid two bank accounts maintained with Tamil Nadu Mercantile Bank Ltd., and therefore, in order to verify the source of cash deposits of Rs.19,28,069/-, he re-opened the assessment and he accepted the RoI of Shri T. Sivasakthivelan by holding as under:

3. The assessee has submitted two sets of Balance sheet and P & L Account, one in Personal capacity and other in the capacity of the proprietary concern-Covai Marketing. The balances of Bank Accounts Numbers (i) 281150050800017 (ii) 028700150950126 with Tamilnadu Mercantile Bank are appearing in the balance sheet of the proprietary concern- Covai Marketing. Similarly, sales turnover of Rs.14,83,31,105/- is reflected in proprietary concern. The profit derived from business activity of Rs.19,38,242/- and Investments in proprietary concern is considered in Individual account. The source of cash deposits is stated from sales of Pesticides. In view of the details filed by assessee, total income is computed as under-

Income Returned	Rs.25,93,010/-
Income Assessed	Rs.25,93,010/-



ITA Nos.701, 743 to 745/Chny/2024
(AY 2017-18)
M/s. Covai Marketing

:: 11 ::

Thus, by passing the scrutiny assessment order dated 14.09.2021, the AO after scrutinizing the RoI of Shri T. Sivasakthivelan (Proprietor of M/s.Covai Marketing) has accepted that proprietary concern M/s.Covai Marketing has indeed shown the bank accounts numbers ending with A/c No. 00017 & 50126 maintained with Tamil Nadu Mercantile Bank Ltd., which appear in the balance sheet of proprietary concern M/s.Covai Marketing and the AO has accepted the source of cash deposits from sales of pesticides and didn't draw any adverse view in respect of the cash deposits of Rs.19,28,069/-. And thus accepted the income declared by him even from the turnover of proprietary concern M/s.Covai Marketing of Rs 25,08,35,922.

12. From the aforesaid discussion, we find that the assessee's contention (i.e. erstwhile Firm's) before the AO has been found to be correct that the assessee firm has been dissolved in December, 2014 and the assessee firm is not existing in the eyes of law, since Smt. S. Sujatha retired in December, 2013, the firm dissolved by operation of law as well as the assessee has filed the Dissolution Deed which is found placed at Page Nos.2-4 of the Paper Book ; and after the dissolution of the firm, the business, assets & liabilities of the erstwhile firm has been taken over by the proprietary concern ran by Shri T. Sivasakthivelan in the name and style of M/s.Covai Marketing. The income from the proprietary concern has been being duly offered to tax in the hands of the individual person



:: 12 ::

Shri T. Sivasakthivelan thereafter. And we note that based on the submissions of the assessee-Firm during the course of assessment proceedings, the AO has re-opened the assessment of the proprietary concern M/s.Covai Marketing i.e, Shri T. Sivasakthivelan and after enquiry, AO was satisfied that the proprietary concern has shown bank account ending with A/c No. 00017 & 50126 with Tamil Nadu Mercantile Bank Ltd., in its balance sheet; and the AO after scrutiny of the assessment has accepted the RoI to the tune of Rs.25,93,010/- in the hands of the Shri T. Sivasakthivelan and has not drawn any adverse view against the cash deposits of Rs.19,28,069/-, for which, he re-opened the assessment.

13. The omission on the part of the assessee-firm was that it neither informed the AO nor applied for cancellation of PAN which led to the impugned assessment of the assessee-firm which is non-existing in the eyes of law. True that assessee was bound to bring to the notice of the AO about the dissolution of Firm and cancel/surrender the PAN allotted in the name of Firm, but that can't be the sole reason for saddling the income of another person as noted supra. And its settled position of law that assessment should be made in the Right-hands/person, Right-year, Right-income [refer ITO vs Ch.Atchiah 218 ITR 239(SC)] Therefore, in the peculiar facts of the case as noted (supra), the addition made by the AO on the cash deposits during demonetization as well as the estimated



:: 13 ::

income on turnover can't be sustained because it would tantamount to double taxation of the same income, which is not permissible and therefore, we are inclined to direct deletion of the addition. Consequently, appeal filed by the assessee in **ITA No.701/Chny/2024** stands allowed.

14. ITA No.743/Chny/2024 is an appeal filed by the assessee against the order of the Ld.CIT(A) dated 20.02.2024 upholding the penalty levied u/s.271A of the Act to the tune of Rs.25,000/-. The AO noted that the assessee has shown turnover of more than Rs.25 Crs. (bank deposit) and failed to keep/maintain books of accounts as required u/s.44AA of the Act and therefore, he levied penalty of Rs.25,000/-. Since we find that the assessee firm has been dissolved in the eyes of law from 2014 onwards, and is not existing in the eyes of law, and not doing any business, therefore, the question of maintaining the books of accounts doesn't arise. Therefore, penalty is directed to be deleted. Consequently, appeal filed by the assessee in ITA No.743/Chny/2024 stands allowed.

15. ITA No.744/Chny/2024 is an appeal filed by the assessee against the order of the Ld.CIT(A) dated 20.02.2024 upholding the penalty levied u/s.271B of the Act for not auditing the books of accounts, because, its turn over exceeded Rs.1 Cr. and therefore, he levied penalty of Rs.1.50 lakhs. Since the assessee doesn't exist in the eyes of law,



ITA Nos.701, 743 to 745/Chny/2024
(AY 2017-18)
M/s. Covai Marketing

:: 14 ::

maintenance of books of accounts doesn't arise consequently, auditing of books of accounts also doesn't arise. Therefore, penalty is directed to be deleted. Consequently, appeal filed by the assessee in ITA No.744/Chny/2024 stands allowed.

16. ITA No.745/Chny/2024 is an appeal against the penalty confirmed by Ld CIT(A) dated 20.02.2024 levied u/s.271F of the Act i.e. failure to furnish RoI u/s.139 of the Act and the AO levied penalty of Rs.5000/-. Since the firm has been dissolved, the question of filing of RoI doesn't arise. Therefore, penalty is directed to be deleted. Consequently, appeal filed by the assessee in ITA No.745/Chny/2024 stands allowed.

17. In the result, appeals filed by the assessee in ITA Nos.701, 743 to 745/Chny/2024 are allowed.

Order pronounced on the 08th day of November, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 08th November, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF