

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2149/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2011-12

Sellappan Arulmurugan,
No.9/133, Pethampatty,
Kangayankadu, Vattur,
Tiruchengode – 637 205.

Income Tax Officer,
v. Ward -1,
Tiruchengode.

[PAN: ATFPA-4539-G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Mr. T.S. Lakshmi Venkatraman, FCA

प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 22.10.2024

घोषणा की तारीख/Date of Pronouncement : 23.10.2024

आदेश / O R D E R

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), Delhi, dated 30.07.2024 and pertains to assessment year 2017-18.

2. The only issue raised from the grounds of appeal of the assessee is that the Ld.CIT(A) has erred in confirming the order

of AO passed u/s.144 of the Act by making an addition u/s.69A of the Act of Rs.49,30,020/-.

3. Brief facts of the case are that the assessee is an individual, had not filed his return of income for the A.Y. 2011-12. The assessee had made a deposit of cash of Rs.28,92,500/- to his savings bank account maintained with Tamilnad Mercantile bank, Vattur Branch. Based on the above information, the AO initiated proceedings u/s.147 of the Act, and issued notice u/s.148 of the Act, after obtaining proper approval from the higher authorities stating that the cash deposit being unexplained and has escaped assessment.

4. The assessee did not respond to the various notices issued by the AO, which are given below:

"5. The issue of the notices and the response of the assessee are chronologically tabulated below:

<i>Sl. No</i>	<i>Types of notices</i>	<i>Date of notice</i>	<i>Date of service</i>	<i>Response of the assessee</i>
1	148	26.03.2018	03.04.2018	<i>Neither appeared nor filed any reply and not complied.</i>
2	142(1)	18.07.2018	24.07.2018	<i>Neither appeared nor filed any reply and not complied.</i>
3	<i>Reposting Letter</i>	13.08.2018	23.08.2018	<i>Neither appeared nor filed any reply and not complied.</i>
4	<i>Proposed assessment letter</i>	14.09.2018	18.09.2018	<i>Neither appeared nor filed any reply and not complied.</i>
5	<i>Reminder to proposed</i>	08.10.2018	13.10.2018	<i>Neither appeared nor filed any reply</i>

	<i>assessment letter</i>			<i>and not complied.</i>
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5. The AO, obtained the entire bank statement for the A.Y. 2011-12 and found that the assessee has deposited an amount of Rs.49,30,024/- out of which cash deposit was Rs. 28,92,500/-. Again the AO, for a natural justice, pre-assessment order dated 22.11.2018 along with notice U/s.142(1) was issued to assessee, but the assessee has failed to respond. The AO had no choice but to pass an order U/s.144 of the Act, confirmed the addition of Rs.49,30,024/- as unexplained income and passed the order on 05.02.2018. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A), NFAC.

6. Before the Id.CIT(A), the assessee filed a written submission by filing the computation of income based on section.44AD offering 8% of the gross deposit made at bank as Rs.42,31,300/- and also filed bank statements. Further, the assessee alternatively pleaded for providing peak credit of the deposits made by the assessee in the bank account. However, the Id.CIT(A) dismissed the appeal of the assessee without considering the submissions of the assessee holding as under:

"5.2 The appellant had deposited an amount of Rs.49.30 lakhs during the year under consideration. The Ld. AO sought details regarding the same but the appellant had not filed requisite details. The appellant had also not filed his income tax return.

Resultant the Ld. AO treated the deposit as unexplained money and added to total income.

5.3 During the appellate proceedings also, the appellant contested that total deposits appellant has not filed any explanation regarding these were Rs.49.30 lakhs but the deposits.

5.4 It is settled position that the onus is upon the appellant to prove genuineness of each and every transactions entered into. In land mark cases like Kale Khan Mohammad Hanif v CIT [1963] 50 ITR 1(SC), Roshan Di Hatti v CIT [1977] 107 ITR (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an appellant, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the appellant and no further burden is on the revenue to show that the income is from any particular source.

5.5 In view of the above, I am of the considerate view that in the appellant has not justified the deposits appearing in his bank accounts. In the event of non furnishing of details and documentary evidences thereto, the claim of appellant cannot be verified. Therefore, the addition made by learned AO for sum of Rs.49,30,020/- is upheld.”

Aggrieved by the order of the Id.CIT(A), the assessee preferred an appeal before us.

7. The Id.AR for the assessee submitted that the assessee is an individual and having a business of trading in pulses and both the lower authorities have not appreciated the fact that any business will have expenditure and the entire credits in the bank account has been brought to tax. Further, Id.AR stated that the assessee is having deposited to the tune of Rs.49,30,024/-, is eligible to declare 8% of the gross collection as income from

business u/s.44AD of the Act and had filed the computation accordingly by showing the business income of Rs.3.38 Lakhs, before the Ld.CIT(A). Therefore, the Ld.AR submitted that the order of the AO was passed exparte u/s.144 of the Act and prayed setting aside the order of Id.CIT(A) and delete the addition made by the AO and consider 8% of the bank deposit as income from business.

8. Per contra, the Id.DR argued that the assessee was negligent and had not even filed a return of income even after issuing 142(1) notice. Therefore, prayed for confirming order of the Id.CIT(A) by dismissing the appeal of the assessee.

9. We have heard the rival contentions and gone through the materials available on record and orders of the authorities below. We note that the assessment order passed by the AO u/s. 144 of the Act without considering any of the expenditure by bringing entire credits in the bank account to tax as unexplained income. We note that the assessee has made bank deposits of Rs.49,30,024/-, during the impugned assessment year, which is within the turnover limits prescribed u/s.44AD of the Act. The Ld.AR has filed a computation of income declaring 8% of the amount of bank deposit as business income and prayed for

accepting the same by setting aside the orders of lower authorities. Since, the AO has passed an ex parte order by making an entire bank deposit as income without allowing any corresponding expenditure and the same has been confirmed by the Ld.CIT(A), we do not countenance the action of the lower authorities. In the present facts and circumstances of the case and in the interest of justice and fair play we deem it fit to set aside the order of the Id.CIT(A) and estimate the business income of the assessee at 15% of the bank deposit of Rs.49,30,024/-, which works out to Rs.7,39,503/- and direct the AO to recompute the income and tax thereon accordingly.

10. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 23rd October, 2024 at Chennai.

Sd/-

(एस एस विश्वनेत्र रवि)

(S.S. VISWANETHRA RAVI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर. रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 23rd October, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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