

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2018/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Ramasamy Ramesh,
New No.24, Old No.32,
Chinnasengodampalayam,
Veerappanchatram,
Erode – 638 009.

The Income Tax Officer,
Vs. Ward-1,
Erode.

PAN: AJNPR 1671E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Bhupendran, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 17.10.2024

घोषणा की तारीख/Date of Pronouncement : 17.10.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2024-25/1066338187 (1) dated 02.07.2024. The assessment was framed by the Income Tax Officer, Ward-1, Erode for the assessment year

2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 06.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of cash deposits made during demonetization period in Specified Bank Notes (SBNs) u/s.69A of the Act. For this, assessee has relied on ground No.3, which reads as under:-

“3. The First Appellate Authority, despite having powers which are co-terminus with that of the Assessing Officer should have called for the books of account maintained by the appellant, which, sufficiently, proved the availability of cash for making cash deposits during demonetization.”

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee is engaged in the brokerage business of real estate / property dealing and earning income out of the same apart from agricultural income, rental income, etc. The assessee filed its return of income on 13.03.2018 for the relevant assessment year 2017-18 and assessee's case was selected for complete scrutiny under CASS for the reason that the assessee has deposited cash amounting to Rs.14.37 lakhs during the financial year 2016-17 relevant to this assessment year 2017-18. During the course of scrutiny assessment proceedings, the AO noted that the assessee has

deposited cash during demonetization period in SBNs at Rs.10.98 lakhs out of total cash deposits made during the year of Rs.14.37 lakhs. Since there was no response from the assessee, the AO framed assessment ex-parte and added cash deposited during demonetization period in SBNs amounting to Rs.10.98 lakhs. Aggrieved, assessee preferred appeal before CIT(A), the CIT(A) also confirmed the action of the AO by observing that *“However, no further details in respect of his contention i.e. copy of books of accounts or cash book as well as source of cash deposited has been uploaded by the appellant during the appellate proceedings. ITR-V for the previous years uploaded only reflect gross total income, tax payable and deduction under chapter VIA”*. The CIT(A) further held that mere filing of ITRs is not enough to prove or explain the source of cash deposit and the cash deposit has nothing to do with the trading results as claimed by the assessee. Hence, he confirmed the addition. Aggrieved, assessee is in appeal before the Tribunal.

4. Now before us, the Id.counsel for the assessee filed paper-book consisting of 71 pages in which he has placed the accounts of the assessee i.e., profit & loss account, balance sheet and trial balance. The assessee has also filed day cash book. Before us, the only claim was that assessee was not allowed proper opportunity of being heard and hence, the Revenue has violated the principles of natural

justice and he stated that he has all the details to explain the source of cash. He tried to explain before us that the cash is generated out of assessee's business and recorded in the books of accounts as the assessee is carrying on the brokerage business of real estate / property dealing.

5. When this was confronted to Id.Senior DR, she argued that the assessee neither before the AO nor before the CIT(A) filed any details or evidences to prove his claim that the source of cash deposit is out of business. We agree with the argument made by Id. Senior DR that assessee has not co-operated with the AO and presumably it seems that he has not filed proper details before the CIT(A). We noted that the claim of assessee is that the cash deposit is out of books of accounts and we notice from the cash book that there are certain loan, advances, etc., and brokerage commission is disclosed which the assessee claimed to have been the source of income. Since now the assessee has filed all the details before us for the first time, we admit these details and remand this issue back to the file of the AO for fresh adjudication for the reason that these details need verification and it can only be verified by the AO. It is also a fact that the assessee has not co-operated with the lower authorities and in that eventuality, we are inclined to impose a cost

of Rs.25,000/- (Rupees twenty five thousand only) to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras by the assessee within a month's time from the date of receipt of this order. The assessee will pay this cost and produce the receipt before the AO. In term of the above, the matter is remanded back to the file of AO for fresh adjudication after allowing reasonable opportunity of being heard to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court at the time of hearing on 17th October, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 17th October, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT