

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

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकरअपील सं./ ITA No.2072/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-2018)

Murugesan Jothi,
223/1, Maturha Cotspinn Private Ltd.
Gobi 638 452.
Tamil Nadu

Vs. The Income Tax Officer,
Ward 2(1)
Erode

[PAN: ACAPJ 0446K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri N.C.Ravi Krishnan, Advocate
: Shri ARV Srinivasan, IRS, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 04.11.2024

घोषणा की तारीख /Date of Pronouncement

: 29.11.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal by assessee is arising out of the order of the Additional/Joint Commissioner of Income Tax (Appeals)-5, Office of the Commissioner of Income Tax (Appeal), Mumbai in Order No.ITBA/APL/S/250/2024-25/1066136300 (1), dated 27.06.2024. The assessment was framed by the Income Tax Officer, Ward 2(1), Erode for the assessment year 2017-2018, u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 06.12.2019.

2. Brief facts of the case are that assessee is an individual had filed her return of income for the assessment year 2017-18 on 31.03.2018 by electronically, admitting the income of Rs.8,24,360/-. The same was processed u/s.143(1) of the Act. The case was selected for scrutiny and the notice u/s 143(2) was issued on 24.09.2018. In response to the notices, the assessee submitted details called for vide above said notices on various dates such as copy of return of income, statement of total income, cash book, copy of ITR along with statement of total income for A.Ys 20115-16 & 2016-17 and copy of bank account statements etc.. The details submitted by the assessee were examined. The case has been selected for scrutiny under CASS. The case has been selected as Limited scrutiny for the reasons of "Cash deposit during demonetization period". The aspect has been verified with the documentary evidences submitted by the assessee to the department and other documentary evidences available. The assessee filed return of income, offering salary income of Rs.1,44,000/- and other source income of Rs.8,23,100/- as commission received. The assessee has not, however submitted any evidentiary material in support of the claim for having received commission income from any principle. The Id. Assessing Officer on perusal of the return of income filed by the assessee for A.Ys 2015-16 and 2016-17, found that the assessee has been regularly declaring commission income for all the preceding previous years. The assessee submitted cash flow statements for the A.Y 2016-17 and 2017-18, wherein commission & brokerage receipts have been debited to cash book. The opening balance of cash as on 01.04.2016 brought forward from A.Y 2016-17, for which, the assessee has filed return of income is Rs.5,05,532/-. The Id. Assessing Officer on

perusal of the bank account statement of the assessee found that cash has been deposited into his Saving Bank account held with Indian Overseas Bank during demonetisation period in SBN to the tune of Rs.12,55,000/-. Since the assessee has been regularly filing return of income declaring commission income and the cash flow statement for all years, the Id. Assessing Officer accepted opening cash balance as on 01.04.2016. The cash balance as on 08.11.2016, as per cash book of the assessee is Rs.10,20,532/-. But, since the assessee has not submitted any cash balance as on 08.11.2016 can only be arrived taking into account the cash balance in hand as on 01.04.2016 and withdrawals made by the assessee from bank accounts till 08.11.2016. The above sum of amounts put together, is arrived at Rs.6,05,532/- (Cash balance as on 01.11.2016 is Rs.5,05,532/- and withdrawals from bank account is found to be Rs.1,00,000/- till 08.11.2016). The assessee has made cash deposit of Rs.12,55,000/- in old currency during demonetisation period. Hence, balance amount of Rs.6,49,468/- is assessed as the unexplained cash of the assessee, deposited during the demonetisation period u/s 69 of the Act. Aggrieved, assessee preferred an appeal before the Id.CIT(A).

3. Before the appellate proceedings, the assessee has submitted that the Id. Assessing Officer while determining the cash in hand position as on 08.11.2016 has totally ignored the commission income received till 08.11.2016. To substantiate its claim the assessee has submitted copy of cash book wherein the opening cash in hand as on 01.11.2016 was Rs.11,09,474/- and as on 08.11.2016 it was at Rs.11,15,884/-. However, the Id. CIT(A) observed that the Id. Assessing Officer in his order has specifically mentioned that the cash in hand of the assessee as on

01.11.2016 was Rs.5,05,532/- as per the cash book submitted by him. Whereas before him the assessee has submitted another cash book with opening cash balance as on 01.11.2016 was Rs.11,09,474/-. As per the Id.CIT(A) assessee has not disputed the correctness of the figure mentioned by the Id. Assessing Officer in the assessment order. The Id.CIT(A) further opined that the assessee has not deposited the huge commission received in bank despite having a bank account. The Id. CIT(A) placing reliance on the decision of Hyderabad Bench of the Tribunal in the case of *Masheeruddin Ali Khan vs. ITO, Hyderabad (2014) 42 taxmann.com 69* dismissed the appeal of the assessee and affirmed the action of the Id. Assessing Officer. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

4. Before us, the Id. Counsel submitted that the AO cannot consider the opening balance as on 01.04.2016 as the opening Balance as on 01.11.2016. He further submitted that when the cash book is submitted alongwith the Bank statement and also considering the source and nature of business of the appellant, the AO and CIT(A) are not justified in assuming the figures. He furthermore, submitted that the assessee has already submitted the cash deposited in the Bank as part of the declared income which is evident from the Income Tax Return filed and adding the same as undisclosed by the AO will be amount to tax the same income twice.

5. Per contra, the Id.DR, Shri ARV Srinivasan, Addl.CIT relied upon the orders of the lower authorities and pleaded for the dismissal of appeal.

6. We have gone through the rival submissions and perused the record of the appeal file and paper book (PB) filed by the assessee. We have gone through the

page 6 of PB wherein the opening cash Balance as on 01.04.2016 is 5,05,532/- where as on page 9 of PB the opening cash Balance as on 01.11.2016 is 11,09,474/-. The opening cash Balance as on 08.11.2016 is 11,15,884/-. We also find from the computation of total income (Pg 17 of PB), the Commission and Brokerage-net income-Auto spares-cash is shown as Rs.8,00,000/- and if this commission is taken into consideration the difference will not arise from the remittance during the demonetization Period. Commission receipts month wise were also submitted before the Id.CIT(A) but not considered in proper perspective. We also find that no specific query was raised by the AO about commission receipt. Hence, in the light of the above factual findings we delete the addition.

7. In result, the appeal of the assessee is allowed.

Order pronounced in open Court on 29th November, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated : 29-11-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER