

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1277/Chny/2024  
निर्धारणवर्ष/Assessment Year: 2015-16  
&  
Cross-Objection No.54/Chny/2024  
निर्धारणवर्ष/Assessment Year: 2015-16

The ITO, NCW-19(6), Chennai.	v.	Smt. Kavitha Subbrarayalu, No.38/96, Pudupet Street, Alandur, Chennai-600 016.
		[PAN: BQMPS 1604 M]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross-Objector)
Department by	:	Mr.P. Krishna Kumar, JCIT
Assessee by	:	Mr.G. Akash, Advocate Mr.P.M.Kathir, Advocate
सुनवाईकीतारीख/Date of Hearing	:	12.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	04.12.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the Revenue and Cross-Objection filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 28.03.2024 for the Assessment Year (hereinafter in short "AY") 2015-16.



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**2. Grounds of appeal raised by the Revenue are as under:**

1. The order of the Ld. CIT(A) is contrary to law and facts and circumstances of the case.
2. The Ld. CIT(A), NFAC has erred in accepting the claim of the assessee that the entire cash deposits were received from her customers for purchasing the stamp papers.
3. The Ld. CIT(A), NFAC ought to have appreciated that the assessee has not substantiated her claim with corroborative evidences like register containing list of customers name, address, stamp paper number, value of stamp paper sold in any particular day and whether the amount collected was commensurate with that of cash deposited on that day.
4. The Ld. CIT(A), NFAC ought to have appreciated that the transaction value being huge the assessee has not established whether statutory books of account were maintained, if so, whether the assessee's accounts were subjected to statutory audit and whether the said audit report was furnished
5. The Ld. CIT(A), NFAC erred in not calling for the remand report from the AO as required under Rule 46A(3) of the IT Rules 1962, when the fresh evidences were admitted by the Id. CIT(A), NFAC.
6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing officer be restored.

**3. Grounds of Cross-Objection raised by the assessee are as under:**

1. The appeal filed by the Department is inadmissible and is liable to be dismissed in limine as the grounds of appeal have not been raised by the Appellant/Proper Officer.
2. The appeal filed by the Department is to be dismissed in limine also for the reason that no ground has been raised challenging the order of the CIT(A) allowing the ground relating to validity of re-opening.
3. The order of the CIT(A) is correct and in consonance with law and facts to the extent it allows the appeal of the Respondent/Cross-objector.
4. The CIT(A) has rightly held that the AO did not have jurisdiction to issue notice u/s. 148 of the Act dated 30.03.2021.



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5. The CIT(A) has rightly deleted the addition of cash deposits of Rs.2,41,95,000/- u/s 69A of the Act by holding that the same was out of cash received from customers for sale of stamp.

6. The CIT(A) has rightly considered the materials placed before him by the Respondent and allowed the appeal by deleting the addition in full.

7. Any other ground of Cross Objection that may be taken up at the time of hearing.

**4.** Having noted the aforesaid grounds of appeal raised by the Revenue and grounds of Cross-Objection raised by the assessee, it is inter-alia noted that Revenue is challenging the impugned action of Ld CIT(A) deleting the addition made by AO u/s 69 of the Act; and the assessee in her C.O is supporting the action of Ld CIT(A) and has raised the legal issue challenging the re-opening of the assessment.

**5.** The brief facts are that the assessee is an individual who is carrying on business in stamp vending under license dated 12.11.1997. The assessee didn't file return of income (RoI) for AY 2015-16 and the AO noted from the information available on ITBA/Insight portal, that the assessee has made cash deposits amounting to Rs.2,41,95,000/- in her bank account, and that she had filed her return of income only from AY 2016-17 onwards. The AO thereafter recorded his reasons for initiation of proceedings [re-opening of assessment] u/s.147 of the Income Tax Act, 1961 (hereinafter in short "the Act") issued notice u/s.148 of the Act on 30.03.2021 and the AO noted in the assessment order that pursuant to notice, assessee had filed her RoI on 22.12.2021 declaring Rs.1,44,740/-



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and since no more compliance of the notices were made by assessee, he computed the income of the assessee under section 144/ best judgment assessment and added the entire cash deposited in her bank account to the tune of Rs.2,41,95,000/- u/s.69A of the Act for AY 2015-16 by assessment order dated 21.03.2022.

**6.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A)/NFAC who was pleased to delete the same by holding as under:

5. I have carefully examined the facts of the case and perused the grounds of appeal quoted on form 35. Ground 1 to 08 are simply against the addition of Rs 2,41,95,000/- u/s 69A of the Act being the unexplained money.

5.1 Now in the proceedings before me the appellant in order to substantiate the claim has filed written submissions. The appellant during the appellate proceedings contended on the same tune as contended during the assessment proceedings that the appellant works as a stamp vendor and has the commission income only. The appellant collects cash from its customers and the same cash collected was deposited in the account of the appellant and the same was then remitted to the Government account. In order to substantiate the appellant has submitted copy of the letter issued by the Bank, bank statement and the copy of the license. The appellant has submitted detailed submission relevant one is as under:

The appellant is a stamp vendor who is receiving a minimum commission by sale of stamp paper. She is collecting cash from her customers for the purchase of stamp paper and depositing the cash in her Savings Bank account no: 30136088922 maintained with SBI, Alandur. She is then remitting the same to the Treasury Department by NEFT for procuring Non Judicial stamp paper as required by the customers. This is clearly evidenced by the bank statement submitted by her on 23.12.2021 along with her response. The appellant submits that the sources of cash deposits are only from her customers for purchase of stamp paper and there are no unexplained cash deposits in her account. The payments are made to the Treasury Department for purchase of stamp paper and this is further supported by a certificate issued by her bankers M/s State Bank of India, Alandur Branch. Copy of the certificate is enclosed. The appellant submits that since she was deriving



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income below taxable limits, hence she did not file her return of income for the Asst. Year 2016-17. The appellant is not well versed with computer or email and hence was not able to respond to the notices by email She was not served a copy of the assessment order dated 21.03.2022 and demand notice dated 21.03.2022. On receiving a SMS from the Income Tax Department on 28.07.2022 for reply to notice issued for penalty she approached the Learned Chartered Accountant and came to know that an assessment order dated 21.3.2022 fixing the income at Rs.2,43,39,840/- been passed in her case along with a huge demand for Rs.21381961/- after logging into the e-portal. The appellant submits that she is has not been given sufficient opportunity as all notices were sent only through e mail and she not being computer literate was not able to access and send her response. The appellant is very much aggrieved on the above said huge addition of Rs.2,43,39,840/- and high pitched demand of Rs. 2,13.81.961/-raised and hence this appeal.

5.2 The submission has been taken due cognizance off. It is pertinent to mention here that once the cash has been deposited in the bank account of the appellant the same is debited towards two accounts mainly :-

A. 33823706288

B. 33823704203

5.3 Now it is evident from copy of the letter issued by the manager SBI Bank that the Bank Manager has certified that both of the aforesaid accounts belong to the state Government. The AO during the assessment proceedings has made addition only on the ground that the no evidences were furnished by the appellant that the appellant works as a stamp vendor. However during the appellate proceedings the appellant has succeeded to furnish the same (bank Statement, License, Letter from bank). In this appeal, the only thing which needs to be established by the appellant is the source of the aforesaid cash deposit and the same was duly explained by the appellant i.e the cash was received from the customers in respect of the stamp sold and the same was deposited in the bank account of the appellant which further was remitted to the Government Account. In view of the aforesaid facts the action taken by the appellant does not appears to be in order and accordingly the addition made by the AO of Rs 2,41,95,000/- is hereby deleted. Ground no. 01 to 08 raised by the appellant are hereby allowed.

**7.** Aggrieved by the aforesaid action of the Ld.CIT(A), the Revenue is before us and the assessee has preferred a Cross-Objection raising the



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legal issue pointing out that valid approval/sanction was granted by the competent authority for re-opening of the assessment.

**8.** We have heard both the parties and perused the material available on record. On merits of the addition, we note that the assessee is a stamp vendor who earned commission income only from the sale of stamp papers. It is noted that the assessee collected cash from her customers and deposited the same in her bank account and then, it would be remitted to the government treasury. And the assessee in order to substantiate the aforesaid facts has submitted the copy of the license [stamp vendor], the letter issued by the State Bank of India, Alandur Branch and bank statement etc. The assessee didn't file any RoI for the year under consideration since it was the below taxable limit. However, the AO noticed that the assessee has deposited cash to the tune of Rs.2,41,95,000/- in her savings bank account, and issued notice u/s.148 of the Act dated 30.03.2021 expressing his desire to re-opening of assessment, and pursuant thereto, the assessee filed RoI along with income computation statement which is found placed at Page Nos.3-4 of the Paper Book and the assessee in her RoI has shown total income to the tune of Rs.1,44,740/- and the tax payable as "zero". The assessee had filed reply before the AO vide letter dated 23.12.2021 which is found placed at Page No.5-6 of the Paper Book and brought to the notice of the AO that since she was carrying out the service of stamp vending as a



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license holder, she was getting only commission on gross receipts/ payments deposited in the Treasury of Government of Tamil Nadu which amount totaled to Rs.2,45,01,627/-. Despite the assessee filing the aforesaid reply dated 23.12.2021, the AO ignored the same and went ahead to pass best judgment assessment u/s.144 of the Act by making the entire addition of cash deposits to the tune of Rs.2,41,95,000/- u/s.69A of the Act. On appeal, the Ld.CIT(A)/NFAC found the assertion of assessee that being a stamp vendor having valid license to do so, had collected cash from her customers for purchase of stamp papers and has duly deposited the same in her savings bank account bearing No.30136088922 maintained with SBI, Alandur Branch, Chennai, and then debited the same to the two bank accounts of Government Treasury by NEFT for procuring Non-Judicial Stamp Papers as per the requirements of the customers which fact has been certified by the Bank-Manager. The Ld.CIT(A) has gone through the bank statements submitted before him and from other corroborating material (infra) found that the source of cash deposits are only from her customers for purchase of stamp papers and thus, there was no unexplained cash deposits in her bank account as alleged by the AO. The Ld.CIT(A) noted that the assessee has filed the supporting documents like certificate of the SBI that assessee debited the amounts deposited in her account to the Government bank account which fact was corroborating by the bank statements filed by the assessee; and



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the Ld.CIT(A) noted that the assessee has made payments with Government of Tamil Nadu to the tune of Rs.2,45,01,627/- whereas the assessee's cash deposits was only to the tune of Rs.2,41,95,000/-. Therefore, the Ld.CIT(A) has deleted the addition of Rs.2,41,95,000/- on merits, which is a plausible view and can't be held to be a perverse view. Therefore, we confirm it and hence dismiss the Revenue appeal.

**9.** Coming to the Cross-Objection [CO]filed by the assessee, it is supporting the order of the Ld.CIT(A) deleting the additions made by the AO u/s.69A of the Act and inter alia, has raised Ground No.2 which reads as under:

2. The Ld. CIT(A), NFAC has erred in accepting the claim of the assessee that the entire cash deposits were received from her customers for purchasing the stamp papers.

**10.** From a perusal of the impugned order, it is noted that the Ld.CIT(A) decided Ground Nos.1-8 raised by the assessee as allowed and in this regard, it is noted that Ground No.2 raised by the assessee before the Ld.CIT(A) was that the AO didn't had jurisdiction to issue notice u/s.148 of the Act dated 30.03.2021. Thus, when Ld CIT(A) has allowed ground Ground Nos.1-8, it means he allowed the legal issue challenged by assessee against AO's jurisdiction to issue notice u/s.148 of the Act. In such a scenario, the Revenue ought to have challenged the action of Ld CIT(A), which was not specifically done, which prompted the assessee to



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raise ground no 2 supra in its CO. Be that as it may, since we have already upheld the action of the Ld.CIT(A) on merits, the legal issues raised by the assessee in the Cross-Objection are academic in nature and therefore, left open.

**11.** In the result, appeal filed by the Revenue is dismissed and Cross-Objection filed by the assessee is partly allowed.

Order pronounced on the 04<sup>th</sup> day of December, 2024, in Chennai.

**Sd/-**

(जगदीश)

**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 04<sup>th</sup> December, 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

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**