

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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 No.2245/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Seethrampalayam Dhandappagounder Chinnasamy, #102-C/3, Sankari Road, Seethrampalayam Post, Tiruchengode-637 209.	v.	Income Tax Officer, Ward-1, Tiruchengode.
[PAN: AEZPC-2157-F]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S.Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Chinthapalli Meher Chand, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.10.2024
घोषणाकीतारीख /Date of Pronouncement	:	06.12.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against order of the Ld. Commissioner of Income Tax (Appeals), NFAC, (hereinafter in short "CIT(A)"), Delhi dated 25.06.2024 for assessment year 2017-18 (hereinafter in short "AY").



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2. The main grievance of the assessee is against the impugned action of the Ld.CIT(A), confirming the action of the AO, wherein AO has made following additions of (i) Rs.1,01,26,500/- u/s.69A of the Income Tax Act, 1961, (hereinafter in short "Act"); (ii) Rs.39,53,815/- as business income; & (iii) unproved claim of 80C deduction Rs.1,19,408/-.

3. Brief facts are that assessee an individual is engaged in the business of trading in rig spares, who didn't file any return of income for AY 2017-18. The AO noted that assessee has made cash deposits of Rs.1,08,43,200/- in his bank account maintained with Federal Bank & ICICI Bank during demonetization period. In order to find out genuineness of cash deposits, survey u/s.133A was carried out at the business premises of the assessee on 10.03.2017. Simultaneously, AO called for details of SBNs (Specified Bank Notes) deposited by the assessee from the two banks during demonetization period [*from 08.11.2016 to 30.12.2016*] and found out that assessee has deposited SBN totaling to Rs.83,26,500/- in his Federal Bank account and Rs.18,00,000/- in his ICICI Bank account i.e. total SBN's Rs.1,01,26,500/-. The AO further noted in the assessment order that during survey proceedings, sworn statements were recorded from assessee, wherein he stated that he is engaged in the business of rigs & spares in the name of Sri Murugan Rig Spares and gave details of bank



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accounts maintained by him and also submitted that he was maintaining proper books of accounts such as day book & ledger in his computer [refer answer to question no.5]. When confronted by the survey team by asking question no.6 as to source of amount deposited during demonetization period to the tune of Rs.1,08,43,200/-, the assessee answered in his own words "*source for above mentioned cash deposit out of from rigs spares for business and follow up service nature*". Thereafter, the AO again confronted assessee as to deposit of SBN to the tune of Rs.1,01,26,500/- during demonetization period and asked him to explain as to why he has deposited the same when it is illegal tender after 08.11.2016, the assessee answered and confirmed [refer answer 7 page 4 of assessment order] "*I confirm that during demonetization period I have received above amount old currency value of Rs.1,01,26,500/- out from business sales and follow up service nature*". And pointed out that out of the total SBNS/cash deposit of Rs.1,01,26,500/-, an amount to the extent of Rs.34,62,810/- was asserted to be cash balance from business as on 08.11.2016 as reflected in cash book. And for the remaining amount of Rs.66,63,690/-, he offered the same as unproved business income for financial year in addition to the normal business income under Pradhan Mandhiri Garib Kalyan Yojana, 2016. The AO further noted that on 30.03.2017 assessee filed an affidavit retracting his disclosure made during survey dated



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10.03.2017; and also filed his return of income for AY 2017-18 declaring income of Rs.13,88,000/-. And the AO noted that assessee had maintained three bank accounts in the name of proprietary concern M/s. Sri Murugan Rig Spares and another account in his individual name in the Federal Bank. The AO also noted the total credits in the four bank accounts was to the tune of Rs.7,79,23,921/-. The AO thereafter noted that assessee has admitted business profit of Rs.14,69,979/- and in the absence of relevant documents produced, he estimated income of the assessee by applying 8% on the total credits accumulated in the four bank accounts i.e.,Rs.7,79,23,921/- **minus** Rs.1,01,26,500/- (SBNs) i.e., Rs.6,77,97,421/- and 8% of which works out to Rs.54,23,794/- which was added as additional business income. Thereafter, AO made addition of Rs.1,01,26,500/- separately u/s.69A, being SBN deposited during demonetization period. Aggrieved, assessee preferred appeal before the Ld.CIT(A), who was pleased to confirm the same. Aggrieved, assessee is before us.

4. We have heard both the parties and perused records. We note that assessee is an individual, who is engaged in business of rig spares in the name of M/s. Sri Murugan Rig Spares and the said proprietary concern had two bank accounts in Federal Bank & one in ICICI bank and another bank account in his individual name at Federal Bank [the details of which are captured at page 4 of assessment order]. The AO noted that the



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assessee has deposited cash of Rs.1,08,43,200/- during demonetization period, out of which SBNs was to the tune of Rs.1,01,26,500/-. In order to find out the genuineness of cash deposits, Department has conducted survey on the business premises of the assessee on 10.03.2017 and confronted the assessee, *inter-alia*, about maintaining of proper books of accounts etc., to which assessee submitted that he was maintaining books of account such as, day book as well as ledger being maintained in the computer etc. When confronted about the cash / SBN deposited during demonetization period in his bank accounts to the tune of Rs.1,08,43,200/- and specially about the SBN to the extent of Rs.1,01,26,500/-, the assessee submitted that source of deposit was from business i.e. sales and follow up services. He also brought to the notice of the survey team that out of said amount of Rs.1,01,26,500/- [SBN deposited during demonetization period] Rs.34,62,810/- was the closing cash balance as on 08.11.2016 and the balance amount of Rs.66,63,690/- was the unproved business income, which was offered to tax under Pradhan Mandhiri Garib Kalyan Yojana, 2016 i.e. an amount of Rs.66,63,690/-. However, after 20 days the assessee on 30.03.2017 retracted his aforesaid offer i.e. assessee didn't offer the amount of Rs.66,63,690/- under Pradhan Mandhiri Garib Kalyan Yojana, 2016; and instead filed return of income declaring Rs.13,88,000/- showing total business income of Rs.14,69,979/-. However, the AO without finding any



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incriminating materials unearthed during survey proceedings and without finding any fault in day book, ledger maintained in computer has rejected assessee's consistent stand that amount deposited during demonetization was its trade receipts, but instead made separate addition u/s.69A of the total SBN deposited to the tune of Rs.1,01,26,500/-. And taking note that assessee has total credit accumulated in the four bank accounts to the tune of Rs.7,79,23,921/- has estimated taxable income @8% of balance credit i.e. Rs.7,79,23,921/- [**minus** Rs.1,01,26,500/- added u/s 69A] i.e. Rs.6,77,97,421/- and after reduction of returned income made separate addition of Rs.39,53,815/-. On appeal, Ld. CIT(A) has confirmed the same.

5. The main plea of the assessee is that even if, total credits of Rs.7,79,23,921/- found in his bank accounts is taken as total turnover, only profit embedded in the turnover can only be brought to tax and not the entire SBNs deposited can be separately taxed u/s.69A of the Act because it was trade receipts. In other words, according to Ld.AR, amount credited in the four bank accounts including the SBNs/cash deposited in bank accounts are sourced from business income of the assessee which was the stand of the assessee right from the beginning. And the department couldn't disprove it despite survey was conducted at the business premises of the assessee on 10.03.2017 precisely to find out the



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source/genuineness of the cash deposit and couldn't find any iota of incriminating evidence to show that assessee had any other undisclosed source for SBN's/Cash/undisclosed income other than the business income i.e., business of rig spares which the assessee has been engaged in last few years. The Ld.AR also brought to our notice that assessee has been regularly filing his return of income and for AY 2015-16, filed RoI on 06.01.2016 and had shown turnover of Rs.82,80,948/- and had shown net profit of 3.9%; and for AY 2016-17, assessee had filed return of income on 28.02.2017 and had shown turnover of Rs.1,59,92,444/- and net profit of 6.7%. The Ld.AR also brought to our notice that during the year under consideration the assessee had filed VAT return which reflects sale of Rs.3,41,85,548/-, which was his actual business turnover. However, the assessee doesn't want to contest the action of the AO estimating reasonable income based on total credits in the bank accounts to the tune of Rs.7,79,23,921/- and has restricted his plea against making separate addition of SBN's u/s.69A of the Act to the tune of Rs.1,01,26,500/-. Be that as it may, we note that assessee has been filing return of income in earlier assessment years and has filed return of income for AY 2017-18 on 31.03.2017 [after survey has taken place on 10.03.2017 in his business premises of the assessee]. The assessee has filed return of income declaring total income of Rs.13,88,000/-, which was assessee's business income and it included income/SBNs deposited during



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demonetization period. According to the assessee, the SBNs deposited to the tune of Rs.1,01,26,500/- was nothing but business receipts on which assessee has filed VAT returns and therefore, separate addition u/s.69A of the Act was unreasonable and so unsustainable. It is noted that the aforesaid stand/assertion of the assessee couldn't be disproved by the AO, even though survey was conducted within seventy days after demonetization. As noted, the Survey team of department failed to unearth any incriminating evidence from the premises of assessee, which gives credence to the contention of the assessee that SBN deposited during demonetization period was his business income only. Moreover, it is noted that out of Rs.1,01,26,500/- SBN deposited, assessee has shown to have closing balance of Rs.34,62,810/- in his cash book which fact the AO acknowledges and there is no evidence to show that assessee didn't had stock to make sales of Rs.34,62,810/- and the balance amount of Rs.66,63,690/-, which was explained/shown by the assessee as his unproved business income. In such factual background, merely based on the statement/offer made during survey u/s.133A of the Act, i.e. an amount of Rs. 66,63,690/- would be offered under Pradhan Mandhiri Garib Kalyan Yojana, 2016, it would be unsafe to make addition u/s.69A of the Act, when the assessee has retracted the same on 31.03.2017 by filing an affidavit [i.e. within 20 days]. Thus, we find that there is neither any relevant evidence/material to disprove assessee's assertion that SBNs



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deposited was part of business income of the assessee nor any evidence/material to show that SBNs deposited was income from any other undisclosed source of the assessee. In the light of the discussion (supra) and the materials placed on record, the assessee's explanation that Rs.1,01,26,500/- [which includes closing cash balance of Rs.34,62,810/- as on 08.11.2016] was out of proceeds from his business is found to be probable and so we are of the view that the addition made u/s.69A of the Act of Rs.1,01,26,500/- can't be sustained. Therefore, we are inclined to accept the explanation given by the assessee about the nature & source of deposit during demonetization as business/trade receipt; and based on his offer to estimate income of the assessee on the total cash credits found in four bank accounts amounting to Rs.7,79,23,921/-, we need to reasonably estimate the income of assessee and do not agree with the AO estimating income @ 8%, which is not based on any comparable cases. And in this regard, we take note of the results of earlier & subsequent years business returns of the assessee (supra) and in the absence of any comparables, estimate income @ 5%. The AO is therefore directed to compute taxable income @ 5% of Rs.7,79,23,921/- after reducing the returned income. Since total credits from his bank accounts have been brought to tax as business income, separate addition of Rs.1,01,26,500/- is found to be unwarranted in the peculiar facts of the case and therefore, directed to be deleted.



ITA No.2245/Chny/2024 (AY 2017-18)
Shri S.D.Chinnasamy

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6. In the result, appeal of the assessee is partly allowed.

Order pronounced on the 06th day of December, 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: 06th December, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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