

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.11/Chny/2024
&
Stay Petition No.51/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Mr.Rengasamy Asaithambi, 12, Thattanpadugai Street, Kumbakonam-612 001.	v.	The ACIT, Circle-2(1), Trichy.
[PAN: AABPA 2549 P]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anita, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	01.10.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.12.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 12.12.2023 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the addition of Rs.40 lakhs and giving direction to



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the AO to take remedial action regarding an amount of Rs.1.35 Cr. (approx.).

3. The brief facts are that the assessee is a wholesale vegetable merchant who filed his return of income (RoI) for AY 2017-18 dated 21.12.2017 declaring total income of Rs.18,82,980/- and agricultural income of Rs.1,75,000/-. The AO noted that the assessee had deposited cash of Rs.2,40,41,610/- in his bank accounts during demonetization period from 09.11.2016 to 31.12.2016. Therefore, after re-opening the assessment for AY 2017-18, the assessee was asked to prove the nature & source of the cash deposits during demonetization period. Pursuant thereto, the assessee submitted that the cash deposits were made out of his trading in vegetable which included cash available in hand as on 08.11.2016; and that the cash balance available with the assessee on 08.11.2016 was to the tune of Rs.1,04,52,586/- and that out of the said amount, Specified Bank Notes (SBNs) were only to the tune of Rs.62,62,500/-. The AO noted the aforesaid facts and made the addition of Rs.40 lakhs u/s.69A of the Act by observing as under:

The closing cash balance on 31.03.2015 and on 31.03.2016 was verified from the returns filed by the assessee, and the same is found as under:

Cash balance as on 31.03.2015	Rs. 4,52,753/-
Bank balance as on 31.03.2015	nil
Cash balance as on 31.03.2016	Rs.12,762/-
Bank balance as on 31.03.2016	Rs. 10,000/-



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It is seen that the closing cash balance on the year end is much lower as compared to the monthly closing balance shown by the assessee in his submission.

Hence, it is inferred that the monthly closing balance shown by the assessee is on higher side and is not acceptable.

The assessee's business is wholesalers in onion & potatoes wherein the need for cash is only for day to day expenses and not for purchases as the same is procured from outside states and payments are made by banking channels only. The need for a cash balance to the tune of Rs. 1,04,52,586/- is not acceptable.

However, only Rs. 62,62,500/- is stated to be SBNs and the balance of Rs. 41,900,088/- is other notes on 08.11.2016 i.e. the same are notes of 100, 50, 20, 10 etc. It is for the assessee to explain denominations and how the same was utilized subsequently. It is beyond human probability that the assessee, a wholesaler having turnover to the extent of Rs.16,82,88,868/- to have cash balance of Rs. 41 lakhs in currency of Rs. 100, 50, 20 & 10 etc. Hence the amount

of Rs. 40,00,000/- is treated as unexplained money u/s 69A and brought to tax under the provisions of section 115BBE.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A)/NFAC who was pleased to confirm the addition and also made certain directions/observations as under:

7.2.1 It is to note that the total cash deposits made by the appellant during demonetization period was Rs.2,40,41,610/- and out of which cash of - Rs. 1,04,52,586/- stated to be available as on 08.11.2016 as per the appellant submissions and for balance amount of Rs.1,35,89,024/- (Rs.2,40,41,610 - Rs.1,04,52,586), there is no mention in the assessment order by the AO and is silent. It is not known whether the AO has verified this amount of Rs.1,35,89,024/- during scrutiny assessment proceedings, if not verified, suitable remedial action may be initiated as per law.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. We note that the assessee is an individual who is engaged in



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the business of wholesale purchase and sale of onion & potatoes (vegetables) and has filed his RoI declaring total income of Rs.18,82,980/- and agricultural income of Rs.1,75,000/-. The AO came to know that the assessee has made cash deposits during demonetization period to the tune of Rs.2,40,41,610/-, and hence, he re-opened the assessment u/s.147 of the Act; and pursuant to the notice issued u/s.148 of the Act dated 16.03.2019, the assessee reiterated the RoI filed earlier supra. And the AO asked the assessee to prove the *nature & source* of the cash deposits during the demonetization period; and the assessee brought to his notice that the cash deposits was his trade receipts which included his cash balance available in hand as on 08.11.2016 of Rs.1,04,52,586/-, it was also brought to AO's notice that out of the ibid cash balance, SBNs were only to the tune of Rs.62,62,500/- and the balance amount of Rs.41,90,086/- was valid currencies in denominations of Rs.100/-, Rs.50/-, Rs.20/- & Rs.10/- etc., However, the AO didn't record any adverse findings against the SBNs deposited to the tune of Rs.62,62,500/- which he accepted being part of the cash balance as on 08.11.2016. However, he wondered 'as to how' assessee could be having currencies of denominations of Rs.100/-, Rs.50/-, Rs.20/- & Rs.10/- etc., to the tune of Rs.41,90,088/- which according to the AO was not believable; and according to him, was beyond human probability that a wholesale businessman like assessee having turnover to the extent of



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Rs.16,82,88,868/- would be having cash balance of Rs.41 lakhs in small currencies of Rs.100/- to Rs.10/- and therefore, on such a reasoning/suspicion, he made the addition u/s.69A of the Act to the tune of Rs.40 lakhs. On appeal, the Ld.CIT(A) also wondered 'as to why' such a huge cash (*Rs.41 lakhs was kept with the assessee when he is a wholesale dealer*) and further, noted that the total turnover of the assessee was Rs.16,82,88,868/- and therefore, the average monthly turnover would be around Rs.1,40,24,072/-. And therefore, according to him, the assessee's contention that he had cash in hand to the tune of Rs.40 lakhs as on 08.11.2016 was unbelievable and therefore, he confirmed the action of the AO by making addition of Rs.40 lakhs u/s.69A of the Act.

7. Thereafter, the Ld.CIT(A) also noted that the total cash deposits was to the tune of Rs.2,40,41,610/- and out of which, cash available with the assessee was only Rs.1,04,52,586/- as on 08.11.2016 and therefore, he wondered as to what happened to the balance amount of Rs.1,35,89,024/- [Rs.2,40,41,610 – Rs.1,04,52,586/-]. The Ld.CIT(A) found that there was no mention in the Assessment Order regarding this amount of Rs.1,35,89,024/- and therefore, he observed that if it [*the balance amount of Rs.1,35,89,024/-*] has not been verified by the AO, suitable remedial action should be initiated as per law.



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8. First of all, the Ld.AR assailed the impugned direction of the Ld.CIT(A) regarding Rs.1.35 Cr, which was not an issue/ground of appeal before him. According to the Ld.AR, even though, the Ld.CIT(A) has co-terminus powers as that of AO, and has powers to enhance the assessment made by the AO, but it has to exercised/done in accordance to law. In other words, the Ld.CIT(A) may pass such direction to the AO while exercising his powers as that of the First Appellate Authority following the procedure as prescribed under sub-section (2) of section 250 of the Act i.e. *only after giving opportunity to the assessee by issuing of show cause (SCN)*; and in this regard, pointed out that the Ld.CIT(A) didn't issue any SCN on this issue before making such impugned observation for remedial action. The Ld.DR couldn't contradict such assertion made by the Ld.CIT(A). Hence, we find force in the objections taken by the Ld.AR regarding the direction given by the Ld.CIT(A) in respect of deposit of Rs.1.35 Crs. Therefore, such direction issued by the Ld.CIT(A) can't be legally sustained, because, there is *per se* violation of natural justice; and if the AO didn't enquire or in other words, if the AO didn't perform his dual role of Investigator or Adjudicator, the Ld.PCIT is empowered to exercise his revisional jurisdiction u/s.263 of the Act but not the Ld.CIT(A) in his Appellate jurisdiction unless he exercises his co-terminus powers as that of AO by following procedure u/s.250(2) of the Act. Therefore, the directions of the Ld.CIT(A) needs to be deleted.



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9. Coming to the addition sustained to the tune of Rs.40 lakhs, we note that the addition can't be sustained for the simple reason that the AO has accepted the returned income to the tune of Rs.18,82,980/- and has accepted the audited books of accounts filed by the assessee. It is noted that the assessee has deposited Rs.62,62,500/- [SBNs] in the bank which deposit's nature & source has been accepted by the AO presumably being trade receipts (purchase and sale of onion & potatoes in the whole sale market]. It is noted that the assessee had shown the cash balance in hand [as on 08.11.2016] to the tune of Rs.1,04,52,586/- and out of which Rs.62,62,500/- [SBNs] were accepted by the AO. But, when it came for the balance amount shown as cash balance [as on 08.11.2016] to the tune of Rs. 41 lakhs approx, he wondered 'as to how' the assessee would be having the valid currencies in the denomination of Rs.100/-, Rs.50/-, Rs.20/- & Rs.10/- etc., which sum of cash, according to him was improbable to be with an assessee who is having good turnover of more than 16 Crs and based only on suspicion and conjectures has made the addition which can't be legally sustained. It is further noted that AO erred in making addition of Rs.40 lakhs u/s 69A since the same is very well part of the total turnover of the assessee i.e. Rs.16,82,88,868/- which [turnover] has been accepted by the AO [since the AO has accepted the returned income] and the AO has not rejected the books and the action of the AO to again make the addition of Rs.40 lakhs would tantamount to



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double addition which is not permissible under the Law. Moreover, it is not the case of the AO that the assessee had any other source of income other than the wholesale [purchase & sale] of vegetable. Therefore, in the absence of any other evidences, Rs.41 lakhs being valid currencies in the denominations of Rs.100/-, Rs.50/-, Rs.20/- & Rs.10/- can't be brought to tax since it is obtained by the assessee during the regular business which is a trade receipt which can't be brought to tax u/s.69 of the Act. And since the assessee has explained the nature & source of the same and recorded the same in his books of accounts, impugned addition made u/s.69A of the Act is not legally sustainable. Therefore, we are inclined to delete the addition of Rs.40 lakhs u/s.69A of the Act.

10. Stay Petition No.51/Chny/2024 filed by the assessee has become infructuous and merges into the aforesaid order of the Tribunal

11. In the result, appeal filed by the assessee is allowed and Stay Petition filed by the assessee is held to be infructuous.

Order pronounced on the 09th day of December, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**



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दिनांक/Dated: 09th December, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

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