

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' 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.1751/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2017-18

Raja Baskar,  
No.9, Jani Jhan Khan Road,  
Royapettah,  
Chennai-600 014.  
[PAN: AAKPR6896B]

Income Tax Officer,  
Non-Corporate Ward-12(2)  
Chennai.

**(अपीलार्थी/Appellant)**

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से /Revenue by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख /Date of Pronouncement

**(प्रत्यर्थी/Respondent)**

Shri B.Suresh, C.A,

Ms.Gouthami Manivasagam, JCIT

26.09.2024

06.12.2024

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1063621974(1) dated 29.03.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 29.03.2024 passed by NFAC, Delhi.

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2.0 It has been noted that there is a delay of 21 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that his wife suddenly expired on 07.10.2023 and because of this he could not come out of that trauma. Further, because of his mental disturbances leading to business loss and other issues of his family, he could not file in time and from June-2024 only he could concentrate in all his affairs. All these activities contributed to the delay which was neither willful nor wanton. The assessee submitted that there will not be case of any non-compliance now. We have considered the justification put forth by the assessee and we are satisfied with its adequacy. We are also conscious of the fact that no litigant gains by intentionally delaying its own matters. The Ld. DR did not pose any serious objections to the delay. Accordingly, we hereby condone the delay and proceed to adjudicate this appeal.

3.0 The only issue arising from the grounds of appeal raised by the assessee is regarding the action of the Ld. CIT(A) in confirming the addition of the Ld. AO to the tune of Rs.19,77,250/-. The Ld. Counsel for the assessee informed that the Ld.AO had made an addition of Rs.39,54,500/- u/s 68 and Rs.13,69,000/- u/s 69A. During the course of appellate proceedings, the Ld. CIT(A) had called for a remand report from

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the Ld. AO. After considering the same the Ld.CIT(A) proceeded to delete the addition of Rs.13,69,000/-. As regards, the other addition of Rs.39,54,500/- the Ld. CIT(A) accorded relief of 50% and confirmed addition to the extent to Rs.19,77,250/-. The Ld. Counsel for the assessee argued that the Ld.AO had in his remand report given categorical findings about correctness upon verification of all its transactions in the books of account, with VAT returns, sales invoices etc and hence the rejection of the same by the Ld. CIT(A) was unwarranted. It was argued that the Ld.CIT(A) mainly drew his conjectures and premises to reject the remand report of the Ld. Assessing Officer. It was contended that the Ld. CIT(A) had called for remand report qua the entirety of addition made but had in reality rejected / accepted the report. The Ld. DR contented that the decision of the Ld. CIT(A) is correct.

4.0 We have heard rival submissions in the light of material available on records. We have noted that the case was selected for scrutiny to verify cash deposits and large investments in property. The assessee had deposited Rs.53,35,500/- in his bank account during the demonetization period, out of which Rs.39, 54, 500/- was in SBNs and balance Rs.13,69,000/- in non SBNs. The Ld. AO made the impugned addition for want of details / justification and confirmations of parties from

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the assessee. His enquiries with few parties now indicated that the transactions lacked genuineness. Before the Ld. CIT(A) prayed that the Ld. AO has not considered the facts of the case and accompanying documents properly. As per page 6 and 7 of the order of Ld. CIT(A), the assessee provided detailed justification and documents in support of its claims regarding genuineness of cash deposits. The Ld. CIT(A) as per para 4.3 of his order remitted the case to the AO for his remand report. In para 4.3 he observes that *"....keeping in mind the request of the appellant for remand report, the copy of the submission, being general and routine in nature, made by the appellant was forwarded to the for information and comments / RR. In compliance the AO after making in-depth scrutiny thereof submitted the remand report on 15.11.2023..."* . When viewed in the light of above comments, the decision of Ld. CIT(A) to confirm a part of the addition that is of Rs. 19,77,250/- and deleting an addition of even amount along with another addition of Rs.13,69,000/- is contextually incomprehensible.

5.0 At this stage it is pertinent to observe the findings of Ld.CIT(A) on para 5.2 of his order that *"....the AO has submitted very casual remand report without bringing any material evidence on record about realization of cash from creditors, against credit sales effected in the*

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*earlier year....". He has further proceeded in para 5.5 of his order concluding that "...keeping in mind the above stated facts, in my considered opinion, the addition to the extent of Rs. 19,77,250/- out of total addition of Rs.39,5,500/-, on account of SBNs deposited in the bank, will be reasonable to meet the end of the justice. Therefore, the balance amount of Rs. 19,77,250/- is hereby deleted. 5.6 As regard the balance addition of Rs.13,69,000- is concerned the AO could not bring any material evidence on record to prove it otherwise, therefore, the same is held as realization from debtors / cash sales and accordingly, the same is hereby deleted. All the grounds of appeal are decided accordingly..."*

6.0 The ironical and dichotomous part of the Ld. First Appellate Authority order is that on one hand he is observing in para 4.3 that the Ld. AO has submitted his remand report after making "indepth scrutiny" and on the other hand he concludes in para 5.2 that the Ld. AO has "submitted very casual remand report without bringing any material evidence on record". Thus it is not clear as to how report can become a "casual remand report" when the same was reportedly based upon "in-depth enquiry". Further it is also intriguing as to if the report was deemed to be unreliable, how can the same be used for deleting the addition of Rs. 13.6 lakhs and Rs. 19,77,250/- and also how the same

can be used for confirming the addition of Rs. 19,77,250/-. Thus a clear cut case of non-application of mind is made out against the Ld. First Appellate Authority. The appellate authority also had powers to direct the Ld. AO to resubmit his remand report after conducting enquiries on the indicated lines. Incidentally the conclusions to confirm and delete the additions have also been made by the Ld. CIT(A) on the basis of his own self-serving conjectures and surmises. The law provides adequate powers to the appellate authorities of revenue to conduct their independent enquiries, wherever required at their end. Assuming that the remand report was deficient, nothing prevented the Ld. CIT(A) to have suo moto or through the Ld. AO conducted enquiries in the matter so as to draw judicious conclusions. We have also noted that the addition of Rs. 19,77,250/- confirmed by the Ld. CIT(A) was done on an adhoc estimate basis. Accordingly, we are of the view that the decision of the Ld. CIT(A) is not based upon the correct understanding of the facts of the case and also he has exceeded his jurisdiction by being indiscreet. Accordingly, the order of lower authorities is set aside and the Ld. AO is directed to delete the addition of Rs. 19,77,250/-. All the grounds of appeal raised by the assessee therefore allowed.

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

Order pronounced on 6<sup>th</sup>, December-2024 at Chennai.

**Sd/-**

**( एबी टी. वर्की )**

**(ABY T VARKEY)**

**न्यायिक सदस्य / Judicial Member**

**Sd/-**

**(अमिताभ शुक्ला)**

**(AMITABH SHUKLA)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 6<sup>th</sup>, December-2024.

*KB/-*

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

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