

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.1786/Chny/2024
निर्धारण वर्ष /Assessment Years: 2017-18

Shree Ramachandra Breeders,
No.1, Karnaka Arumuga Pillaiyar Koil
Street, Gugai,
Salem-636006.
[PAN: ADAFS4845C]

Deputy Commissioner of Income Tax,
Circle-1(1),
Salem.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: S/Shri S.Sridhar & S.Senthil Kumar,
Advocates.

प्रत्यर्थी की ओर से /Revenue by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.11.2024

घोषणा की तारीख /Date of Pronouncement

: 06. 12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1064357271(1) dated 25.04.2024 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 25.04.2024 passed by NFAC, Delhi.

2.0 In all appellant has raised 16 grounds of appeal, all of which have been found to be narrative and descriptive in nature. Perusal thereof however indicates that the assessee is primary contesting the addition of Rs.28,84,500/- made by the Ld.AO and which has been

confirmed by Ld.CIT(A). For the purposes of brevity all the grounds of appeal are adjudicated together.

3.0 The Ld. Counsel for the assessee informed that the assessee firm is engaged in the business of hatching of eggs. It was stated that the business started on 21.03.2016 and that AY-2017-18 thus became first year. The Ld.Counsel submitted that total sales of Rs.2,17,49,193/- was done during the year. The Ld. AO, as per para 7 of the order, had noted that there were cash deposits of Rs.36,71,770/- during the demonetization period out of which Rs.28,84,500/- were in SBNs. The assessee was not having any cash in on 08.11.2019 and that the amount of Rs.28,84,500/- was deposited between the period 11.11.2016 to 27.12.2016. The Ld. Counsel submitted that the AO, applying theory of human probability, proceeded to add the impugned amount of Rs.28,84,500/- to the income of the assessee as unexplained money u/s 69A r.w.s. 115BBE. While doing so the Ld. AO relied upon judicial pronouncements including those delivered by the Hon'ble Apex Court. In para 6 of the assessment order, the Ld. AO has noted that the assessee had chosen to not reply to the final show cause notices of AO.

4.0 The Ld. Counsel submitted that the Ld.First Appellate Authority sustained the addition made by the Ld.AO. The Ld. Counsel argued that it has made total sales of Rs.2,17,49,193/- which is not in dispute either

by the AO or even by VAT authorities before whom returns were also filed. It was argued that considering the total sales, monthly sales comes to Rs.18 lakhs app. It was stated that since books of accounts were maintained, provisions of section 69A are not attracted. The Ld. Counsel submitted that the amount of Rs.28,84,500/- deposited between the period 11.11.2016 to 27.12.2016 was sale proceedings received from buyers. The Ld. Counsel for the assessee also placed reliance upon the decision of Hon'ble Coordinate Bench of this tribunal in the case of TASMAL vide ITA No.431 / Chny/2023 dated 07.10.2024 wherein it has been held that the transactions qua SBNs was declared a prohibited activity only w.e.f 31.12.2016 and that prior to the date there was no ban in transacting in SBNs. As per the facts of the impugned case, TASMAL a Public Sector Enterprise, under the Government of Tamil Nadu engaged in the business of liquor trading was found to have accretions in its bank account by way of cash deposits during the demonetization period. The assessee therein had submitted that the cash deposits represented sales of liquor which it was forced to have received from the buyers so as to avoid a law and order situation. Accordingly, the Ld. Counsel requested for setting aside the order of lower authorities and deletion of addition. The Ld. DR agitated that there is no justification in assessee's arguments. It was contended that as on 08.11.2016 the

assessee had nil balance in cash. It was argued that the assessee had deposited by cash Rs.36.71 lakhs app. out of which Rs.28.84 lakhs was by way of SBNs. Thus the theory of the same being two months sale was contested by the Ld. DR. The Ld DR also drew attention to the fact that before the Ld CIT(A) the assessee had contended that the cash deposits were linked to 3 sources being sales , trade advances and partners capital.

5.0 We have heard rival submissions in the light of material available on records. The details filed by the assessee qua its turnover of Rs.2.17 Crs indicate towards a monthly sales of about Rs.18 lakhs app. It is also a known fact that a highly perishable commodity like eggs and chicken are largely sold in cash. However, to conclude that all the sales was made in cash only is a farfetched conclusion. Consequently to conclude that the entire amount of Rs.28.84 lakhs represented only sales would not be inconformity with assessee's own admissions. Besides , we have also seen that the assessee himself has before the Ld CIT(A) , by way of a ground of appeal admitted that the impugned large increase in cash deposits during FY-2016-17 was linked to sale proceeds from eggs and chicks, trade advances and partners' capital. Thus, para 5 on page 3 of Ld.CIT(A)'s order , elucidating ground of appeal no. 5, reads as under:-

“....5) Large increase in cash deposit made during the FY-2016-17 represents the cash sales proceeds of hatching eggs and Day old Chicks beside trade advances partly received in cash from parties and partners part of their capital. The above cash proceeds had been deposited with the Bank. Partnership Firm commenced only on 21.03.2016. Even though parent chicks were purchased in April 2016 the chicks started laying eggs only after 6 to 7 months. So the production of hatching eggs has started in the month of November-2016 onwards....”

6.0 In view of the aforesaid undisputed admission of the assessee that the cash deposits in its bank account of Rs. 28,84,400/- are linked to more than one sources, a conclusion of their exclusive linkages to assessee's sales would at best be a premature conclusion. It deserves to be therefore enquired into as to what is the breakup of such sources that is to say how much is related to sales including advance sales and how much is relatable to the capital accretions from the partners. We have noted that no such bifurcation is available on records, nor any enquiries made into the matter. We therefore deem it appropriate to set aside the matter to the file of the Ld.AO for readjudicating the issue de novo, by passing a speaking order, after bringing on records correct facts of the case. We hold that so far as the cash deposits are relatable to sales including advance sales the same would require to be accepted by the AO as genuine deposits. As regards the components which is relatable to the capital accretions from the partners, the same

will have to be examined by the Ld. AO qua their sources etc and the decision would have to be taken in accordance with law. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bounden upon the assessee to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed

7.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 6th, 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: 6th, December-2024.

KB/-

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

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