

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1847/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)

M/s. Asiatic Enterprises # 6, Jones Road, Saidapet, Chennai-600 015.	बनम/ Vs.	ITO Non-Corporate Ward-19(3) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAFFA-5949-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Vasudevan (Advocate)- Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Ms. R. Anita (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	04-12-2024
घोषणा की तारीख / Date of Pronouncement	:	17-12-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 04-06-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) of the Act on 31-12-2019. The grounds of appeal read as under: -

The order of the Commissioner of Income Tax (Appeals) NFAC, in so far as it is against the assessee, is contrary to law, erroneous and unsustainable on the facts of the case.

I. ADDITION U/S.69 OF THE ACT :

- 1.The CIT(A) NFAC erred in confirming the addition of Rs.1,29,99,000/- as unexplained money under sec.68 of the Act.
- 2.The CIT(A) NFAC failed to appreciate that the cash deposited in the bank accounts were the amounts realized from sundry debtors, namely, Nagore Timber Traders, Sri Vijayalakshmi Timber & Tiles, Mubarak Traders, Kumaravilas Timber Mart, Sree Balaji Timbers and Sri Maruti Timbers and the addition u/s.68 was wholly unjustified and unsustainable on the facts of the case.
- 3.The CIT(A) NFAC further failed to appreciate that the assessee had discharged its onus of proving that the amounts were the realization from those trade debtors and is evidenced by the entries in the books of accounts and hence the addition of the amount as unexplained money is untenable in law and facts of the case.
- 4.The CIT(A) NFAC further failed to appreciate that the nature of business of assessee is that there are regular cash sales and had been consistently depositing the cash in the bank accounts throughout the year and hence there was no reason to suspect that the amounts deposited are the unexplained money of assessee.
- 5.The CIT(A) NFAC was not justified in confirming the addition only based on surmises and conjectures and without adverting to the regularly maintained books of accounts duly audited and hence confirming the addition was wholly unjustified and unsustainable on the facts of the case.
- 6.The CIT(A) NFAC was not justified in confirming the application of sec. 115BBE since the source of the cash deposits was only the business of timber sales and collection from trade debtors and hence deleted the addition.

II INSURANCE CLAIM WRITTEN OFF :

- 7.The CIT(A) NF AC erred in confirming the disallowance of insurance claim of Rs.58,78,451 written off as unrecovered by assessee.
- 8.The CIT(A) NFAC failed to appreciate that the assessee had placed on record the rejection of the insurance claim by the insurance co. of the huge loss of stock suffered by assessee in the Dec.2015 floods and hence the write off by assessee was fully justified.
- 9.The CIT(A) NFAC further failed to appreciate that in the A.Y.201617, this amount was shown as 'Insurance receivable' in the P & L a/c and since the insurance company rejected the claim, the assessee had to write-off the loss as not recoverable in the current year and hence confirming the disallowance was improper and unjustified.

III ESTIMATED ADDITION OF SUNDRY CREDITORS :

- 10.The CIT(A) NFAC erred in confirming the estimated addition of the sundry creditors to the extent of the gross profit of assessee.
- 11.The CIT(A) NFAC failed to appreciate that substantial amount is with reference to the overseas creditors and the outstanding is tied to the L.C. and hence inherently carries the tag of genuineness and there is no scope to estimate the addition treating them as not explained.
12. The CIT(A) NF AC further failed to appreciate that the basis to estimate the addition of sundry creditors by the officer was itself flawed and no further estimate can be made to justify a wrong addition.
- 13.The CIT(A) NFAC further failed to appreciate that the entire list of sundry creditors are part of the regularly maintained books and hence was not justified in applying the estimated addition, inclusive of the opening balance

and that too establishing the non-genuineness of the trade creditors and hence the addition is uncalled for and is to be deleted in entirety.

14. The CIT(A) NFAC, in any event, ought to have considered the detailed written submissions, supporting documents filed in the course of appellate proceedings in the proper perspective and thus deleted the arbitrary additions made in the assessment.

As is evident, three issues fall for our consideration i.e., (i) Addition of cash Deposits for Rs.129.99 Lacs; (ii) disallowance of insurance claim written-off for Rs.58.78 Lacs; & (iii) estimated addition of sundry creditors for Rs.208.94 Lacs.

2. The Ld. AR advanced arguments and drew attention to various documents as placed on record. The Ld. Sr. DR also advanced arguments and referred to the findings of lower authorities. Having heard rival submissions and upon perusal of case records, the impugned issues are adjudicated as under. The assessee being a partnership firm is stated to be trading in timber.

3. Addition of cash deposits

3.1 To verify the source of cash deposited by the assessee during demonization period, the case was subjected to scrutiny. It transpired that the assessee deposited cash of Rs.579.81 Lacs during entire financial year out of which sum of Rs.129.99 Lacs was deposited during demonetization period.

3.2 The assessee submitted that cash was received from various parties which were duly recorded in the books of accounts. The cash as available with the assessee was sourced to make these deposits. The assessee stated the cash was received from six debtors as detailed in the assessment order. The Ld. AO perused documentary evidences for each of the six parties and rendered factual finding. The creditworthiness of three parties was accepted. Two parties did not file return of income

and therefore, it was held that amount received from them could not be accepted. One party had filed return of income but the same was stated to be meager income only. In the above background, Ld. AO alleged that the assessee booked non-genuine sales which were nothing but secreted profits as deposited in the bank accounts.

3.3 The Ld. AO also observed that the assessee reflected year-end sundry creditors of Rs.10.22 Crores whereas year-end debtors were at Rs.6.10 Crores. In the earlier years, these figures were less and therefore, these outstandings were high and abnormal. The same was in the light of the fact that the assessee did not produce stock register, copies of invoices and confirmation from the debtors. Therefore, the claim the amount was received from the debtors could not be accepted. Finally, the cash deposits were held to be unexplained and added to the income of the assessee.

3.4 During appellate proceedings, the assessee submitted that there were considerable sales in cash and the assessee had regularly deposited cash in the bank account. The amount deposited during demonetization period was not one-off event. The nature of business was such that the considerable sales were in cash. The Ld. AO erred in creating a nexus between re-payment of trade debt by the income returned by the debtors. The assessee duly recorded the transactions in its books of accounts regularly maintained in the regular course of business. The assessment order does not bring out any such fact that the impugned deposits were unexplained money. However, Ld. CIT(A) rejected the same and confirmed the addition. Aggrieved, the assessee is in further appeal before us.

3.5 From the facts, it emerges that the assessee is a partnership firm and it is carrying out trading of timber. The substantial sales are in cash which is evident from the fact that the assessee has deposited cash of Rs.579.81 Lacs during entire financial year. A part of that happens to fall during demonetization period. However, the business model as well as the source of remaining cash has been accepted by Ld. AO. The cash has been received from sundry debtors and the same has duly been recorded in the cash book. The assessee is having regular dealing with all these debtors which is evident from debtors' ledger extracts as placed on record. The cash as available with the assessee has been sourced to make the cash deposits in the bank accounts. The books of accounts have not been rejected and no defect has been pointed out in the books. The quantum of sale has also been accepted by Ld. AO. The assessee has reflected substantial sales of Rs.21.61 Crores. When the sales have been made which is offered to tax and the debtors have been realized which have duly been recorded, the same could not be added again since taxing the same amount twice is impermissible. The allegation of Ld. AO that the assessee made non-genuine sale is not backed-up by any concrete material on record. The settlement of trade debts by debtors may not have any relation with their returned income. It is another fact that creditworthiness of three creditors has already been accepted by Ld. AO. Therefore, the impugned addition is not sustainable in law. By deleting the same, we allow the corresponding grounds as raised by the assessee.

4. Insurance Claim written-off

4.1 The assessee reversed recovery of insurance claim for Rs.58.78 Lacs. The Ld. AO alleged that the same was afterthought to reduce the business income and accordingly, added the same to the income of the assessee.

4.2 During appellate proceedings, the assessee explained that during floods of December, 2015, the trading stock was washed away and the assessee suffered huge losses. The assessee made a claim with the insurance agency for the year ending 31-03-2016. The amount so recoverable was offered to tax by way of credit to Profit & Loss Account in that year. In this year, the insurance company rejected the claim and accordingly, the claim was written-off / reversed in this year. The same would be allowed since the same was already offered to tax in earlier years. However, Ld. CIT(A) rejected the same and confirmed the addition. Aggrieved, the assessee is in further appeal before us.

4.3 Upon perusal of Profit & Loss Account for the year ending 31-03-2016, it could be seen that the assessee has offered to tax insurance claim recoverable for Rs.58.78 Lacs by way of credit to Profit & Loss Account. In this year, this claim has been rejected by the insurance company which is evident from claim-rejection letter dated 03-01-2017 which is kept on Page No.54 of the paper-book. Considering the same, this claim has been written-off / reversed by way of debit to Profit & Loss Account. Any claim arising out of trading stock which has been offered to tax but not recovered subsequently would certainly be available as business deduction to the assessee. Therefore, we delete the impugned addition and allow the corresponding grounds as raised by the assessee.

5. Non-confirmation of Sundry Creditors

5.1 The assessee failed to provide confirmation of sundry creditors for Rs.10.44 Crores. The Ld. AO disallowed 20% of these creditors on estimated basis and made addition of Rs.208.94 Lacs.

5.2 During appellate proceedings, the assessee submitted that sundry creditors include opening balances also which were accepted in earlier years. The amounts represent trade creditors from whom the assessee had purchased goods and the corresponding payments were due to them. The Ld. AO ought to have verified the parties to ascertain the *bona-fide* of the assessee. There could be no arbitrary addition on percentage basis. However, Ld. CIT(A) rejected the same and directed Ld. AO to restrict the addition by applying the Gross Profit Rate of this year to the creditors. Aggrieved, the assessee is in further appeal before us.

5.3 It clearly emerges that the adhoc addition as made by Ld. AO and as confirmed by Ld. CIT(A) is without any basis. No case of invocation of Sec. 41(1) has been made-out against the assessee. Nothing has been shown that the trade creditors have ceased to exist. The ledger extracts of sundry creditors have been placed on record. The perusal of the same would show that the assessee has made purchases from them and have regular dealing with all of them. The payments to the creditors are through banking channels. The accounts of the assessee are duly audited wherein these sundry creditors have been reflected. The creditors of current year are commensurate with the quantum of creditors of earlier years. The purchases made by the assessee from these creditors have been accepted and the same are not shown to be non-genuine. The addition has been made merely on the fact that the

balance confirmations were not placed on record which is unjustified since no enquiry was made by Ld. AO to prove the non-genuineness of the creditors. This addition is purely on suspicion, conjecture and surmises and liable to be deleted. We order so. The corresponding grounds stand allowed.

Conclusion

6. The appeal stand allowed in terms of our above order.

Order pronounced on 17th December, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 17-12-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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