

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2327/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2012-13

Shri Madhappa Siva,
Plot No.16,
Vivekanandha Nagar,
Avalapalli Road,
Hosur - 635 109.

The Income Tax Officer,
Vs. Ward-1,
Hosur.

PAN: DGHPS 6254J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Ms. Sandhya Rani Kure, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.01.2025

घोषणा की तारीख/Date of Pronouncement

: 07.01.2025

आदेश / O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the assessee is directed against CIT(A) - NFAC order dated 10.07.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2012-13.

2. Brief facts of the case are as follows:

The assessee is an individual. The AO had received information that assessee had made cash deposits of Rs.33,94,516/- during the relevant assessment year namely AY 2012-13. Since the assessee did not file the return of income for the assessment year 2012-13, the AO had reason to believe that income had escaped assessment and so, notice u/s.148 of the Act was issued on 28.03.2019. The assessee did not respond to the notice issued u/s.148 of the Act. Hence, notice u/s.142(1) of the Act dated 07.12.2019 was issued. Since there was no response to the notice issued u/s.142(1) of the Act, the AO sent a proposal to complete the assessment on best judgment basis u/s.144 of the Act (proposal / show-cause dated 12.12.2019). The assessee did not respond to the same. Therefore, assessment was completed vide order dated 23.12.2019 u/s.144 r.w.s. 147 of the Act. In the said assessment order, the AO made addition of Rs.33,94,516/- as unexplained income u/s.69A of the Act.

3. Aggrieved by the assessment completed u/s.144 r.w.s. 147 of the Act, the assessee filed appeal before the First Appellate Authority. Before the First Appellate Authority, the assessee filed evidences to show that cash deposits are out of his business of sale

of mosquito nets. In this context, the Id.AR placed on record the SBI bank statement wherein the cash deposits were made, VAT and GST registration certificate, the purchase register and the sample purchase invoices, sales register and sample sales invoices. Further, the assessee had submitted before the CIT(A) that the cash deposits is only to the tune of Rs.21,64,516/- and not Rs.33,94,516/-. It was submitted by the assessee before the CIT(A) that the average net profit up to the date of assessment was only 11.72% and prayed for adoption of the presumptive tax of 8% or 11.72% on the gross receipts (The gross receipts was the total cash deposits). The CIT(A) held that the assessee had not filed his return of income for the relevant assessment year and only for the subsequent assessment year onwards, the assessee has been filing the returns of income and therefore, the subsequent events cannot justify the claim of events which have happened for the relevant assessment year namely 2012-13. The CIT(A) however, accepted the assessee's plea that the cash deposit is only to the tune of Rs.21,64,516/- instead of Rs.33,94,516/-. Accordingly, the CIT(A) partly-allowed the appeal of the assessee by limiting the addition u/s.69A of the Act to Rs.21,64,516/-.

4. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The submissions made before the CIT(A) and the relevant annexures which was furnished before the CIT(A) are placed on record. The Id.AR reiterated the submissions made before the CIT(A).

5. The Id.DR supported the order of the AO and the CIT(A).

6. We have heard rival submissions and perused the material on record. The assessee's basically plea before the Tribunal is that the entire cash deposits are out of purchase and sale of mosquito nets and his case should be treated on the basis of estimated profits either under presumptive taxation or at the rate of 11.7% being the average net profit percentage till the date of finalization of the impugned assessment order. In this context, it is relevant to note that assessee had obtained the VAT registration subsequent to the relevant assessment year i.e., on 25.05.2017 and is registered as tax payer under the GST Regulation. The assessee has also filed the return of income from assessment year 2014-15 to 2022-23. The details of the same are as under:-

<i>Assessment</i>	<i>Date of Filing</i>	<i>Turnover in</i>	<i>Taxable</i>	<i>Net Profit</i>
2014-15	21.08.2016	18,75,855	2.20	11.73%
2016-17	29.03.2018	17,86,200	2.68	15.01%
2017-18	29.03.2018	20,56,540	3.08	14.98%
2018-19	21.07.2018	39,03,925	3.50	8.97%
2019-20	16.08.2019	61,96,884	4.84	7.91%
<i>AVERAGE UPTO THE DATE OF ASSESSMENT</i>				11.72%
2020-21	28.12.2020	82,28,755	5.51	6.70%
2021-22	27.12.2021	86,51,811	5.03	5.81%
2022-23	04.11.2022	1,73,75,830	4.99	2.87%
<i>TOTAL AVERAGE OF ALL THE NET PROFIT RATIO</i>				9.25%

It has been brought on record that the above income disclosed in the returns filed by assessee has not been disturbed by the Revenue. Considering the aforesaid returns which have been filed much before the passing of the impugned assessment order, we are of the view that the CIT(A) ought to have taken a clue about the nature of activities conducted and could have passed an order to arrive at a fair and reasonable income of the assessee. The Id.AR has placed on record the purchase register, sample purchase record, sale register, sample sales invoices and bank statements. On perusal of same, we find that assessee has been engaged in systematic business of dealing in mosquito nets and deposit in the bank account of the assessee is related to the business activity by way of realization of sale proceeds. Hence, the addition of all credits as unexplained income u/s.69A of the Act is not justified and

legally not tenable. Since the assessee has not maintained the books of accounts for the relevant assessment year and based on the average net profit ratio for the assessment years 2014-15 to 2019-20 (average net profit up to the date of impugned assessment order being passed), we are of the view that net profit of 12% on the cash deposit of Rs.21,64,516/- would meet the ends of justice. Accordingly, we confirm the addition of Rs.2,59,742/- and delete the balance addition of Rs.19,04,774/-. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 7th January, 2025 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 7th January, 2025

RSR

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.