

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

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री जगदीश, लेखासदस्य के समक्ष
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.68/Chny/2025
निर्धारण वर्ष /Assessment Year: 2017-18

Ramesh Ramani
No.1/38, 1st Main Road,
Thirumalai Nagar,
Kolathur,
Chennai-600 099.
[PAN: BXBPR1235D]

The Income Tax Officer,
Non-Corporate Ward-10(5),
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri P.S.Prabhakar, CA
: Smt.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.03.2025

घोषणा की तारीख /Date of Pronouncement

: 25 .03.2025

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member):

The captioned appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals) ADDL/JCIT (A)-2 Gurugram [CIT(A)] dated 14.11.2024 for Assessment Year 2017-2018.

2. Brief facts are as under:

In fact, AO made an addition of Rs.8,06,500/- on account of cash deposits during demonetization in the assessee bank account treating as unexplained investment u/s 69 of the Income Tax Act, 1961.

Assessee further challenged the order of assessment u/s 143(3) of the Act before the Id.CIT(A) who confirmed the order of the AO on merits.

Aggrieved, assessee is in appeal before us.

3. Before us, the Id. Counsel for assessee referred para 4 of the CIT(A) order and contended that AO cannot made presumptive addition treating the cash currency deposits as Specified Bank Notes. He further contended that AO did not dispute the books of account of the assessee that the cash deposits are business receipts.

4. We have heard the rival submissions and perused the record. WE find that the assessee has filed the detailed reply before the Id. CIT(A) which are reproduced at para 4(1) to 4(4) of the order as under:

"....4. During the course of appellate proceedings, Notices u/s 250 of the Income Tax Act were issued to submit written submission on E-filing Portal. The case is adjudicated based upon relevant information on record.

1. During the course of Appellate Hearing, the appellant has uploaded its reply along with relevant document on e-filing portal and the relevant part of which are reproduced hereunder:-

1. "Presumptive" addition:

The AO, in his order states: "During the demonetization period from 09/11/2016 to 30/12/2016 the **assessee has deposited SBN** amounting to Rs.15,13,050/- in State Bank of India, Kolathur Branch vide account No. 34591937285. **The assessee has explained the sources for the above said cash deposits as daily collection from business.**

It is humbly submitted that it is the surmise / presumption of the AO that the cash currency deposited in the bank account of the appellant were Specified Bank Notes. For coming to such a conclusion, the AO did not have an iota of proof or evidence. Not only he did not back his presumption with any evidence but also by not disputing the statement of the assessee that the cash deposits are business receipts, he accepted the books of accounts of the assessee. The representation made to the AO during the hearings that all the amounts that were collected from customers during the period in question were in currency that were valid legal tender of the period only were not considered even for a rebuttal in the order, who went only by his presumptions.

It is well-settled by judicial precedent that additions cannot be made merely on assumptions or presumptions or surmises or conjectures. And **it is the burden of the Department to prove the correctness of such additions.** In the following cases, the **Hon'ble Supreme Court** had pronounced ratios to the same effect:

- (i) K.P. Varghese v, ITO [1981] 131 ITR 5971 (SC);
- (ii) CIT v. A. Roman & Co. [1968] 67 ITR 11 (SC);
- (iii) CIT v. Calcutta Discount Co. Ltd. [1973]91 ITR 8 (SC):
- (iv) Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC).99.

Apart from these Supreme Court cases, we also wish to cite the following decisions from Hon'ble Appellate Tribunals.

Sindhu Trade Links Ltd. Vs Add. CIT (TAT Delhi) 1TA No. 2428/DEI/2014 - Date of Judgement/Order: 11/09/2020 - No addition can be made merely on the basis of presumption.

SHAMK International (P.) Ltd. Vs Income-Tax Officer 9(3)(1), Mumbai (ITAT Mumbai) – IT Appeal Nos. 6756 to 6758 (Mum.) of 2008 & 407 (Mum) of 2009 Date of Judgement/Order : August 10, 2012 -Addition to income on the basis of mere presumption not sustainable.

It may please be noted that the Apex Court's judgement in *Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC)* said "the finding of the Tribunal that high denomination notes of the value of Rs.30,000 represented the concealed profits of the appellant is not supported by any evidence, and is, in consequence, erroneous in point of law and liable to be set aside".

In all the above cases and in several other cases, the uniform view taken by the judicial fora is that any presumptive assumption without any evidence to back up the same is not sustainable at all.

2. Sec.69 cannot come in to play:

The AO has mentioned in the Assessment Order as below: "Further, the assessee has deposited Rs. 7,06,550/- during 24/11/2016 to 15/12/2016 and another sum of Rs. 8,06,500/- during 16/12/2016 to 31/12/2016 during which period the exemption was not available even for such mobile top up services. Hence, the balance cash deposit amounting to Rs.8,06,500/- is treated as **unexplained investment u/s. 69 of the IT Act** and added to the total income for which tax will be levied as per Sec. 115BBE." (emphasis supplied).

Sec 69 of the Income Tax Act reads as follows: "Where in the Financial year immediately preceding the assessment year the assessee has made **investments** which are **not** recorded in the books of account, if any, maintained by him for any

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source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the value of such investments may be deemed to be the income of the assessee of such financial year."

It may please be noted that the amounts deposited are not in the nature of investments at all. Secondly, the assessee has maintained books of accounts and the AO has not rejected the said accounts at all. Hence, the AO has accented that the said amounts were trade receipts only. So, it is not any "investment" in the first place but even if by some quixotic logic it can be misinterpreted as investments, these amounts were very much "recorded in the books of accounts" also and by no stretch of imagination, this can be brought within the purview of Sec. 69.

*Further, the AO has referred the assessee's letter dated 23rd Nov, 2019 which was actually an extension of the letter by the assessee written on 18th Nov, 2019. It may please be observed that in the aforesaid letters, the assessee had given explanations to AO's queries and that nowhere in the assessment order, the AO has even indicated that the said explanations were unsatisfactory. **(Both the letters are attached as Annexres 1&2)***

So, there were no investments, no amounts unrecorded in the books, no explanation found unsatisfactory. All the ingredients for invoking Sec. 69 are pathetically absent. However, in as much as the AO has chosen to invoke Sec. 69 to make the addition, we humbly submit that the addition is completely invalid and needs to be deleted.

*We would also like to submit that the AO has mentioned the amount for addition as Rs.8,06,500/- is wrong. The total cash deposits that were made into the bank account during the period 16th Dec, 2016 to 31st Dec, 2016 was Rs.4,70,500/- only. To evidence the same, we are enclosing the Bank statement of the appellant, for the entire year, duly highlighting the amounts of cash deposits for the period 16th Dec, 2016 to 31st Dec, 2016.**(Annexure 3)**.*

3. **AO not followed the SOP of CBDT:**

By its circular No: F.No.225/145/2019-ITA-II, the CBDT came up with a Standard Operation Procedure Instruction/Internal Guidance Note for assessing officer with regard to handling of cases related to demonetization vide circular dated 09.08.2019 in F.no.225/145/2019 - ITA.II. **It specifically instructed the Assessing Officers to make a comparative analysis of cash sales, cash deposited (year wise and month wise).** The Guidelines also suggested to look at the situations described below:

1. Any unusual increase in the cash sales during the period November to December 2016 as compared to previous assessment year.
2. Any sudden deposit of cash to another account or entity, which may seem inconsistent.
3. Any unusual increase in the percentage of cash trails of identifiable persons as compared to previous assessment year.
4. Analysis of month wise cash sales and cash deposits.

During the course of hearing, the details of month-wise cash collections deposited into bank account were furnished to the AO, as per the format herein attached. **(Annexure 4)**

There was not only no unusual increase in Nov /Dec 2016, but there was a marked reduction. None of the 'doubtful' situations envisaged by CBDT in the said checklist / SOP were present in the assessee's case.

If only the assessing officer had followed the SOP and the guidelines, no additions could have been made at al.

4. **Wrong computation:**

The Assessing Officer, as already mentioned in an earlier paragraph, first erred that the amount of cash deposit was Rs.8,06,500/- while the cash deposits during that period was only Rs.4,70,500/-.

He also erred in adding this figure to the profit figure of Rs.7,55,170/- shown in the ITR, when this profit figure had been arrived at after including the so-called 'Sec. 69 investment' amount of Rs.8,06,500/- in the revenue side of the P&L account.

This point is articulated not for praying that the 'corrected figure should be adopted (because it is our case and prayer that the entire addition is to be deleted) but to

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bring home the point that the Assessing Officer had not applied his mind even to such issues in his hurry to finalize the assessment....”

5. We, further find from the order of the Id.CIT(A) that he has not at all controverted the submissions of the assessee as narrated at para 4 (1) to 4(4) of CIT(A) order. We are also of the considered view that without rejecting books of accounts of the assessee, the AO cannot treat the trading receipts received in valid bank notes received from the customers as unexplained investment u/s 69 of the Act. Hence, we delete the addition made by the AO.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 25th March 2025 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai: दिनांक Dated : 25th March, 2025

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF