

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

श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.527/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Mrs.Umamaheswari,
12A, Perumal Konar Street,
VPC Nagar, Coimbatore South,
Coimbatore.
[PAN: ABRPU 4791 L]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Non-Corporate Ward-4(2),
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Erode Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 21.09.2022
घोषणा की तारीख /Date of Pronouncement : 14.10.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 06.06.2022 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

1) *The order of the learned CIT(A) is bad and erroneous in law and against the principles of natural justice.*

2) *The learned CIT(A) erred in not considering the replies filed by the appellant in proper perspective.*

3) *The learned CIT(A) erred in reproducing the assessment order and written submissions filed by the appellant, without any basis, which exhibits non application of mind.*

4) *The learned CIT(A) failed to appreciate the fact that the cash deposits into the bank, made by the appellant on 10/11/2016 were out of the sale proceeds of landed property and also the fact that the registration of the same was done on 09/11/2016.*

:: 2 ::

5) The learned CIT(A) erred in not considering the fact that the Assessing Officer erred in making an addition of Rs.7,67,500/- treating it as unexplained money u/s. 69A without any basis.

6) The learned CIT(A) erred in not considering the scope and effect of the Specified Bank "Notes (Cessation of Liabilities) Act dated 28/02/2017 properly. (Copy of the Act is enclosed).

And for the other reasons that may be adduced at the time of hearing, the appellant prays that this appeal be admitted, considered and justice be rendered.

3. The brief facts of the case are that the assessee is an individual filed her return of income for the AY 2017-18 on 07.03.2018 declaring total income of Rs.4,37,090/- and agricultural income of Rs.7,83,000/-. The case has been selected for limited scrutiny to verify cash deposits during demonetization period. During the course of assessment proceedings, the AO gathered information u/s.133(6) of the Act, regarding cash deposits from Karur Vysya Bank, Kuniamuthur Branch, Coimbatore, and KVB Main Branch, Coimbatore. As per the information submitted by the Bank, the assessee has deposited a sum of Rs.17,25,500/- in Specified Bank Notes of the denomination of Rs.500/- & Rs.1,000/- on various dates. The AO called upon the assessee to explain source for cash deposits, for which, the assessee has filed a cash book, as per which, cash balance available as on 08.11.2016 is only Rs.9,58,066/- and for the balance amount, the assessee explained source for cash deposits out of sale proceeds received from one Smt.Vedhavathy amounting to Rs.13 lakhs on 09.11.2016 for sale of property. The AO accepted source for cash deposits to the extent of Rs.9,58,066/- out of cash balance available as on 08.11.2016. However, for balance amount of Rs.7,67,500/-, the AO rejected explanation of the assessee regarding source for cash deposits from 08.11.2016 on the

:: 3 ::

ground that the assessee cannot accept the demonetized currency and thus, opined that the assessee has not proved source for cash deposits to the tune of Rs.7,67,500/- and thus, made addition u/s.69 of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeeded. The Ld.CIT(A), NFAC for the reasons stated in their appellate order, confirmed the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before me.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A), NFAC erred in confirming additions made towards cash deposits of Rs.7,67,500/- by treating it as unexplained money u/s.69 of the Act, without appreciating the fact that the assessee can transact in Specified Bank Notes up to appointed date as per the Specified Bank Notes (Cessation of Liabilities) Act, 2017, and as per said Act, appointed date for this purpose is 31.12.2016. In this regard, he relied upon the decision of ITAT Visakhapatnam Bench in the case of ITO v. Sri Tatiparti Satyanarayana in ITA No.76/Viz/2021 order dated 16.03.2022.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), filed a detailed Written Submissions dated 21.09.2022 and argued that as per the Specified Bank Notes (Cessation of Liabilities) Act, 2017, which came into effect from 31.12.2016, the assessee is prohibited from dealing with Specified Bank Notes w.e.f.09.11.2016 for all purposes except for the purpose of exchange of such Specified Bank Notes held on or before

:: 4 ::

08.11.2016. Further, assuming for a moment, the assessee can transact in Specified Bank Notes up to 31.12.2016, but the assessee could not prove the receipt of sale consideration of Rs.13 lakhs in Specified Bank Notes and thus, the benefit of source cannot be given to the assessee. The relevant Written Submissions filed by the Ld.DR is reproduced as under:

The counsel of the assessee argued that, section 5 of The Specified Bank Notes (Cessation of Liabilities) Act, 2017 (hereinafter called the 'Act') permits persons to hold, transfer or receive Specified Notes up to the 'appointed date and section 2(a) of the Act, defines 'appointed date' as the 31st December, 2016. Hence, according to him, the amount of specified notes received by the assessee on 9th November, 2016 is a valid note and the transaction is also valid as it is not barred by any law in force.

The argument is contrary to the other provisions of The Specified Bank Notes (Cessation of Liabilities) Act, 2017 for the following reasons.

a. The Specified Bank Notes (Cessation of Liabilities) Act, 2017 came into being from 31st December, 2016 (section 1(2) of the Act)

b. Section 13 of the Act clearly states the provisions of Specified Bank Notes (Cessation of Liabilities) ordinance, 2016 will prevail till enactment of this Act.

c. As per the Para of the Ordinance (copy enclosed), the Specified notes ceases to be legal tender with effect from 9th November, 2016 for all purpose except for the purpose of exchange of such specified notes held on or before 8th November, 2016 as specified u/s section 4 of the Ordinance.

d. In the present case, the assessee has claimed to have obtained Rs.13,00,000/- on 9th November, 2016 as sale consideration in specified notes. Since as per the Ordinance, the specified notes ceases to be legal tender for all transaction other than for the purpose of exchange of the same under section 4 of the Ordinance and the assessee being not one of the notified persons permitted to receive the specified notes, the amount so claimed to have been received is not legally recognizable as a legally acceptable source. Further most importantly, the assessee has not proved with documentary evidence that the consideration received of Rs.13,00,000/- comprised of 'Specified notes' in full. The assessee is just attempting to telescope the so stated receipt as an explanation of source for its accumulated Specified notes in procession as on the midnight of 8th November, 2016 and exchanged with the banking authorities on 10th November, 2016. Even if the assessee produces such specific evidence of having received the full consideration in only specified notes, the benefit of violation of provisions of Ordinance cannot be extended under the Income Tax Act in line with the principle as laid out in the explanation to u/s 37 of the Income Tax Act-1961.

:: 5 ::

6. I have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As regards, the first objection of the AO on legal tender of Specified Bank Notes on or after 08.11.2016, I find that as per the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016, which came into effect from 31.12.2016 appointed date for this purpose means 31.12.2016. Further, as per Sec.5 of said Ordinance, from the appointed date, no person shall, knowingly or voluntarily, hold or transfer or receive any Specified Bank Notes. From the above what is clear is that up to the appointed date i.e.31.12.2016, there is no prohibition for dealing with Specified Bank Notes. Therefore, in my considered view, the objection of the AO on this regard in light of said Act is devoid of merits. Further, a similar issue had been considered by the Tribunal, Visakhapatnam Bench, in the case of Sri Tatiparti Satyanarayana in ITA No.76/Viz/2021, where the Tribunal after considering relevant provision of Specified Bank Notes (Cessation of Liabilities) Act, 2017, held that there is no prohibition under the Act to deal with Specified Bank Notes up to 31.12.2016. Therefore, in my considered view, the observation of the AO on this regard totally incorrect and liable to be rejected.

7. Having said so, let us come back to explanation of the assessee with regard to source for cash deposits. The assessee explained before the AO that she had received a sum of Rs.13 lakhs from Smt.Vedhavathy for sale of property on 09.11.2016. In fact, the AO accepted, the assessee has received consideration for sale of property from Smt.Vedhavathy and the

:: 6 ::

purchaser has also filed a confirmation letter stating that she had paid consideration in cash. Therefore, once the AO is accepted the fact that the assessee has received consideration in cash, then the source for cash deposits during demonetization period should have been accepted out of sale consideration received for property. In my considered view, the AO grossly erred in not accepting the source for balance cash deposits of Rs.7,67,500/-, even though, the assessee has filed necessary evidences to prove the availability of source for cash deposits. The Ld.CIT(A) without appreciating the fact simply confirmed the additions made by the AO. Hence, I set aside the order of the Ld.CIT(A) and direct the AO to delete the addition made towards cash deposits of Rs.7,67,500/- u/s.69A of the Act.

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

Order pronounced on the 14th day of October, 2022, in Chennai.

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 14th October, 2022.

TLN

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

1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आंकर आंक्त (ं पील)/CIT(A)
4. आंकर आंक्त/CIT
5. विभागीं प्रतिनिधि/DR
6. गार्ड फाईल/GF