

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 196/VIZ/2020  
(Asst. Year : 2017-18)**

ITO, Ward-1(1),  
Guntur.

Vs. M/s. President Subsidiary  
Police Canteen, S.P. Office,  
Opp. Police Parade Ground,  
Guntur.

(Appellant)

PAN No. AADAP 2814 M  
(Respondent)

**C.O.No. 24/VIZ/2021  
(Arising out of I.T.A. No. 196/VIZ/2020)  
(Asst. Year : 2017-18)**

M/s. President Subsidiary  
Police Canteen, S.P. Office,  
Opp. Police Parade Ground,  
Guntur.

Vs. ITO, Ward-1(1),  
Guntur.

PAN No. AADAP 2814 M  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari, Advocate.  
Department by : Shri B.Rama Krishna, Sr.DR

Date of hearing : 14/09/2021.  
Date of pronouncement : 23/09/2021.

**ORDER****PER BENCH**

This appeal has been preferred by the Revenue Department whereas the cross objection by the Assessee against the order dated 11/03/2020 impugned herein passed by the Id.Commissioner of Income Tax (Appeals)-1 [for short, "Id.Commissioner"], Guntur u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2017-18.

**2.** There is a delay of 69 days in filing the appeal. The Revenue Department has filed the condonation application along with affidavit, wherein it was stated as under: -

*"2. It is humbly submitted that in this case the actual due date for filling appeal is 08.08.2020. Due to Covid-19 pandemic conditions, the offices at Guntur were completely closed due to lock down. This office has started working regularly only in the month of September, 2020 and there was reallocation of offices. Due to which the Pr. Commissioner of Income tax, Guntur was merged with Pr. Commissioner of Income tax, Vijayawada. Soon after, the case was submitted to the Pr. Commissioner Income Tax Vijayawada for approval to file second appeal and this office has received the authorization u/s 253(2) of Income tax Act 1961 dt. 25 09 2020. Accordingly the second appeal in Form No.36 was submitted on 9.10.2020. The delay for filing appeal is due to Covid-19 and decentralization of offices.*

*3. Therefore it is submitted that the delay of the 69 days in filing of appeal in this case may kindly be condoned for which act of kindness, the undersigned shall remain ever grateful to the Hon'ble Income Tax Tribunal Visakhapatnam."*

Considering the Gazette notification dated 29/10/2020 issued by the Central Government whereby the limitation period was relaxed vide clause (3) for filing of any appeal from

20/03/2020 to 31/12/2020, which was further extended to 31/03/2021, the delay of 69 days in filing the instant appeal stands condoned.

**3.** Having heard the parties and perused the material available on record. In this case, the case of the Assessee was opened to examine the cash transactions made during the demonetization period i.e. 09/11/2016 to 30/12/2016, however, the AO made the addition of Rs. 1,18,17,570/- for the entire financial year 2016-17 relevant to the A.Y. 2017-18 while considering the fact that the Assessee has not filed its return of income.

The said addition came into consideration before the Id. Commissioner, where the Assessee filed additional evidence on the ground *that during the course of assessment proceedings, the Assessee has not produced any evidence due to lack of knowledge being not aware of notices received for scrutiny assessment, it was assumed that our police department welfare canteen is not in profit motive and is exempted from filing of income tax returns, therefore we have not produced any documentary evidences during the course of assessment proceedings before the AO.* The Assessee also adduced additional evidence in the form of documents relating to the profit & loss account, receipts & payments, bank account statements etc.

The Id. Commissioner while considering the peculiar facts and circumstances, forwarded the additional evidence to the AO and the AO filed its remand report against which counter comments/written reply was also filed by the Assessee and on consideration of the said remand report and the written

submissions, the Id. Commissioner deleted the addition of Rs. 1,18,17,570/- by holding as under: -

*“7.1.2. I have gone through the proceedings of the Superintendent of police and President of Subsidiary police canteen, Guntur dated 25.05.2013 and also Memorandum of DGP, A.P, Hyderabad dated 05.12.2012. From these proceedings, it is observed that the appellant is an association of persons for Police Welfare subsidiary canteen and was 'constituted by way of proceedings of the Superintendent of Police and president of subsidiary police canteen, Guntur District with a detailed objectives, procedure for running of, organization, motive of the organization and persons authorized to run the organization etc.. This canteen purchases daily requirements of police people from central police canteen, Hakeempet, Hyderabad who in turn purchases from manufacturers through DGP office and those articles are sold to police personal at nominal profit of 1%. Thus, several mediators like distributors, wholesalers and retailer are eliminated Even this nominal profit also is spent for the welfare of the police families.*

*Ongoing through the purchases and sales account it is observed that the appellant canteen's cash sales were as per the business trend of the appellant canteen only. As the appellant canteen is run by the police department, all the purchases are made from the Central Police canteen, Hyderabad and sales are made only to the police personnel, there is no possibility of accumulating unaccounted money. The cash deposits made are nothing but cash sale proceeds. The A.O with mere suspicion and without making any independent enquiry treated all the deposits in the bank are unexplained money. The A.O has also not examined the additional evidence forwarded to him while submitting Remand report to me. Though the assessment was opened to examine the cash deposits during the demonetization period i.e. 09.11.2016 to 30.12.2016, the A.O without applying mind added all the cash deposits made during*

*the entire financial year which facts of the present case are similar to the facts of the case referred above. owing the decision of the Hon'ble ITAT, Delhi, I direct the A.O to delete the addition made of Rs.1,18,17,570/-. Ground No. 1 is adjudicated.”*

**4.** The challenge of the Revenue Department is based on three issues, the first one is related to the passing of best judgment u/sec. 144 of the Act in absence of evidence called for by the AO during the course of assessment proceedings, secondly the reliance placed by the Id. Commissioner on the judgment of the Hon'ble ITAT, Delhi Benches in the case of **Agson Global Pvt. Ltd. Vs. ACIT (ITA Nos. 3741 to 3746/Del/2019, dated 31/10/2019,** and thirdly admission of additional evidence filed by the Assessee during the appellate proceedings.

**5.** The 1<sup>st</sup> issue raised by the Revenue Department, related to the passing of best judgment u/sec. 144 of the Act in absence of evidence called for by the AO during the course of assessment proceedings. We endorse the view of the Revenue Department that in absence of evidence called for by the AO during the course of assessment proceedings, the Assessing officer is required to pass the assessment u/sec. 144 of the Act on the basis of best judgment, which in the instant case has been passed, however it is a fact that the AO except relying upon the bank deposits, did not consider any material for corroboration and/or otherwise for making the addition therefore the observation of the Ld. Commissioner to the effects that the AO did not make necessary enquiry seems to be logical and reasonable. As the power of the Ld. Commissioner is co-extensive with that of the AO and

therefore in the instant case exercised by the Ld. Commissioner, and it is undisputed fact that proper opportunity was given to the AO to file the remand report, hence no interference is warranted on this issue.

**6.** The 2<sup>nd</sup> issue relates to the reliance placed upon the order of the co-ordinate bench of the tribunal at Delhi benches in the case of Agson Global Pvt. Ltd. (supra). The claim of the Revenue Department is that facts of the case are distinguishable to the facts of the present case in so far as to the fact that there was no non-compliance of the Assessee in the case of Agson Global Pvt. Ltd. (supra) like in the present case.

We may observe that the co-ordinate bench of the tribunal in that case considered the CBDT circulars qua various standard operating procedures **under "operation clean money"** wherein the issue was related to the unaccounted money in the old currency notes which have been pumped into unaccounted money. The co-ordinate bench of the tribunal further held that whatever sales were recorded by the Assessee for the year, the same was deposited in its bank account. In the instant case as well, it is not in controversy that the cash deposits made was not from other sources but it was cash sale proceeds only which was deposited in bank account, therefore, the said case is squarely applicable to the facts of the present case, hence, the contention of the Revenue Department simply on the dissimilar fact of non-compliance of the Assessee, does not entail the judgement of co-ordinate bench as distinguishable and hence not tenable.

**7.** The next issue raised by the Revenue Department relates to the admission of certain submissions/additional evidences produced by the Assessee before the Id. Commissioner. The Ld. Commissioner thoroughly considered the claim of the Assessee to the effects “ *that during the course of assessment proceedings, the Assessee has not produced any evidence due to lack of knowledge being not aware of notices received for scrutiny assessment, it was assumed that our police department welfare canteen is not in profit motive and is exempted from filing of income tax returns, therefore we have not produced any documentary evidences during the course of assessment proceedings before the AO.*” And before relying upon the evidences filed by the Assessee, forwarded the same to the AO and sought its remand report. Meaning thereby, sufficient opportunity was afforded as per the mandate of Rule 46A of the Income Tax Rules, 1962 to the AO to submit remand report and/or explanation and therefore the contention of the Revenue Department to the effect that no sufficient cause was shown by the Assessee before the AO for not producing the evidences during the assessment proceedings, is untenable.

**The Revenue’s** contention is also relates to the effect that the Assessee never produced any evidence before the AO and it is a fact that AO has not refused to admit the evidences during the course of assessment proceedings. As we have already observed that the Assessee was prevented to file evidence before the AO on bonafide plea, therefore the Ld. Commissioner justified the action of the Assessee for filing the written submissions and evidence before him, hence the contention of the Revenue Department is untenable.

We may observe that the Ld. Commissioner thoroughly considered the peculiar facts and circumstances of the case and evidence filed by the Assessee, while holding *that the police canteen runs by the Police department and all the purchases are made from the Central Police Canteen, Hyderabad and sales are made only to the police personnel and therefore there is no possibility to accumulate unaccounted money.* The Id. Commissioner further observed *that though the assessment was opened to examine the cash deposits made during the demonetization period i.e. 09/11/2016 to 30/12/2016, however the AO without applying mind, added all the cash deposits made during the entire financial year, amounting to Rs.1,18,17,570/-, therefore, the facts of the present case are similar to the facts of the referred case i.e. Agson Global Pvt. Ltd. (supra).*

**8.** On the aforesaid consideration and analyzations, we do not find any reason to interfere with the order passed by the Id. Commissioner as the same does not suffers any impropriety, perversity or illegality and therefore the same is affirmed. Consequently the appeal of Revenue is dismissed.

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**9.** The Cross Objection filed by the assessee is in support of the order of the Id. CIT(A), therefore on dismissal of the Revenue appeal against the impugned order, the same become infructuous, hence dismissed.



**10.** In the result, appeal filed by the Revenue Department and the cross objection filed by the Assessee stands dismissed.

Order Pronounced in open Court on this 23<sup>rd</sup> day of Sep., 2021.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(N.K. CHOUDHRY)**  
**Judicial Member**

**Dated: 23<sup>rd</sup> Sep., 2021.**

**vr/-**

*Copy to:*

1. *The Assessee - M/s. President Subsidiary Police Canteen, S.P. Office, Opp. Police Parade Ground, Guntur.*
2. *The Revenue - ITO, Ward-1(1), Guntur.*
3. *The Pr.CIT, Guntur.*
4. *The CIT(A)-1, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.