

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND  
SMT BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.1343/Bang/2017</b>
<b>Assessment Year : 2012-13</b>

Shri. N. U. Srinivas, Prop: Shree Ayyappa Tourist, No.646, Muniyappa Building, KIADB Road, Jalahalli Cross, T. Dasarahalli, Bengaluru – 560 057. <b>PAN : ADBPS 8802 Q</b>	Vs.	The Deputy Commissioner of Income-Tax, Circle – 6(3)(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. G. S. Prashanth, CA
Revenue by	:	Shri. Priyadarshi Mishra, JCIT (DR)(ITAT), Bengaluru
Date of hearing	:	07.10.2020
Date of Pronouncement	:	16.10.2020

**ORDER**

*Per A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-6, Bengaluru, dated 31.01.2017 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under:

1. The learned assessing officer had erred in passing order in the manner passed by him and the learned Commissioner of Income-tax (Appeals) has erred in confirming the same. The impugned order having been passed in violation of law and in violation of principles of natural justice is liable to be quashed.

2.1 In any case the assessing officer had erred in resorting to estimate the income from business of the appellant by rejecting the financial statements despite there being audited financial statements and in estimating income from business at Rs. 60,00,000/- as against the declared business income of Rs. 31,14,651/-.

2.2 The action of the Assessing Officer rejecting the financial statements is not in accordance with law and such an action has to be rejected in toto.

2.3 In any case no basis of estimation has been given by the Assessing Officer and therefore such an estimation without supporting is to be totally rejected and the addition made on this count as confirmed by Commissioner of Income-tax (Appeals) is to be deleted in entirety.

2.4 In any case and without prejudice, it is submitted that the estimation as made is very excessive.

3.1 The learned Assessment order had erred in making an addition of Rs.1,07,27,000/- to the income of the appellant as unexplained cash deposits in bank and the learned Commissioner of Income-tax (Appeals) has erred in confirming the same.

3.2 The learned Assessing Officer had made the addition without furnishing the nature of information received by him and without informing the basis of arriving at the figure, such an addition being bad in law and on facts is therefore required to be deleted in entirety.

3.3 In any case, there are no unexplained deposits in bank. The additions as made has no legs to stand in law and on facts are required to be deleted in entirety.

4. In view of the above and on the other grounds to be adduced at the time of hearing it is requested that the impugned order be quashed or atleast additions made to the income be deleted and the income as returned be accepted.

3. The assessee has also raised two additional grounds which are as under:

3. The action of the learned assessing officer in not providing sufficient opportunity of being heard is against the settled principles of natural justice and consequently, the order of assessment needs to be set aside in the interest of equity & justice.

4. The learned assessing officer failed to appreciate that when the books of accounts are rejected and business income is estimated, no separate addition is warranted under the facts & circumstances of the case. Reliance is placed on the decision of the Jurisdictional High Court in the case of CIT vs. Bahubali Neminath Muttin reported in 72 taxmann.com 139.

4. This appeal was filed by the assessee after a delay of 73 days and the assessee has moved an application for condonation of delay along with an affidavit of the assessee and it is submitted in this application that during the relevant period, the assessee was unwell and was suffering from viral fever and due to his illness, the assessee could not file the appeal in time. The assessee has also submitted a medical certificate in this regard. In the course of hearing, it was submitted by learned AR of the assessee that under these facts, this delay should be condoned and the appeal of the assessee should be admitted. Learned DR of the Revenue opposed to the condonation of the delay but still in the facts of the present case, we feel it proper to condone the delay and admit the appeal. We order accordingly and the delay is condoned and the appeal is admitted.

5. In course of hearing on merit of the appeal, it was submitted by learned AR of the assessee that as per ground Nos.2.1 to 2.4, this is the grievance of the assessee that the AO was not justified in estimating the income of the assessee at Rs.60 lakhs as against the declared business income of Rs.31,14,651/- supported by the audited accounts of the assessee. He also

submitted that in ground Nos.3.1 to 3.3, this is the grievance of the assessee that the AO is not justified in making an addition of Rs.107.27 lakhs by holding that the cash deposits of this amount in the Bank in the present year is unexplained cash deposit.

6. Regarding the first issue in respect of estimation of income from business, learned AR of the assessee submitted that on page 2 of the Assessment Order, the AO has observed that as per the P & L Account filed by the assessee along with return of income, the assessee had shown receipt of hire charges of Rs.7,89,40,086/- and claimed expenses of Rs.6,68,92,563/- under the head "Hire Charges" and there are some other expenses and in this manner, the assessee has shown the net profit of Rs.31,14,651/-. He pointed out that this is further observed by AO that in course of assessment proceedings, assessee was asked to produce the books of accounts, proof for the expenses claimed but in spite of giving several opportunities, the assessee did not produce the books of accounts and other details and on the basis of these observations, the AO rejected the financial statements filed by the assessee and estimated the income of the assessee from business at Rs.60 lakhs. It was his submission that since the books of accounts were audited, the rejection of books of account by the AO and estimation of the income is not justified. Learned DR of the Revenue supported the orders of the authorities below on this issue.

7. We have considered the rival submissions and we find that a clear finding is given by the AO in the Assessment Order that the assessee was asked to produce the books of accounts and proof for the expenses claimed but in spite of this, the assessee has neither produced the books of accounts nor produced the proof for expenses claimed. In para 10 of his order, a categorical finding is given by learned CIT(A) that as per the Assessment Order, the assessee failed to produce the books of accounts despite several opportunities provided by the AO. Before the Tribunal also, this is not the claim of the assessee that even if the matter is restored back to the file of AO, the assessee can produce the books of accounts and the proof for the expenses claimed. Under these facts, we find no reason to interfere in the order of learned CIT(A) and AO on this issue and accordingly, ground Nos.2.1 to 2.4 raised before the Tribunal are rejected.

8. The next issue i.e., ground Nos.3.1 to 3.3 is in respect of addition made by the AO of Rs.107.27 lakhs by alleging that the cash deposit in the Bank account of the assessee of much amount is unexplained cash deposit. Learned AR of the assessee submitted that both the Additional grounds raised by the assessee are also in respect of this addition of Rs.107.27 lakhs being disputed as per these grounds No. 3.1 to 3.3. He submitted that reliance is already placed on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Bahubali Neminath Muttin as reported in 72 Taxman.com 139,

copy available on pages 1 to 7 of the Case Law Compilation. In particular, our attention was drawn to Para 23 & 24 of this judgment and it was submitted that as per Para 23, it was held that if the books of accounts of the assessee are rejected, the same books of accounts cannot be relied upon for making another addition on account of trade creditors or arriving at the closing stock. He submitted that by the same logic, the same rejected books of accounts cannot be relied upon for making this addition of Rs.107.27 lakhs by alleging that the cash deposit in the Bank account of the assessee of this much amount is unexplained cash deposit.

9. Regarding merit of this addition also, it was submitted by learned AR of the assessee that on page 3 of the Assessment Order, the AO has observed that as per the information available in the office of the AO, the assessee has made cash deposits to the extent of Rs.107.27 lakhs in the bank accounts held by the assessee and the assessee could not explain the source of such cash deposit and the AO came to the conclusion that this cash deposit in banks is unexplained cash deposits and made addition. In the course of hearing, it was submitted by learned AR of the assessee that on pages 17 to 85 of the Paper Book is the copy of bank statements for the period from 01.04.2011 to 31.03.2012 of the account maintained with Dhanalakshmi Bank Ltd., and similarly on pages 86 to 95 of the Paper Book is the bank account statement for the same period with the account maintained with HDFC Bank Ltd. He

also submitted that on page 4 of the Paper Book is the audited balance sheet of the assessee as on 31.03.2012 as per the which the cash at bank has been shown at Rs.5,31,699/- and as per page 6 of the Paper Book is the bank wise detail of this Bank balance of Rs.5,31,699/- and as per the same, there was a balance of Rs. 5,905/- in Bank Account No. 03734 with Dhanlakshmi Bank, Rs. 5,22,768/- in Bank Account No. 01112 with Dhanlakshmi Bank and Rs. 3,026/- in HDFC Bank. Regarding the balance as per Bank Statement of Account No. 01112 with Dhanlakshmi Bank , it was submitted that the relevant Bank statement is available on pages 17 to 85 of the paper book but we find that on page 85, the statement runs up to 26.03.2012 only and 13.10.2020, two more pages of the same bank statement were filed for the period 26.03.2012 to 31.03.2012 and as per the same, closing balance as on 31.03.2012 is Rs. 507,584.16 as against Rs. 5,22,768/- as shown on page 6 of the paper book. This small difference may be because of some bank reconciliation. As per the bank statements of HDFC bank available on pages 86 to 95 of the paper book, it can be seen that the closing balance with this bank as on 31.03.2012 was Rs.3026.38/- and it is tallying with the balance shown with HDFC Bank on page 6 of the paper book. Hence, we accept that both these bank accounts are disclosed bank accounts.

10. It was his submission that since, both these accounts are disclosed bank accounts and entire cash deposit is in these two accounts only, the entire cash

deposit in these two banks should be accepted as explained. At this juncture, the Bench directed the learned AR of the assessee to submit the details of total cash deposit in these two bank accounts as per the bank statements of these two banks along with cash withdrawal from these bank accounts to examine this claim of the assessee that the entire cash deposit of Rs.107.27 lakhs is only in these two disclosed bank accounts. Accordingly, learned AR of the assessee has submitted such working and as per these workings, there is cash withdrawal during the Financial Year 2011-12 of Rs.78,57,380/- from these two bank accounts and there is cash deposits in these two bank accounts for Financial Year 2011-12 of Rs.107.27 lakhs. It has also been submitted that out of cash deposits in these two banks of Rs.107.27 lakhs, there is sales turnover in cash of Rs.61,84,302/- and there is balance cash deposit of Rs.45,42,699/- which is explained being out of cash withdrawals of Rs.78,57,380/- from the same two bank accounts and therefore, no part of cash deposit is unexplained. Regarding this issue also, learned DR of the Revenue supported the orders of authorities below.

11. We have considered the rival submissions and first we decide the additional Ground No. 2. We find that the books are rejected by the AO and income was estimated by him at Rs. 60 Lacs as against the income declared by the assessee at Rs.31,14,651/- and the grounds raised by the assessee being Ground Nos. 2.1 to 2.4 are already rejected by us as per para No. 7 above. It

means, rejection of books of accounts is confirmed by us. Now under these facts, we examine the applicability of this judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Bahubali Neminath Muttin (Supra). We first reproduce paras 23 & 24 of this judgment from page No. 7 of the Case law compilation. These paras read as under:-

***“23. The principle that if a finding of fact is not challenged as being perverse, the High Court is bound to accept such finding. Therefore, as no such substantial question of law has been framed and the questions pertain to findings of fact, which cannot be said to be perverse as it is evident that the books of accounts of the respondent had been rejected by the Assessing Authority, in which case the same books of accounts could not be relied upon in an addition on account of trade creditors and also for arriving at the closing stock. This is an established principle as has been held in the decisions relied upon by the respondent namely Indwell Constructions case (supra), Banwari Lal Banshidhar's case (supra), Aggarwal Engineering Company's case (supra) and Amman Steel and Allied Industries case (supra).***

***24. In the light of the above, there is no substantial question of law that arises for consideration and the findings of the Tribunal cannot be said to be perverse, as the reasons assigned by the Tribunal are certainly acceptable and do not warrant interference. Consequently, the appeals are dismissed.”***

12. We find that in that case also, it was found by Hon'ble Karnataka High Court that books of accounts were rejected by the AO and it was held by Hon'ble Karnataka High Court that the same books of accounts cannot be relied upon for making another addition on account of trade creditors or arriving at the closing stock. We find force in this argument of the learned AR of the assessee that by the same logic, in the present case also, the same rejected books of accounts cannot be relied upon for making this addition of

Rs.107.27 lakhs by alleging that the cash deposit in the Bank account of the assessee of this much amount is unexplained cash deposit. Respectfully following this judgment, we delete this addition.

13. For the sake of completeness, we examine and decide about this addition on factual aspect also. We find that there is no dispute that the books of accounts of the assessee are audited books and as per audited balance sheet on page 4 of the Paper Book, there is cash at bank of Rs.5,31,699/- as on 31.03.2012 and there is cash in hand on this date of Rs.43,355/-. On page 6 of the Paper Book is the summary of this cash at bank available on 31.03.2012 of Rs.5,31,699/- and as per the same, there was a balance of Rs.5,905/- with Dhanalakshmi Bank Ltd. Account No.03734 and a balance of Rs.5,22,768 with Dhanalakshmi Bank Ltd. Account No.01112 and there was a balance of Rs.3026/- with HDFC Bank Ltd., Bengaluru. As per the summary of cash deposit in these bank accounts submitted by learned AR of the assessee, it is seen that the total cash deposits of Rs.107.27 lakhs is in these two declared bank accounts only being Dhanalakshmi Bank Ltd. Account No.01112 and HDFC Bank Ltd., Bengaluru and the source of the same is explained being out of cash sales of 61,84,302/- and cash withdrawal from these two banks Rs.78,57,380/- and the total of these two comes to Rs. 1,40,41,682/- and even after cash deposit of Rs.107.27 lakhs, it leaves enough cash for other cash expenditures / payments and the closing cash balance as on 31.03.2012.

Moreover, we have confirmed the addition of Rs.28,85,349/- being the difference between the amount of Rs.60 lakhs and Rs.31,14,651/- and this much amount also has to be considered as available to explain the source of cash deposit into bank. Under these facts, we are satisfied that the total cash deposits in the bank account of the assessee of Rs.107.27 lakhs is explained and under these facts, on factual aspect also, we find that this addition of Rs.107.27 lakhs is not justified.

14. In the result, the assessee's appeal is partly allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(BEENA PILLAI)**

**Judicial Member**

Sd/-

**(A.K. GARODIA)**

**Accountant Member**

Bangalore,

Dated: 16<sup>th</sup> October 2020.

/NS/\*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.