

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “SMC-C”, BANGALORE**

**Before Shri George George K, Judicial Member**

ITA No.141/Bang/2020 : Asst.Year 2017-2018

Sri.Mubarak Gandapuri C/o.M/s.Mubarak Traders APMC Yard, Hubli – 580 020 <b>PAN : AIQPG9137J.</b>	v.	The Income Tax Officer Ward 1(3) Hubli.
(Appellant)		(Respondent)

Appellant by : Sri.Venkatesh Pani, Advocate  
Respondent by : Sri.Ganesh R.Ghale,  
Standing Counsel for Department

<b>Date of Hearing : 18.11.2020</b>	<b>Date of Pronouncement : 20.11.2020</b>
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**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 03.12.2019. The relevant assessment year is 2017-2018.

2. The grounds raised read as follow:-

*“1. The order of the learned CIT(A) in so far as it is against the Appellant is opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.*

*2. The appellant denies himself liable to be assessed to an income of Rs.35,40,260/- against the returned income of Rs. 2,13,820/- on the facts and circumstances of the case.*

*3. The learned CIT(A) was not justified in law and on facts, in failing to admit the additional evidence filed, which was not filed during assessment proceedings, due to reasonable cause, on the facts and circumstance of the case.*

*4. The learned CIT(A) was not justified in law and on facts in appreciating that the appellant has filed replies in respect of the cash deposited during demonetization and the same ought to have been considered while passing the order of assessment, on the facts and circumstances of the case.*

5. *The learned CIT(A) was not justified in appreciating that the appellant had a very good case on the merits of the matter and ought to have admitted the additional evidence filed and adjudicated on the merits of the matter, on the facts and circumstances of the case.*

6. *The learned CIT(A) failed to appreciate that the appellant was dealing in perishable goods and the entire receipts could not have been added as the income of the appellant and a reasonable estimate as prevailing in the line of the business alone could have been considered as the income of the appellant, on the facts and circumstances of the case.*

7. *The appellant denies himself liable to the levy of penalty under section 234 of the Act.*

8. *The Appellant craves leave to add, alter, delete, substitute or modify any of the grounds urged above.*

9. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

3. Brief facts of the case are as follow:

The assessee, an individual, is proprietor of M/s.Mubarak Traders, a commission agent and trader at APMC Hubli. The assessee did not file the return of income for the assessment year 2017-2018. It was noticed by the Department that the assessee had deposited cash of Rs.11,26,000 during the demonetisation period, i.e., from 09.11.2016 to 30.12.2016 in his bank account with Axis Bank. Accordingly, notice u/s 142(1) of the I.T.Act was issued to the assessee. During the course of assessment proceedings, bank statement of the assessee with Axis Bank was called for u/s 133(6) of the I.T.Act. Upon analysis of the bank statement, it was found that the assessee had total cash deposit of Rs.35,40,260 during the financial year 2016-2017 and cash deposit of Rs.11,26,000

during the demonetisation period. The A.O. had issued numerous notices u/s 142(1) of the I.T.Act, calling for the details of the cash deposits made. However, there was no reply or explanation to the above notices. In the absence of any reply or explanation forthcoming from the assessee, the Assessing Officer proposed best judgment u/s 144 of the I.T.Act. There was non-compliance on the part of the assessee to furnish reply to the best judgment assessment proposed. Therefore, the assessment was completed u/s 144 of the I.T.Act vide order dated 25.09.2019. In the said assessment order, the total income of the assessee was assessed at Rs.35,40,260, being the unexplained cash deposits u/s 69A of the I.T.Act. The relevant finding of the Assessing Officer reads as follow:-

*“9. In the absence of any reply / explanation forthcoming from the assessee, the analysis of the Bank account was made. The assessee has opened the Bank account on 29.7.2016. There are frequent cash deposits during the year. Immediately after the deposits payments are made to various parties and on certain occasions, there are withdrawals by cash. Further, during the demonetization period the assessee has made a cash deposit of Rs.10,00,000/- on 10.11.2016. On the same day, a sum of Rs.10,00,000/- is transferred to M/s.Ashirwad Sheet through NEFT. The total deposit during the demonetization period is at Rs.11,26,000/-. In the absence of the details filed by the assessee, the probabilities of making payment would be purchase of an articles from the various parties / clearing an outstanding due / the money was let to the parties. Therefore, it is very clear that the assessee has purchased goods worth or created an asset worth of Rs.35,40,260/- during the year.”*

4. Aggrieved by the order of the assessment u/s 144 of the I.T.Act, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, the assessee filed additional evidence in the form of confirmation letters from

bank for transfer of funds to M/s.Ashirwad Sheet Grah Cold Storage and M/s.H.L.Jain Ice and Cold Storage, etc. It was submitted that the assessee was an illiterate person and was unaware of the provisions of the Income-tax Act, 1961. It was stated that the cash deposits are out of normal course of purchase and sale of agricultural produce that is undertaken by the assessee. It was further stated that the cash deposits made during the demonetisation period were immediately transferred to NEFT to M/s.Ashirwad Sheet Grah Cold Storage and M/s.H.L.Jain Ice and Cold Storage for purchase of agricultural produce. The CIT(A), however, did not admit the additional evidence for reason that the assessee was not prevented by sufficient cause from producing the evidence before the A.O. The CIT(A) thereafter held that there is no material on record to interfere with the conclusions / findings of the Assessing Officer. Hence, the appeal of the assessee was dismissed.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee has filed two paper books enclosing therein copy of the written submission filed before the CIT(A), the additional evidence produced before the CIT(A), details of returns of income filed for the various assessment years 2013-2014 to 2019-2020, Form 26AS for assessment years 2015-2016, 2018-2019, etc. The learned Counsel for the assessee reiterated that the assessee is an illiterate person and was unaware of the provisions of the Income-tax Act, 1961. It was stated that there is shortcoming on the part of the assessee as

regards non-appearance before the Assessing Officer. It was stated that the assessee was a commission agent and trader of agricultural produce at APMC, Hubli and the cash deposits are out of such trading activities of the assessee. The learned Counsel for the assessee submitted that the Income-tax return was filed pursuant to notice u/s 142(1) of the I.T.Act on 16.10.2019. However, the assessment order u/s 144 of the I.T.Act for assessment year 2017-2018 was completed on 25.09.2019. Further, the learned AR brought to my notice Form 26AS for assessment years 2018-2019 and 2015-2016 and contended that the cash deposits for assessment years 2018-2019 and 2015-2016 clearly show that the assessee was regularly doing the business of commission agent and trader for agricultural produce. Therefore, it was prayed in the interest of justice and equity, one more opportunity may be granted to the assessee to prove his case that the cash deposits are not undisclosed income warranting addition to the total income u/s 69A of the I.T.Act. Alternatively, it was contended that only a percentage of the total cash deposit of Rs.35,40,260 alone should be brought to tax as income.

6. The learned Standing Counsel, on the other hand, strongly supported the orders passed by the Income Tax Authorities.

7. I have heard the rival submissions and perused the material on record. The assessment was completed u/s 144 of the I.T.Act for the reason that there was no reply / explanation to the notices issued u/s 142(1) of the I.T.Act. Consequently,

the entire cash deposits in assessee's bank account for the financial year 2016-2017 was treated as unexplained money and brought to tax u/s 69A of the I.T.Act. For the addition made u/s 69A of the I.T.Act, tax was levied at the rate of 60% in view of the provisions of section 115BBE of the I.T.Act. Before the CIT(A), the additional evidence was not admitted, since the assessee did not fulfil the conditions mentioned under Rule 46A of the I.T.Rules. Thereafter, the appeal before the CIT(A) was dismissed for the reason that the assessee was not able to point out any error in the order of the Assessing Officer.

7.1 It is true that there has been lapses on the part of the assessee during the course of assessment proceedings. There was no reply / explanation to the various notices issued u/s 142(1) of the I.T.Act. I strongly deprecate the non-cooperation on the part of the assessee before the Assessing Officer. The Assessing Officer cannot be faulted for passing a best judgment assessment u/s 144 of the I.T.Act.

7.2 However, there seems to be some truth in the statement of the learned AR that the assessee is a commission agent / trader of agricultural produce in APMC Market. This can be borne out from the fact that large payments are made from assessee's bank account to M/s.Ashirwad Sheet Grah Cold Storage and M/s.H.L.Jain Ice and Cold Storage. The above two entities are stockiest for agricultural produce. If the assessee's contention that he is a commission agent / trader of agricultural produce is true, then there could be frequent cash

deposits and withdrawals on account of sale and purchase of agricultural produce. The A.O. in the impugned assessment order states as follow:-

*“9. ....There are frequent cash deposits during the year. Immediately after the deposits, payments are made to various parties and on certain occasions, there are withdrawals by cash. Further, during the demonetization period the assessee has made a cash deposit of Rs.10,00,000 on 10.11.2016. On the same day, a sum of Rs.10,00,000 is transferred to M/s.Ashirwad Sheet through NEFT.”*

7.3 The learned AR had furnished the date of filing of the returns of income for various assessment years. For the relevant assessment year, the return of income was filed on 16.10.2019 (refer page 109 to 152 of the paper book). However, the assessment for assessment year 2017-2018 was completed u/s 144 of the I.T.Act prior to the date of filing of the return (assessment was completed on 25.09.2019). The assessee in the paper book has also filed Form 26AS for the assessment years 2015-2016, 2018-2019, etc. On perusal of Form 26AS for the above mentioned assessment years shows huge cash deposits and withdrawals. For example, for the assessment year 2018-2019 there are cash deposits of Rs.49,94,230 and cash withdrawals of Rs.60,54,406. Therefore, there is some truth in assessee's contention that cash deposits are attributable to agricultural / trading activities and entire cash deposits in the current account of the assessee cannot be treated as unexplained money and brought to tax u/s 69A of the I.T.Act.

7.4 For the abovementioned facts and in the interest of justice and equity, I am of the view that one more opportunity should be granted to the assessee to prove his case that cash deposits are attributable to the agricultural / trading activities. For the above said purpose, the issue raised in this appeal is restored to the Assessing Officer. The assessee shall cooperate with the Assessing Officer and shall not seek unnecessary adjournments. The assessee shall furnish the necessary evidences / material to prove his case that cash deposits in the current account with Axis Bank is not unexplained money. It is ordered accordingly.

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

Order pronounced on this 20<sup>th</sup> day of November, 2020.

**Sd/-  
(George George K)  
JUDICIAL MEMBER**

Bangalore; Dated : 20<sup>th</sup> November, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Hubballi.
4. The Pr.CIT-Hubballi.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore