

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

Before Shri George George K, Judicial Member

ITA No.1249/Bang/2019 : Asst.Year 2015-2016

Sri.Mohan Ramachandra Basawa 6/17, Amingad Road, Gudur Taluk Hungund Bagalkot District – 587 202. PAN : AFMPB6148K.	v.	The Income Tax Officer Ward 1 Bagalkot.
(Appellant)		(Respondent)

Appellant by : Sri.Ravishankar, Adovcate
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 20.01.2021	Date of Pronouncement : 20.01.2021
-------------------------------------	---

ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.03.2019. The relevant assessment year is 2015-2016.

2. The solitary issue raised is regarding the addition of Rs.10,83,000 being cash deposits in the assessee's bank account.

3. The brief facts of the case are as follow:

The Assessing Officer vide order dated 11.12.2017 passed u/s 143(3) of the I.T.Act, had made an addition of Rs.10,83,000 u/s 69A of the I.T.Act. The relevant observations of the A.O. in making the said addition are as follow:-

“3. Addition on account of cash deposit of Rs.10,00,000 with Shri Vijaymahantesh Co-op bank and Ilkal Urban Co-op Bank Ltd:-

As discussed above, the assessment has been selected for scrutiny under CASS to examine the as to whether the cash deposits has been made from disclosed sources. On going

through the savings bank account No.10305100000077 with Ilkal Co-op Bank Ltd, Ilkal and SB A/c No.10205100028023 with Shri Vijaya Mahantesh Co-op Bank Ltd, Gudur SC, that the assessee has made following cash deposits during the year under consideration:-

Ilkal Co-op Bank Limited, Ilkal

<i>Date</i>	<i>Amount of cash deposit</i>
<i>31.05.2014</i>	<i>Rs.2,00,000</i>
<i>28.06.2014</i>	<i>Rs.1,00,000</i>
<i>25.08.2014</i>	<i>Rs.1,00,000</i>
<i>Total</i>	<i>Rs.4,00,000</i>

Shri Vijayamahantesh Co-op Bank Ltd. Gudur SC

<i>Date</i>	<i>Amount of cash deposit</i>
<i>10.05.2014</i>	<i>Rs.2,00,000</i>
<i>16.06.2014</i>	<i>Rs.1,00,000</i>
<i>25.08.2014</i>	<i>Rs.1,00,000</i>
<i>17.03.2015</i>	<i>Rs.2,00,000</i>
<i>Total</i>	<i>Rs.6,00,000</i>

The assessee has furnished letter on 27.09.2017 stating that the sources of deposits of Rs.10 lakhs is out of opening cash balance as on 10.05.2014, which is reproduced below:-

<i>Date</i>	<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
<i>01.04.2014</i>	<i>Opening cash</i>		<i>Rs.7,48,555</i>
<i>10.05.2014</i>	<i>Cash withdrawn from SVM Coop Bank</i>	<i>Rs.2,15,000</i>	
<i>10.05.2014</i>	<i>Cash withdrawn from Ilkal Co-op Bank</i>	<i>Rs.60,000</i>	<i>Rs.2,85,000</i>
	<i>Total cash balance as on 10.05.2014</i>		<i>Rs.10,33,555</i>
	<i>Cash deposited from 10.05.2014 to</i>	<i>Rs.6,00,000</i>	

	31.3.2015 in SVM Bank		
	Cash deposited from 31.5.2014 to 31.3.2015 in Ilkal Coop bank	Rs.4,00,000	Rs.10,00,000

In support of opening cash of Rs.7,48,555, the assessee has filed statement of affairs as on 31.3.2014 wherein, opening capital balance has been shown at Rs.41,97,331. However, the said opening capital balance is without any supporting. The assessee has not filed returns of income prior to A. Y, 2015-16 which is also filed only on 31.3.2017 belatedly. The assessee was asked to furnish cash flow statement as on 31.3.2015 but the same was not filed by the assessee. The assessee has maintained various FDs in Ilkal Co-op Bank Ltd and SVM Co-op Bank Ltd and has earned interest which was also not considered while computing total income by the assessee.

3.1 On going through the Current Account NO.08143070000289 with Syndicate Bank that the assessee has also deposited cash of Rs.24,000 & Rs.59,000 on 03.04.2014 and 30.06.2014 respectively. Thus, the assessee has not explained the sources of the cash deposits with this bank also to the tune of Rs.83,000. Thus, the total cash deposits into bank accounts worked out to Rs.10,83,000 sources of which were remained to be explained.

3.2 It is also seen from the records that the assessee has not filed any returns of income prior to A.Y. 2015-16 except for A.Y. 2009-10 filed manually declaring income of Rs.3,75,950. The assessee has filed statement of affairs as on 31.3.2014 but no capital account was furnished. In view of the above facts, the assessee was asked to furnish sources of opening cash balance as well as other details vide this office letter dated 24.11.2017 fixing case for hearing on 6.12.2017. However, the assessee's AR appeared and filed letter dated 6.12.2017 wherein it has been only stated that assessee had income from salary, interest on bank deposits, commission from agricultural produces but no details of salary, retail business, commission business etc were furnished. In the absence of these details, the sources of cash deposits made into banks amounting to Rs.10,83,000 are not verifiable. Further, in order to examine how the opening capital of RsA1,97,331 has been arrived at, it is necessary to examine the details of opening capital i.e. credits found in

capital account as it is possible that sources for cash cash-in-hand may be from introduction of cash in his capital account. In view of the above, the explanation of the assessee that the sources for cash deposits of Rs.10,83,000 is out of cash-in-hand shown by the assessee and re-deposits out of subsequent withdrawals is not acceptable for the following reasons:-

(i) In the absence of details of opening balances, the assessee has prepared statement of affairs as on 31.3.2014 on reverse way on the basis of entries/transactions made during the year in the bank accounts. In order to tally the statement of affairs in particularly opening capital balance shown in the Balance-sheet at Rs.41,97,331, the assessee has shown cash-in-hand of Rs.7,48,555. The assessee has furnished cash flow summary for the year 2014-15 relevant to A.Y. 2015-16 but did not give any details of opening capital as on 1.4.2014 shown in the statement of affairs for the year ending 31.3.2014 at Rs.41,97,331 to justify his cash in hand shown at Rs.7,48,555. On verification of cash flow summary, it is seen that the assessee has not given any justification as to how the said cash in hand arrived at by providing capital account for the F.Y. 2013-14. Thus, the cash flow summary will not indicate what are the amounts credited to capital account while arriving closing capital balance of Rs.41,97,331. Thus, there are no explanation or evidence for sources of cash in hand and therefore, the explanation of the assessee that he has deposited cash out of cash in hand as on 31.3.2014 is not acceptable.

(ii) It is also explained by the assessee that no FD is matured and withdrawn during the year relevant to A.Y. 2015-16. Thus, the funds available are stated to be salary of Rs.2,10,000 details of which are not furnished, income under section 44AD of Rs.2,41,445 stated to be out of retail business but no details viz nature of business, details of purchases and sales etc not furnished except stated in statement of total income retail business receipts Rs.9,65,780. Thus, these two sources of income cannot be acceptable in view of evidences of having done the retail business and salary certificate from the employer. It is also stated that the assessee apart from working and earning salary of Rs.2,10,000, he has earned commission of Rs.26,567 by way of sale of agricultural produces purchased from farmers and sold to customers. However, no such evidences in support of his activities were furnished. The assessee is a non-filer and filed return of income only after demonetization period in order to cover up his deposits for the subsequent year i.e. A.Y. 2016-17 & 2017-18.

(iii) It is also seen from the statement of affairs as on 31.3.2014 filed in support of cash-in-hand that the assessee has received unsecured loans from 2 parties amounting to Rs.7,00,000

which was carried forward to statement of affairs as on 31.3.2015. Thus, in order to examine genuineness of cash in hand, the assessee has to give details of opening capital balance without which it is not possible to accept the genuineness of cash in hand.

3.3 As stated above, the assessee has prepared statement of affairs on reverse way and therefore, there is no basis or sources for cash in hand shown by the assessee. No return of income from asst year 2010-11 to 2014-15 was filed by the assessee and hence, the assessee deliberately did not prepare capital account.

3.4 Therefore, it is clear that the assessee has brought unexplained money/cash as envisaged in section 69A of the LT. Act, 1961 to the extent of Rs.1 0,83,000 sources of which remained to be explained. In the light of the above findings, the unexplained money of Rs.10,83,000 under section 69A read with section 115BBE is brought to tax and added to the total income of the assessee.”

4. Aggrieved by the addition of Rs.10,83,000, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the addition made by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

“8.1 During the appellate proceedings the appellant was not able to make out any case to show that the additions made by the A.O. were against the facts or in violation of any law. The appellant was unable to prove that sources of the deposits were from withdrawal from capital of earlier years. It is unreasonable and also illogical to say that when business got closed down four years back, the amounts outstanding before 4 years were suddenly brought and kept in bank accounts, without any supporting evidence. Assessee could not produce the facts in support of his claim before A.O. during the time of Assessment. He was also unable to prove before the CIT(A) with any supporting evidence to show that earlier withdrawals made 4 years back is source of present deposits. Considering the long gap of 4 years, no supporting and linking evidence, it is not reasonable to accept that the cash deposits and bank balances are pertaining to that earlier business only. Hence I am not accepting the argument of the assessee which is completely devoid of logic and supporting evidence. Though assessee filed additional submissions stating that the sources of deposits were from earlier capital but no supporting evidence.

Link could not be established to show that how after such a long gap of 4 years, without any source of income / taxable income. Assessee was able to meet his personal / family / business or other obligations and still spare the same old capital towards bank deposits. Hence addition made by the A.O. is in accordance with law and the same is confirmed.”

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal, raising the following grounds:-

“1. The order of the learned Commissioner of Income-tax (Appeals) Belagavi, passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed to an income of Rs.16,58,784/-, against adjusted income of Rs.5,75,784/- on the facts and circumstances of the case.

3. The learned CIT(A) failed to appreciate that the appellant has demonstrated the source for the deposit of cash of Rs.10,83,000/- into the bank accounts by way of financials, on the facts and circumstances of the case.

4. The learned CIT(A) was not justified in law and on facts in failing to appreciate that the financials clearly demonstrated the flow of funds and the opening cash on hand, to hold on a preponderance, that the same was not acceptable, thereby has not passed a reasoned order, on the facts and circumstances of the case.

5. The learned CIT(A) was not justified in failing to appreciate that the AO has not even made a proper enquiry and has not considered the withdrawals during the year to hold that the cash deposited was unexplained, on the facts and circumstances of the case.

6. Without prejudice and not conceding that the entire sums of money deposited, were out of the cash on hand and withdrawals from bank during the year, the authorities below ought to have telescoped the withdrawals during the year, in respect of the cash deposits, hence passed an order without application of mind, on the facts and circumstances of the case.

7. The authorities below failed to appreciate that the opening cash was out of the balance remaining out of the audited accounts of the closed down business, and the statements

demonstrate the fund flow up to the year of assessment, on the facts and circumstances of the case.

8. *The authorities below failed to appreciate that the appellant had only marginal income which was below the taxable limit and no return of income was required to be filed for the earlier years, on the facts and circumstance of the case.*

9. *The learned CIT(A) was not justified in facts in appreciating the financials and submissions filed during the course of hearing, to hold that the appellant had not filed documents nor sufficiently explained the source, which is contrary to fact, on the facts and circumstances of the case.*

10. *The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

11. *For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered.”*

6. The assessee has also raised additional grounds. The issue raised in the additional grounds is that the CIT(A) ought to have set aside the assessment order since the additions were made under erroneous section, i.e., section 69A of the I.T.Act, which is not applicable in the instant case and addition if at all ought to have been made u/s 68 of the I.T.Act. However, no arguments were made with regard to the additional grounds, hence, the same are not adjudicated.

7. The learned AR submitted that the assessee was engaged in the business of liquor up to assessment year 2011-2012. It was submitted that up to assessment year 2010-2011, the assessee had filed return of income and paid taxes under the provisions of presumptive taxation u/s 44AD of the I.T.Act. It was stated that the business of the assessee had closed down due to unforeseen circumstances and there was no taxable income for assessment year 2012-2013 to 2014-2015. It was

submitted that there were cash withdrawals amounting to Rs.2,85,000 on 10.05.2014, which were not telescoped / given credit for the cash deposits made, which is patently illegal. Further, it was submitted that there were cash balances as on 31.03.2014 amounting to Rs.7,48,555, which was supported by profit and loss account and balance sheet. The financial statements for the years ending 31.03.2012, 31.03.2013 and 31.03.2014 for generation of cash balance as on 31.03.2014 are extrapolation of bank entries of cash withdrawals, re-deposits and the receipt from sundry debtors subsequent to the closure of the business. It was stated that the financials for the years ending 31.03.2012, 31.03.2013 and 31.03.2014 were furnished to the CIT(A), which were not taken into consideration while passing the impugned order. It was further stated that the last of the audit report concerning assessment year 2010-2011 also was filed before the CIT(A) as additional evidence and the acknowledgement of the same is placed at page 8 of the paper book filed by the assessee. It was submitted that the CIT(A) has not taken into account the last audit report for the assessment year 2010-2011 and the subsequent financial statements. Therefore, it was prayed that the matter may be remanded to the Assessing Officer in the interest of justice and equity.

8. The learned Standing Counsel present supported the orders of the Income Tax Authorities.

9. I have heard rival submissions and perused the material on record. The total addition made on account of unexplained cash deposits in the bank account is amounting to

Rs.10,83,000. The A.O. has not even given credit to the cash withdrawals made on 10.05.2014 amounting to Rs.2,85,000. The financials for the period 31.03.2012, 31.03.2013 and 31.03.2014 have not been properly considered by the CIT(A). The CIT(A) has also not taken into account the audit report concerning assessment year 2010-2011. Therefore, in the interest of justice and equity, I am of the view that one more opportunity should be granted to the assessee. Accordingly, the issues raised in this appeal are restored to the files of the Assessing Officer. The assessee shall cooperate with the Revenue and shall furnish the necessary details. The assessee shall not seek unnecessary adjournment. The A.O. shall pass an order after affording reasonable opportunity for hearing. It is ordered accordingly.

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

Order pronounced on this 20th day of January, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th January, 2021.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore