

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA Nos.312 & 313 /Bang/2021: Asst.Year 2017-2018
SA Nos.79 & 80/Bang/2021 : Asst.Year 2017-2018

Sri.Irudhayaraj Maria Richard 7, Krishnappa Layout Opp : Banaswadi Railway Station Lingarajapuram, St.Thomas Town Bangalore – 560 084. PAN : AIBPR7272G.	v.	The Income Tax Officer Ward 5(3)(1) Bangalore.
(Appellant / Applicant)		(Respondent)

Appellant by : Sri.Suman K. CA
Respondent by : Sri.Pridarshi Mishra, Addl.CIT-DR

Date of Hearing : 30.08.2021	Date of Pronouncement : 01.09.2021
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against two orders of the CIT(A) dated 11.05.2021 and 12.05.2021. The order of the CIT(A) dated 11.05.2021 is relating to the merits, whereas, the CIT(A)'s order dated 12.05.2021 is concerning imposition of penalty u/s 271AAC of the I.T.Act. The relevant assessment year is 2017-2018. The assessee has also preferred stay petitions for stay of recovery of tax/interest/penalty/ fine etc.

2. Since common issues are raised in these appeals, they were heard together and are being disposed of by this consolidated order.

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

The assessee is a salaried person, working with M/s.Blue Dart Express Limited. For the assessment year 2017-2018, return of income was filed on 02.08.2017 disclosing total income of Rs.8,19,417. The assessment was taken up for limited scrutiny to examine the source of cash deposit during the demonetisation period. The assessee had made cash deposit amounting to Rs.10,23,500 in accounts maintained with Andhra Bank. The A.O. directed the assessee to explain the source of cash deposit. According to the Assessing Officer, there was no response from the assessee to the show cause notice. Therefore, the assessment was completed u/s 144 of the I.T.Act vide order dated 13.12.2019. The Assessing Officer had brought to tax the entire cash deposit of Rs.10,23,500 u/s 69 of the I.T.Act r.w.s. 115BBE of the I.T.Act. The total tax liability u/s 115BBE of the I.T.Act was determined at Rs.7,90,655 and after adding interest u/s 234B of the I.T.Act, amounting to Rs.2,60,898, a demand of Rs.10,51,553 was raised. The Assessing Officer also imposed penalty u/s 271AAC of the I.T.Act amounting to Rs.79,065 (order dated 24.06.2020).

4. Aggrieved by the orders passed by the Assessing Officer u/s 144 of the I.T.Act and the order imposing penalty u/s 271AAE of the I.T.Act, the assessee preferred appeals to the first appellate authority. The CIT(A) confirmed the additions on the merits as well as imposition of penalty. The CIT(A) held that if the assessee was having Rs.10 lakh of cash in hand, there was no necessity to withdraw cash from the salary account of the assessee maintained with Citi Bank. It was

further held by the CIT(A) that the withdrawal of cash from City Bank account of the assessee is against human probability and the A.O. has rightly brought the cash deposit to tax u/s 69 r.w.s. 115BBE of the I.T.Act. The CIT(A) also affirmed the penalty imposed u/s 271AAC of the I.T.Act.

5. Aggrieved by the orders of the CIT(A), confirming the issue raised on merits and imposition of penalty u/s 271AAC of the I.T.Act, the assessee has preferred these appeals before the Tribunal. The assessee has filed a paper book comprising of 175 pages enclosing therein the submissions made before the A.O. and CIT(A), show cause notice, written submissions made before the AO and CIT(A) (National Faceless Appeals Centre), copies of acknowledgements for uploading the submission, copies of the bank statement from 2014, summary of cash withdrawals during the previous year etc. The learned AR submitted that the assessee was a salaried person, who was constructing his residential house. It was stated that the assessee taken housing loan from Andhra Bank and was withdrawing cash regularly for the purpose of construction of house. It was stated that due to delay in constructions, the amount withdrawn over a period of time was accumulated and was deposited in the Andhra Bank account during the demonetisation period. The learned AR by referring to the cash withdrawals from Citi Bank and Andhra Bank, had contended that there is enough cash withdrawals during the previous year for making cash deposits of Rs.10,23,500 during demonetisation period. A copy of the cash withdrawal is placed on record at pages 166 to 174 of the paper book filed by the assessee. The learned AR also

contended that the assessee has given the submissions before the A.O. and the CIT(A). The copies of the acknowledgement for uploading the submissions made before the A.O. and the CIT(A) are placed on record at pages 21 and 38 of the paper book submitted by the assessee.

6. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

7. We have heard rival submissions and perused the material on record. The assessee has given elaborate written submissions in response to the show cause notice issued by the Assessing Officer. Copy of the acknowledgement for uploading the submissions in the Portal of the Income Tax department is placed on record at page 21 of the paper book submitted by the assessee. The assessee had uploaded the submissions on 21.11.2019. The assessment order u/s 144 of the I.T.Act has been passed on 13.12.2019 by not recording the submissions made by the assessee. Before the CIT(A) also, the assessee has made elaborate submissions. The CIT(A) has only recorded the bank statement of assessee's salary account maintained with Citi Bank. The assessee was having bank account also with Andhra Bank, wherein the assessee had listed out cash withdrawals for the purpose of construction of his residential house (The assessee is having housing loan facility with Andhra Bank). These submissions of the assessee have not been taken into account while passing the assessment order as well as the appellate order. In the interest of justice and equity, we are of the view that the assessee needs to be heard. Accordingly, the issues raised in

these appeals are restored to the files of the A.O. The A.O. shall take into consideration the submissions made by the assessee and pass an order in accordance with law. It is ordered accordingly.

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8. In view of disposal of the appeals filed by the assessee, the stay petition filed by the assessee is rendered infructuous and is dismissed as such. It is ordered accordingly.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes and the stay applications are dismissed.

Order pronounced on this 01st day of September, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 01st September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), National Faceless Appeal Centre, Delhi
4. The CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore