

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

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| ITA No.420/Bang/2019 |
| AssessmentYear:2015-16 |

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| ITO Ward 7(2)(1) Bangalore | Vs. | Shri H.N. Purushotham No.1189/A, 35 th C Cross East End Road 4 th T Block Jayanagar Bangalore 41 PAN NO : BAUPP1522K |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Sankar Ganesh K., D.R. |
| Respondent by | : | N O N E |

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| Date of Hearing | : | 23.03.2022 |
| Date of Pronouncement | : | 23.03.2022 |

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The revenue has filed this appeal challenging the order dated 28.12.2018 passed by Ld. CIT(A)-7, Bengaluru and it relates to the assessment year 2015-16. The revenue is aggrieved by the decision of Ld. CIT(A) in deleting the addition of Rs.3,57,74,406/- made by the A.O. u/s 68 of the Income-tax Act,1961 [‘the Act’ for short].

2. None appeared on behalf of the assessee. On earlier occasion, the notice issued by the registry was returned back by the postal department with the noting “building demolished”. Hence,

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the revenue was asked to serve the notice to the assessee. The A.O. has reported that the assessee was not residing in the address given. Under these set of facts, we have no other option but to dispose of the appeal ex-parte, without presence of the assessee.

3. We heard Ld. D.R. and perused the record. The assessee filed his return of income belatedly u/s 139(4) of the Act on 25.3.2017 declaring total income of Rs.2,97,000/-. His return of income was selected for scrutiny on the reasoning that the assessee has shown huge cash on hand in the balance sheet enclosed with the return of income filed for the year under consideration and the same was filed by him after the declaration of demonetization of notes. The assessee has shown cash balance of Rs.3,57,74,406/- as on 31.3.2015 in the balance sheet filed along with the return of income. The assessee explained that the cash balance represents cash withdrawn by him from bank during the financial years 2012-13 & 2013-14. Since the assessee did not provide any evidence to show that he was keeping huge amount as cash in his hand, the A.O. proposed to assess the above said cash balance as unexplained cash credit u/s 68 of the Act. Hence, the assessee petitioned to the Additional Commissioner to give direction u/s 144A of the Act. The Additional Commissioner directed the A.O. to assess the cash balance of Rs.3,57,74,406/- as cash credit on "protective basis". The additional CIT also noticed that the assessee has deposited a sum of Rs.1,50,03,000/- during December, 2016 and sources of the same was explained to be cash withdrawn in 2013. Accordingly, the additional CIT held that the above said sum of Rs.1,50,03,000/- will be assessed on substantive basis in assessment year 2017-18.

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4. Before Ld. CIT(A), the assessee explained that he had entered into an agreement for sale of a property to M/s. Rajatha Developers Pvt. Ltd. and the payments received from them by way of cheque was deposited in his bank account. Thereafter, he has withdrawn cash from his bank account and kept the same with him. The assessee also furnished certain documents and hence Ld CIT(A) called for a remand report. After considering the remand report, the Ld. CIT(A) accepted the explanations given by the assessee, since the A.O. has not brought any contrary evidence to prove otherwise. Accordingly, he deleted the addition made by the A.O. With regard to the observation of A.O. that the addition has been made on protective basis, the Ld. CIT(A) noticed from the remand report furnished by the A.O. that the sum of Rs.3.57 crores was not assessed on substantive basis at any place. Accordingly, the Ld. CIT(A) took the view that the mentioning of the word “protectively” does not cause any prejudice to the assessee. Aggrieved by the order passed by ld. CIT(A), the revenue has filed this appeal before us.

5. We heard Ld. D.R. and perused the record. We notice that though the assessee has claimed that he has withdrawn money from his bank account during the financial years 2012-13 & 2013-14, it is not discernible from the orders passed by the tax authorities as to whether the relevant bank accounts were examined by them in order to verify the claim of the assessee. Secondly, we notice that the cash balance available with the assessee was assessed u/s 68 of the Act as “unexplained cash credit”. We are unable to understand as to how the Cash balance, an asset, could be considered as “Cash credit”. There should not be any doubt that cash balance will be declared in the debit side of the balance sheet. The question of assessing cash credit u/s 68 of the Act would arise in respect of liabilities shown in the Liabilities side

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of Balance Sheet. Further, the A.O. has assessed the same on protective basis as per the direction given by additional CIT. In the remand report furnished by the A.O. before Ld. CIT(A), he has clearly stated that the impugned amount was not assessed on substantive basis at any place. In this factual aspect, how an addition can be made on protective basis is also not clear. In totality there is lot of confusion with regard to the approach of the A.O. and the same has not been addressed by Ld. CIT(A). Under these set of facts, we are of the view that this issue requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) and restore the same to the file of the A.O. for examining the issue afresh, after affording adequate opportunity of being heard to the assessee.

6. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 23rd Mar, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 23rd Mar, 2022.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore