

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 393/Bang/2020
Assessment Year : 2016-17

Mr. Khadir Ahmed, # 836, Pipeline Road, Opp: BBMP Ward Office, Yeshwanthpur, Bangalore – 560 022. PAN: AFXPA8334H	Vs.	The Income-tax Officer, Ward – 6 [3][3], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Deepesh Waghale, CA
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	16-03-2022
Date of Pronouncement	:	28-03-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 28.02.2020 passed by the Ld.CIT(A)-6, Bangalore for Assessment Year 2016-17 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in sustaining a sum of Rs. 52,91,575/-reckoned at 25% of the cash deposits made in the bank account of Rs.2,11,66,300/- as estimated income of the appellant as against the addition of Rs.64,05,000/- made by the learned A.O. as unexplained cash deposits under the facts and in the circumstances of the appellant's case.

2.1 Without prejudice to the above, the income estimated by the learned CIT[A] at 25% of the cash deposits made in the bank account is highly excessive and requires to be reduced substantially.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. Brief facts of the case are as under:

2.1 The assessee filed his return of income for the A.Y. 2016-17 on 01-09-2016 declaring a total income of Rs.4,00,500/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961. The case was selected for limited scrutiny through CASS for the reason "whether the cash deposit has been made from disclosed sources" and notice u/s 143(2) was duly served on the assessee within the prescribed time.

2.2 Subsequently, the notice u/s 142(1) of the I.T Act, 1961 dated; 16-04-2018, 04-05-2018, 31-05-2018 and 22-11-2018 calling for details in connection with the return of income filed. The Ld.AO observed that the assessee has derived income from profits and gains of business or profession and capital gains. In response to the notices, the assessee furnished the details called for.

2.3 On perusal of details furnished by the assessee, he was issued a show cause notice on 12.12.2018 given an opportunity and calling for further clarification with regard to deduction claimed

u/s.54 under the head Capital Gains. The assessee showcaused, but the details called for were not produced by the assessee.

3. The Ld.AO observed that assessee sold property for Rs.40 Lakhs as per sale deed dated 09.02.2016 and claimed exemption u/s.54. It was observed that the assessee invested the capital gain amount in purchase of new ready built house for Rs.49 Lakhs on 24.04.2016. The Ld.AO was of the opinion that as on the purchase of new property, assessee was having two residential houses, therefore exemption u/s. 54 cannot be granted. It was also observed that assessee failed to provide details of expenditure incurred towards improvement amounting to Rs.7 Lakhs and acquisition amounting to Rs.8 Lakhs.

The Ld.AO observed that there was cash deposit of Rs.1,14,35,000/- as on 31.03.2016. From the details furnished by assessee, it was submitted that the cash deposits were out of the sale proceeds of the residential property. It was also submitted that assessee's business being sale of fruits on commission basis earned gross receipt of Rs. 10,30,000/-. The Ld.AO on perusal of the bank statement furnished by assessee observed that sum of Rs. 64,05,000/- remained unexplained. Accordingly, the same was added in the hands of the assessee.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) deleted the disallowance made by the Ld.AO u/s. 54 by observing as under.

“5.3 There is no restriction on the assessee to own more than one residential house property for claiming deduction under section 54 of the Income Tax Act, 1961. Such a restriction was placed for claiming deduction under section 54F of the IT Act, 1961 and not under section 54. In view of the above, the addition made by the assessing officer towards Long Term Capital Gain amounting to Rs. 40,00,000/ - is deleted. The Assessing Officer is directed

to re-compute the capital gain in accordance with section 54 of the IT Act, after verifying the cost of acquisition and improvement claimed by the appellant. The appeal on this ground is allowed.”

In respect of the cash deposits disallowed, the Ld.CIT(A) observed and held as under.

“6.3 Appellant was also asked to produce copies of the bills for purchase from the consigners or fruit growers as well as the sale invoice made to the retailers/vendors. However, the appellant could not produce any such evidence towards the purchase or sale of commission earned. In view of the above, the appellant's explanation that the cash deposits were made out of sale of fruits is not believable.

6.4 It is observed from the assessment order that the cash deposits amounted to Rs.1,14,35,000/- in the bank accounts of the appellant. The Assessing Officer gave allowances of Rs.40,00,000/- towards the sale produce from sale of residential property and gross receipts from sale of fruits on commission basis of Rs.10,30,000/-. Deducting these two amounts from the cash deposits, the Assessing Officer arrived at Rs.64,05,000/- as unexplained cash deposits and added the same as under the head of Income from Other Sources. However, during the course of the appeal proceedings the appellant submitted that the total receipts in his bank account including cheque and cash amounted to Rs.2,83,73,900 as Under:

S.No.	Particulars	ICICI	Canara	Total
1	Cash Deposits in the bank accounts of the appellant	1,52,32,000	59,34,300	2,11,66,300
2	Chq Deposits in the bank accounts of the appellant	69,93,600	64,000	70,57,600
3	Other Cash receipts- Drawings made and not deposited			1,50,000
	Total Gross Receipts	2,22,25,600	59,98,300	2,83,73,900
4	Income estimated at 2%			5,67,478

6.5 The appellant estimated his commission at 2% of the above receipts at Rs.5,67,478/- and offered the same as profit on his commission business. The Assessing Officer's

calculation of cash deposits was not correct. Further the Assessing Officer's allowance towards cash deposit on account of sale of property also wrong, because the sale proceeds from sale of property was received through DDs as evidenced from the sale deed dated 19/02/2016.

6.6 From the forgoing discussions it could be observed that neither the Assessing Officer's computation is correct nor the appellant's submission's that only 2% of cash deposits is his income could be believed. Some or the cash deposits made in the appellant's account had been transferred to various accounts through RTGS or cheques, which shows that the appellant is not the sole beneficiary of the cash deposits. In view of the above, 25% of the cash deposits found in the bank account of the appellant for the period 01/04/2015 to 31/03/2016 is estimated as his income for the assessment year 2015-16, which would amount to Rs.52,91,575 (25% of Rs.2,11,66,300/-). The appeal on this ground is partly allowed."

Aggrieved by the order passed by Ld.CIT(A), assessee filed appeal before this *Tribunal*.

It is the submission of the Ld.AR that the assessee was a fruit trader and also that the assessee's bank balance at the end of the year was just about equal to the amount the assessee had received from the sale of property. In other words, there was hardly any growth in bank balances to warrant such an addition under the head "Income from Business". He also submitted that the Ld.AO failed to appreciate that the assessee made payments by way of RTGS from the aforesaid bank accounts in which cash deposits were made. The extent of such RTGS payments, which represent payment to several Consignors of fruits/ Fruit growers amounts to Rs.2,56,47,600/-.

The Ld.AR submitted that assessee was also due to pay a sum of Rs.18,50,000/- to his creditors as on the end of the year. Thus the total extent of payments made and yet to be made by the assessee to the aforesaid consignors/fruit growers amounted to

Rs.2,74,97,600/-. It is submitted that the Ld.AO failed to consider this aspect of the matter and made addition u/s 68 of the Act.

The Ld.AR submitted that the income of Rs 5,50,495/- reported by the assessee under the head "Business" commensurate with the extent of Cash and Cheque deposits in his bank accounts, the extent of payments made by the assessee from his bank accounts by way of RTGS payment to the several Consignors of fruits/ Fruit growers who supply him fruits to sell as well as the extent of sundry debtors and creditors reported by the assessee as tabulated hereunder:

Total Gross Receipts as per the table above		2,83,73,900	
Add: Sundry Debtors at the end of the year estimated by the appellant		1,50,000	
Total - [A]		2,85,23,900	
Less : RTGS made to Vendors - ICICI	2,13,79,600		
Less : RTGS made to Vendors- Canara	42,68,000	2,56,47,600	
Less : Amount payable to Vendors		18,50,000	
Total amount Paid/Payable to Vendors as per tally extract of payments made enclosed herewith - [B]		2,74,97,600	
Difference between (A) and (B)		10,26,300	3.60% GP%
Less: Expenses		4,33,868	
Less: Depreciation		45,637	
Profit		5,46,795	1.92% NP %

The Ld.AR submitted that the income reported by the assessee is commensurate with the profits in his line of trade. From the table above, it can be seen that the gross profit percentages is above 3.6% which is well within the margin of 2 to 4% claimed by the assessee.

On the contrary, the Ld. DR submitted that the issue may be remanded for verification in terms of the submissions made by the assessee.

We have perused the submissions advanced by both sides in the light of records placed before us.

The Ld.CIT(A) observed that assessee could not produce any evidence towards the purchase or sale of fruits in respect of which commission has been alleged to be earned. It is observed that this is the basis of confirming the addition by the Ld.AO. Before us also nothing is placed on record to explain the sale and purchase of fruits.

Accordingly, we are of the view that the issue needs to be revisited by the Ld.AO. The assessee is directed to file all requisite details in support of his claim and the Ld.AO shall verify all the documents / evidences filed by the assessee.

Accordingly the Ld.AO shall decide the issue in accordance with law by granting proper opportunity of being heard to assessee.

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

Order pronounced in the open court on 28th March, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th March, 2022.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore