

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.684/Bang/2021
Assessment Year: 2017-18

Sri Ningappa Managuli D.No.26/12, Jathi Colony Hutti 584 115 Karnataka PAN NO : BQAPM1035J	Vs.	ITO Ward-2 Raichur
APPELLANT		RESPONDENT

Appellant by	:	Sri Narendra Sharma, A.R.
Respondent by	:	Sri Ganesh R. Ghale, A.R., Standing counsel for Revenue.

Date of Hearing	:	07.06.2022
Date of Pronouncement	:	07.06.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee directed against the order of CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 22.11.2021 for the assessment year 2017-18.

2. The first ground for our consideration is with regard to sustaining addition of Rs.5,80,936/- as unexplained cash credits u/s 69A of the Act in respect of the cash deposit made in the bank account of the assessee during the period of demonetization.

3. Facts of the case are that assessee had deposited a sum of Rs.13.72 lakhs into his bank account with Syndicate Bank from

April, 2016 to December, 2016. During demonetization period I.e. 9.11.2016 to 31.12.2016, assessee made a deposit of Rs.8.06 lakhs into his bank account in Specified Bank Notes (SBN) of Rs.500/- & Rs.1000/- each which ceased to be an illegal tender after 9.11.2016. The contention of the assessee's counsel is that this cash was generated out of his sale of liquor in his business. It is stated that assessee received cash after demonetization and deposited the same into bank account. It was contended that cash deposit from sales, which was duly accounted in his books of account and also VAT paid by the assessee. It was pleaded that the source of cash was not doubted, as such the section 69A of the Act cannot be applied. The Ld. CIT(A) observed that out of cash deposit of Rs.8.06 lakhs, an amount of Rs.2.25 lakhs was opening balance as on 9.11.2016 and balance amount of Rs.5,80,936/-. Though it was emanated from sale of liquor, which cannot be qualified to be called/recorded as sales in books of accounts. Such sales recorded are void and non-est in the eyes of law as the Central Government had withdrawn the legal tender of status of such SBNs w.e.f. 9.11.2016 as the assessee was not authorized to deal with such currency during that period and he sustained the addition of Rs.5,80,936/-. Against this, assessee is in appeal before me.

4. I have heard the rival submissions and perused the materials available on record. Similar issue came for consideration before this Tribunal in the case of Anantpur Kalpana Vs. ITO Koppal in ITA No.541/Bang/2021 dated 13.12.2021 in which it was held as under:-

“9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.

It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman 146 on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted."

5. In view of the above order of the Tribunal, I inclined to allow the claim of the assessee on similar reasons. This ground of assessee is allowed.

6. Next ground in this appeal is with regard to the sustaining of sum of Rs.73,781/-, out of original addition of Rs.1,47,562/- in respect of agricultural income treated as non-agricultural income.

7. Facts of the case are that assessee shown agricultural income at Rs.14,75,620/-. The assessee is said to be owned agricultural land to the extent of 24 acres. The assessee however, failed to substantiate the entire agricultural income with the proper documentary evidence like sale pattis, crop grown certificates from the concerned authorities. In the absence of the above, the AO disallowed 10% of agricultural income as income from other sources and taxed it. On appeal, Ld. CIT(A) sustained addition at 5% of agricultural income as non-agricultural income worked out at Rs.73,781/-. Against this assessee is in appeal before me.

8. I have heard the rival submissions and perused the materials available on record. Before me also, assessee not placed any documentary evidence to suggest that the entire amount of Rs.14,75,620/- has been earned out of agricultural operation carried out by the assessee in his land measuring about 24 acres. In the absence of proper evidence to suggest the claim of the assessee that he has earned said amount from the agricultural activities, I am not in a position to accept the claim of the assessee. Accordingly, I have no option but to sustain the addition sustained by the Ld. CIT(A) at Rs.73,781/-. Accordingly, this ground of the assessee is dismissed.

9. In the result, appeal filed by the assessee is partly allowed
Order pronounced in the open court on 7th June, 2022

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 7th June, 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.