

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

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

ITA No.621/Bang/2020
Assessment Year: 2015-16

Shri Naveen Shivaprakash Kottigere 337/a, 1 st Floor, 18 th Cross Upper Palace Orchards Sadashivanagar Bangalore 560 080 PAN NO : AJXPK6380R	Vs.	ACIT Circle 6(3)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Mallaha Rao, A.R.
Respondent by	:	Smt. Priyadarshini Baseganni, D.R.

Date of Hearing	:	27.07.2022
Date of Pronouncement	:	27.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of the Ld. CIT(A) dated 16.10.2019.

2. There was a delay of 188 days in filing appeal before this Tribunal. The assessee ought to have filed the appeal on or before 25.12.2019, however, the same has been filed on 30.6.2020. Thus, there was 188 days delay in filing the appeal before this Tribunal. It was explained that up to 15.3.2020, the delay was due to ill health

Page 2 of 6

of the assessee, thereafter, due to outbreak of Covid-19 Pandemic. Hence, assessee submitted that filing the appeal belatedly before this Tribunal on bonafide reasons as stated above and prayed that the delay may be condoned. In our opinion, there is a good and sufficient reason in filing the appeal before this Tribunal belatedly and accordingly appeal is admitted for adjudication.

3. The assessee has raised following grounds of appeal:-

- 1. On the facts and circumstances of the case, the order of the learned Commissioner of Income Tax (Appeals) for the Assessment Year 2015-16 vide order dated 16.10.2019 is not maintainable in law.*
- 2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), ought to have appreciate that, the source of cash deposit was explained before the assessing authority and CIT(A) by the appellant but both authorities without considering the same and levied tax and the same was confirmed by the CIT(A) is excessive and arbitrary and liable to be delete.*
- 3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), ought to have appreciated that, for the source of income of the appellant was explained along with the cash withdrawal and Deposit since the appellant is having any net banking facility and the bank account is maintained in Tumkur and books of accounts is maintained in Bangalore hence the appellant is carrying the cash for business purpose and the remaining amount was deposited in the bank, therefore the assessing authority without considering the same and treated the amount of Rs.59,06,448/-Cash deposit and levied the tax and the same was considered by the CIT(A) which is not correct and liable to be deleted.*
- 4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), ought to have appreciate that, on merit of the case the appellant is not liable to pay tax consequently under section 234A and 234B of the Income Tax Act and which is uncalled for and liable to be deleted, hence the order of the both authorities is bad in law.*
- 5. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), relied the judgments in the*

Page 3 of 6

case of Roshan di Hatti vs CIT 107 ITR 938 and Kale Khan Mohammad Hanif vs CIT 50 ITR 1 which is distinguishable fact and case of the Appellant, hence the order of the both authorities are liable to be set aside.

6. Without prejudice, the CIT(A) confirmed the levied tax, interest and under section 234A & 234B, penalty under section 271(1)(C) & 271(F) levied are excessive arbitrary and ought to be deleted in the interest of justice.

4. The crux of above grounds are that Ld. CIT(A) erred in sustaining addition of Rs.59,06,448/- made by AO u/s 68 of the Act.

5. The facts of the case in brief are as follows:- The assessee filed his return of income for A.Y.2015-16 on 20/11/2015, declaring income of Rs.30,37,790/-. The assessee's case was selected for limited scrutiny and notices; u/s 143(2) and 142(1) of the Act were served on the assessee. During the year under appeal, the assessee had cash deposits totaling Rs.59,06,448/- in his bank accounts. Before the AO, the assessee submitted that the source of the said cash deposits was prior withdrawals. It was also submitted that the assessee managed the hotel business of KRS Enterprises Pvt. Ltd. and transportation business of Jayapadma Motor Service and that cash was withdrawn because the assessee was travelling and required cash. The AO observed that the assessee's main source of income was rental income, which was received through banking channels and the business turnover was less than Rs.5 lakhs. The AO therefore held that the income profile of the assessee could not account for the cash deposits. Further the assessee was neither a partner nor director in either of the aforementioned enterprises and did not receive remuneration from them. Hence the withdrawals and subsequent redeposit of cash into the assessee's savings account could not be related to these two enterprises. The AR was asked to explain the nature of expenses for which the cash withdrawals were

Page 4 of 6

made but the AR submitted vide order sheet noting dated 27/11/2017 that the details could not be gathered. The assessee further submitted before the AO that the cash deposits were made to honour standing instructions given to the bank and to prevent cheques being dishonoured. However, in view of the differing explanations put forth by the assessee and the contradictions therein, the AO rejected the assessee's submissions as the assessee had not been able to explain the expenses for which withdrawals were made and give proper reasons for why the cash was redeposited without incurring the expenditure. Accordingly,-the AO added the amount of cash deposits of Rs. 59,06,448/- to the assessee's total income.

6. On appeal, Ld. CIT(A) also confirmed addition by observing that assessee has not satisfactorily explained the source of cash deposit into assessee's bank account. Against this, assessee is in appeal before us.

7. We have heard the rival submissions and perused the materials available on record. The main plea of the assessee that the assessee has raised before us is that the earlier cash withdrawals to redeposit to bank account. Further, it was submitted that assessee has been declaring income from so many years and particularly assessee brought on record the details of gross income declared by assessee in last 3 assessment years as follows:-

A.Y.	Gross Total income Amount (Rs.)
a) 2013-14	Rs.36,01,297/-
b) 2014-15	Rs.43,62,805/-
c) 2015-16	Rs.32,99,368/-

8. Thus, he submitted that the assessee is not penny less. He is having enough fund by way of savings from earlier years and also from earlier withdrawals from the bank accounts. However, the assessee has not placed the cash/fund flow statement or statement of affairs or balance sheet of earlier years so as to demonstrate the availability of sufficient fund to deposit into bank account of the assessee. Accordingly, in the interest of justice, we remit the entire issue in dispute to the file of AO for reconsideration after furnishing of necessary details by assessee. The assessee is at liberty to place any other evidences in support of his claim.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 27th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 27th Jul, 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.**