

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

Before Shri Chandra Poojari, Accountant Member

ITA No.559/Bang/2022 : Asst.Year 2017-2018

Sri.Mallappa Jayappa Kunchitigara Beedi Mallapura Mydolalau Shimoga - 577 243 PAN : BDDPJ0512M.	v.	The Income Tax Officer Ward 2 Shivamoga.
(Appellant)		(Respondent)

Appellant by : Sri.Siddesh Nagaraj Gaddi, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 16.08.2022	Date of Pronouncement : 16.08.2022
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ORDER

This appeal filed by the assessee is directed against the order of the CIT(A) dated 02.06.2022 for the assessment year 2017-2018. The assessee has raised the following grounds:-

“1. *The impugned order passed by the Learned CIT(A) and Assessing Officer, to the extent prejudicial to the Appellant, is not justified in law and on facts and circumstances of the case;*

2. *The Assessment Order and the Order of CIT(A) is bad in law as the same is passed without considering documents furnished during the course of proceedings; therefore liable to be set aside in the view of the rulings of the Hon'ble HC in the case of Salem Sree Ramavilas Chit Company (P.) Ltd. Vs. DCIT w.p. no. 1732 of 2020 and w.m.p. nos. 2006 and 2007 of 2020;*

3. *The Learned CIT(A) and AO have erred in law and on facts in making addition of Rs.10,08,708/- u/s 68 of the Act;*

4. *The Learned AO has erred in law and on facts in not appreciating the source of cash deposits as was duly evident considering the documents available on record during the course of proceedings;*

5. *The Learned CIT(A) and AO have erred in law and on facts in not appreciating that the nature of activities (being agriculture) of the Appellant requires him to transact in cash;*

6. *The Learned CIT(A) and AO have erred in law in not appreciating the fact that assesses operating in the sector are largely depended on cash as a mode of settlement and the provisions of the Act have also acknowledged the same;*

7. *Having accepted the returned agricultural income, the Learned CIT(A) and AO have erred in law and on facts in not accepting the source of cash deposits which are out of such activities;*

8. *The Learned CIT(A) and AO have not appreciated that deposits have been made prior to 15.12.2016 (The Taxation Laws (Second Amendment), 2016), i.e prior to introduction of 115BBE of the Act. And therefore, such amended provisions are not applicable to the facts in the present case.*

9. *The Learned AO has erred in raising demand vide Issue of notice under section 156 of the Act;*

10. *The Learned AO has erred in levying interest under section 234AB of the Act;*

11. *The Learned AO has erred in initiating penalty proceedings by issue of notice under section 271AAC and other provisions of the Act;*

(Total tax effect: Rs.7,79,227/-)

On the basis of above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and relief sought be granted.”

2. Ground 1 is general in nature, which does not call for any adjudication.

3. The brief facts of the issue are that the assessment was completed u/s 143(3) of the I.T.Act, wherein the Assessing

Officer made an addition of Rs.10,08,708 on account of unexplained cash deposit during the demonetisation period. Before the lower authorities, the assessee explained that the assessee had deposited a sum of Rs.19,76,605 into the bank account during the demonetisation period. According to the assessee, the assessee is owning 9.96 acres of land on which the assessee had cultivated Areca and shown agricultural income of Rs.9,67,792. The lower authorities was of the opinion that out of Rs.19,76,605, the assessee had only explained source of deposit of Rs.9,67,792, however, the balance amount of Rs.10,08,708 has not explained by the assessee, and accordingly, the same was treated by the Assessing Officer as unexplained income of the assessee. Before the CIT(A), the assessee made a plea that the total agricultural receipt was Rs.25,60,000 out of which an expenditure of Rs.15,92,208 has been incurred resulting into net agricultural income of Rs.9,67,792. According to the assessee, the entire amount of deposit of Rs.19,76,605 has been explained. However, the CIT(A) observed that the assessee has not substantiated that the entire agricultural income has been used to deposit into the bank account and accordingly, sustained the addition of Rs.10,08,708. Aggrieved, the assessee is in appeal before me. The learned DR supported the orders of the lower authorities.

4. I have heard rival submissions and perused the material on record. Ground 2 is with regard to non-granting of fair opportunity of hearing to the assessee. As seen from the

record, the CIT(A) issued notices on 21.01.2021, 06.04.2022 under new faceless scheme, and thereafter, one more notice was sent on 17.05.2022. It was recorded by the CIT(A) that the assessee filed response on 20.03.2021 and on that basis he proceeded to decide the appeal on merits. The CIT(A) also recorded that there was no response from the assessee for the notice issued on 17.05.2022. Now the contention of the learned AR that the assessee has not been given fair opportunity of hearing and pleaded that the issue may be remitted to the files of the CIT(A) to grant one more opportunity of hearing to the assessee to present his case properly. As seen from the records, the assessee has not filed any reply to the notice issued on 06.04.2022 and also the notice issued on 17.05.2022. In my opinion, it would be appropriate to remit the entire issue in dispute to the files of the CIT(A) for *de novo* consideration. Accordingly, we direct the CIT(A) to decide the entire issue afresh after affording a reasonable opportunity of being heard to the assessee. The assessee shall cooperate with the Revenue and shall not seek unnecessary adjournments in the matter. The assessee shall furnish the necessary submissions in support of its case. The CIT(A) shall afford a reasonable opportunity of hearing before a decision is taken in the matter.

5. Since I have remitted the issue in dispute to the files of the CIT(A) for fresh consideration, I am refrain from going into the merits of the other grounds raised by the assessee before me.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 16th day of August, 2022.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore; Dated : 16th August, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore