

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.415/Bang/2022
Assessment Year : 2017-18

Sasanur Hospital, Station Road, Swamy Chidanand Road, Vijapur. PAN : AAWFS 1398 F	Vs.	The Pr. Commissioner of Income Tax, Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ashok Mandur, C.A
Revenue by	:	Shri Vilas Shinde, CIT (DR)

Date of hearing	:	26.09.2022
Date Pronouncement	of :	27.09.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member :-

This is an appeal filed by the assessee against the order passed by the Id.Pr.CIT dated 29/03/2022.

2. The sum and substance of the grounds of appeal of the assessee is challenging the revisionary powers exercised by the

ld.Pr.CIT u/s 263 of the Act. for passing a fresh assessment order after considering the certain points as per his order dated 29/03/2022.

3. The brief facts of the case are that the assessee filed return of income on 07/11/2017 clearing total income of Rs.91,86,160/-. The case was selected for scrutiny under CASS and other statutory notices were issued to the assessee. The assessee filed reply which is placed at paper book page nos. 3 to 11. The AO observed that during demonetization period, the assessee firm had deposited Rs.2,15,80,640/- in its current account bearing No.913020029514020 of Axis Bank, Bijapur. This includes old and new currency which was deposited daily collections from the hospital. During the demonetization period, the medicine shops/doctors were allowed to collect the old currency notes (SBN) vide Ministry of Finance, Govt. of India's Notification in F.No.10/03/2016-Cy.I, dated 08/11/2016. The AO also observed that there was a delay in payment of employees contribution u/s 36(1)(va) of the Act and certain other disallowances were made by the AO and completed the assessment. Later on, the ld.Pr.CIT called . the assessment records and observed that the AO has not done full enquiry as per the Circular issued by the CBDT, in this regard, specifically in the cash deposited during the demonetization period, he has also observed that the AO has not verified the claim of liability in respect of Dr.H.T Memorial Trust of

Rs.56,59,466/- and he also observed that there is cash embezzlement of Rs.80,97,690/- and further AO has also not verified to not charging interest on interest free loan given to Shri TP Sasanur. Accordingly show cause notice was issued to the assessee on 03/02/2022 and none appeared from the assessee side and again show cause notice was issued on 03/03/2022 and notice was also sent through email on 04/03/2022 but non appeared, thereafter the Id.Pr.CIT presumed that assessee does not wish to make any submissions in this regard. Accordingly, he decided the matter on the basis of materials available on record. He relied on the following judgments.

1. Malabar Industrial Co., Ltd [2000] 243 ITR 83 (SC)
2. Daniel Merchants P. Ltd. 2017- TIOL-455-SC-IT
3. Rajmandir Estates P Ltd. (2017) 245 Taxman 127 (SC)
4. Ashok Logani (2012) 347 ITR 22 (Delhi)
5. Gee Vee Enterprises (1975) 99 ITR 375 (Delhi)
6. Vedanta Ltd. (2021) 279 Taxman 358 (Born)
7. V. K. Bharathi (2019) 102 taxrnann.com 255 (Kar)
8. Rajalakshmi Mills Ltd. v. ITO (2009) 121 ITD 343 (Chennai)(SB)
9. Lokesh M. (2021) 187 ITD 342 (Bang)

4. After discussing in detail in his order, he observed that the order passed by the AO is erroneous and prejudicial to the interest

of the Revenue, accordingly he directed the AO to make fresh assessment in accordance with law and it was also directed to the AO in regard to cash deposit he has to follow the guidelines issued by CBDT during the demonetization period and pass the order accordingly.

5. Aggrieved from the order of the Id.Pr.CIT, the assessee filed appeal before us.

6. The Id.AR submitted that the Id.Pr.CIT is not justified in exercising his power u/s 263 of the Act. During the course of assessment proceedings all the compliances were made by the assessee in regard to the notice issued by the AO u/s 142(1). The reply filed by the assessee is also placed on the paper book No.3 to 11. The AO has not disputed on any of the issues as observed by the Id.Pr.CIT and the AO was satisfied from the submissions, accordingly he has passed the assessment order u/s 143(3) of the Act. Therefore there is no erroneous order passed by the AO which is prejudicial to the interest of the revenue. He has also submitted that the AO has wrongly noted the figures on cash deposits during the demonetization period in the Axis Bank account. The Id.AR of the assessee also filed paper book containing 01 to 20, which is placed on record.

7. The ld.DR relied on the order of the ld.Pr.CIT and he submitted that the AO has not done proper enquiry as per CBDT guidelines, especially for cash deposited during the demonetization period and he has also not carried out any enquiry in respect of the points pointed out by the ld.Pr.CIT. Therefore, the order passed by the AO is erroneous and prejudicial to the interest of the revenue. After discussing in detail, the ld.Pr.CIT directed the AO to make fresh assessment in accordance with law and set aside the order passed by the AO u/s 143(3) of the Act and the case law relied on by the ld.AR is not applicable in the present set of facts.

8. After hearing both sides and perusing the entire material on record and examining the order of the lower authorities, we observe that the AO has not examined the details with respect to cash deposits made during the demonetization period in his bank account as per the CBDT guidelines with the supporting documents, he has submitted only a letter and certificate from the bank, which is placed at page No.12 & 13 of paper book and we do not find anywhere that there was any enquiry made by the AO in this regard viz. cash opening, availability of cash and application of cash during the demonetization period. We also observe that the AO has not verified the cash deposited by the partners and also loan taken from Dr. HT Memorial Trust and cash embezzlement and interest free advances to related persons. All these things are not been examined by the AO. The ld.DR has

rightly pointed out that Id.Pr.CIT has rightly exercised his revisionary powers u/s 263 of the Act and the AO has failed to do discharge his duty in accordance with law. Firstly the AO is investigating officer thereafter he is adjudicating officer. The order passed by the AO is erroneous and prejudicial to the interest of the revenue. Therefore, the assessment order passed u/s 143(3) of the Act has rightly been set aside by the Id.Pr.CIT in exercising his jurisdictional power is upheld. The similar issue has been decided by the coordinate bench of the Tribunal in the case M/s Bhoopalam Marketing Services Pvt. Ltd., in ITA No.375/Bang/2002, the relevant part of the order is as under:-

“7. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has deposited Rs.298,08,080/- during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of INR 5,82,76,300/- as income of the assessee u/s. 68 of the income tax act, by passing assessment order u/s. 144 of the Act. The Ld.AO made such addition as the assessee could not file requisite details as the notice was issued to the email address that was not functional. In the interest of justice, we deem it proper to remand the issues back to the Ld.AO for a de novo verification.

7.1 We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number

03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II. These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

8. In 1 of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

8.1 The instruction dated 21/02/2017 that the assessing officer basic relevant information e.g. monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious

purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

8.2 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash.

The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee may be granted physical hearing in order to justify its claim. In the result, the appeal filed by assessee as well as the appeal of revenue stands allowed for statistical purposes.”

9. Respectfully following the decision in the case of M/s Bhoopalam Marketing Services cited supra, we upheld the order passed by the ld.Pr.CIT and the AO is directed make fresh assessment in accordance with law following the CBDT guidelines in regard to cash deposited during the demonetization period The AO is also directed to carry out his examination as per the decision mentioned in the case of Bhoopalam Marketing Services cited supra.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in court on 27th day of September, 2022

Sd/-

Sd/-

(BEENA PILLAI)

(LAXMI PRASAD SAHU)

Judicial Member

Accountant Member

Bangalore,

Dated, 27th September, 2022

/ vms /

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

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.