

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

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

ITA No.385/Bang/2022
Assessment Year : 2017-18

Shri Umedmal Sonmal Mutha, 1, Parshwanath Road, Gadag - 582 101. Karnataka. PAN : ACGPM 5861 M	Vs.	The Pr. Commissioner of Income Tax, Hubballi.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Preethi Patel, Advocate
Revenue by	:	Shri Manjunath Karkihalli, CIT (DR)

Date of hearing	:	22.09.2022
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 19/03/2022 on the following grounds of appeal:-

"1. The order of the Hon'ble Principal Commissioner of Income Tax, Hubballi, is opposed to law and facts of the case.

2. The Hon'ble Principal Commissioner of Income Tax, Hubballi, erred in holding that the assessing officer has not conducted enquiry/ investigation including source of cash deposits before concluding the assessment.

3. The exercise of jurisdiction u/s 263 by the Hon'ble Principal Commissioner of Income Tax, Hubballi, is bad in law.

4. The Hon'ble Principal Commissioner of Income Tax, Hubballi, ought to have appreciated that during the assessment proceedings the assessee had produced all material evidence in support of its contentions and the same was examined, hence, there is no error committed by the assessing officer in passing the assessment order prejudicial to the interest of revenue.

5. The appellant craves for leave to add to, delete from or amend the grounds of appeal.

Total tax effect – Rs.18,74,250/-"

2. The brief facts of the case are that the assessee filed return of income on 30.10.2017 declaring at income of Rs.5,78,960/-. The case was selected for scrutiny under CASS for verifying the cash deposits during demonetization period and thereafter statutory notices were issued to the assessee. The assessee was engaged in electrical business. The assessee furnished cash book, bank account, trading account and balance sheet, the information was also collected from Canara Bank u/s 133(6) of the Act, wherein he had maintained OD account with the bank and returned income was accepted by the AO in 143(3) assessments.

3. Later on, the ld.Pr.CIT Called the record and observed that AO has specifically not examined the cash deposited during the demonetization period, it was necessary for the AO to examine the source of cash deposits and he has to carry out necessary enquiries which has not been made as per law. He has also not obtained the required details and did not carry out necessary analysis of the source of cash. Accordingly show cause notice was issued to the assessee through email and which was delivered on 08/03/2022 and separate notice was also issued via speed post, in which it was specifically stated that no further opportunity would be granted but no response was received from the assessee. Thereafter the ld.Pr.CIT decided the issue presuming that the assessee is not wish to make any submissions in this regard and the matter will be decided based on the material available on record. Even the assessee did not choose to furnish any reply. Accordingly, the matter was decided on the basis of material available on record. The ld.Pr.CIT relied on the judgment of Cochin International Airport Ltd., reported in 92 taxmann.com 277. The Hon'ble ITAT Cochin Bench has explained the provisions of sec. 263 of the Act. Further, the ld.Pr.CIT also 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 taxrann.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, 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.

5. Aggrieved from the order of the ld.Pr.CIT, , the assessee is before ITAT.

6. The ld.AR vehemently argued the case and she submitted that during the course of assessment proceedings u/s 143(3) of the Act details were submitted by the assessee through mail to the AO. All the notices issued by the AO during the course of assessment proceedings were complied by the assessee and the AO was fully satisfied and no defects was observed. The AO had also called information from bank by issuing show cause notice u/s 133(6) of the Act and no defects were pointed out by the AO. Therefore ld.Pr.CIT sas not justified in setting aside the order of the AO. The ld.AR filed paper book containing page nos. 1 to 51.

7. On the other hand, the ld.DR relied on the order of the ld.Pr.CIT and he further submitted that the case was selected for scrutiny for verification of cash deposited during the demonetization period under CASS, whereas the AO has not examined in details viz. purchase bills/sales bills, stock position, source and application of cash and opening cash balance as on 1st day of financial year, analysis of the cash balance during the demonetization period. The ld.Pr.CIT has rightly observed from the records and he has rightly exercised his jurisdictional power as per Explanation -2 to sec.263 of the Act.

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. The AO should have been examined in depth the source of the cash deposited during the demonetization period. The ld.DR has rightly pointed out that ld.Pr.CIT has rightly exercised his revisionary powers u/s 263 of the Act and the AO has failed to discharge his duty in accordance with law. Therefore, the assessment order passed u/s 143(3) of the Act has rightly been set aside by the ld.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, and the AO is also directed to carry out his examination as per the decision mentioned in the case of Bhoopalam Marketing Services cited supra and decide the issue in accordance with law.

10. In the result, appeal of the assessee is treated as allowed for statistical purposes.

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

Sd/-

(BEENA PILLAI)
Judicial Member
Bangalore,
Dated, 27th September, 2022
/ vms /

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

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.