

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri Laliet Kumar, Judicial Member**

ITA No.233/Hyd/2020		
Assessment Year: 2017-18		
Lakshmana Puvvada Flat No.404, Jaya Bharati Towers, Dwarakapuri Colony, dilsukhnagar Hyderabad-500 060  PAN : AKHPP5047P	Vs.	ITO, Ward-9(4) 2 <sup>nd</sup> Floor, ITO Towers A.C.Guards Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:		Shri S.K.Gupta, Advocate
Revenue by:		Shri A.P Babu, Sr.AR
Date of hearing:		26.09.2022
Date of pronouncement:		27.09.2022

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 16.12.2019 of Learned Commissioner of Income Tax (Appeals)-7, Hyderabad relating to AY 2017-18.

2. Facts of the case, in brief, are that the assessee is an individual and has not filed his return of income for the impugned assessment year. As per the information available with the Income tax Department, it was noticed that the assessee Shri Lakshmana Puvvada had deposited cash of Rs.39,80,000/- during the period between 09.11.2016 to 31.12.2016 in his bank account bearing No.2402051000175 with United Commercial Bank, Karmanghat, Hyderabad. Since the assessee had not filed return of income for the impugned assessment year within due date u/s. 139(1) of the I.T.Act. the AO issued notice u/s. 142(1) of the I.T.Act to the assessee. Despite number of opportunities granted, the assessee

neither filed the return of income nor responded to the letter issued by the AO for which the AO issued final show cause letter asking the assessee to explain as to why order u/s. 144 should not be passed. Again there was no response from the side of the assessee. In view of the persistent non-compliance of assessee to the statutory notices issued and the final show cause notice issued, the AO made addition of Rs.52,07,200/- u/s. 69A r.w.s. 115BBE of the I.T.Act to the total income of the assessee and determined the income at Rs.52,07,200/-.

3. Before the Id.CIT(A), the assessee filed written submission according to which he has not made any cash deposit in his cash credit account and the cash of Rs.39,80,000/- was deposited on 24.11.2016 by one Shri Narahari Satyanarayana, Siri Microfinance, Kurnool who misused the bank facility. It was submitted that Shri Narahari Satyanarayana had earlier facilitated the sanction of cash credit limit from the UCO bank, Karmanghat branch, Hyderabad and with this acquaintance he misused it perversely to transfer the amount to M/s. Zaveri Gold, Hyderabad by way of RTGS and purchased gold. It was submitted that after knowing this, the assessee approached the bank and asked the details of deposit and connected documents like names of persons who deposited the amount on 24.11.2016, the relevant pay in slips, credit vouchers and copy of the RTGS application form and copy of the cheque used to transfer money via RTGS to establish that fraud took place and to approach concerned authorities. However, the bank refused to part with the information for which the assessee took recourse to RTI Act and filed an application to the CPIO Branch Manager for furnishing the information along with CCTV footage of the day on 18.10.2019. Since information was not given, the assessee approached the Higher Authorities to get the documents to prove fraud. The assessee further submitted that the Gold Shop, M/s.

Zaveri Gold is mandated to obtain the signature of the customer/person on the bill which is evident from the tax invoice. This also proves the genuineness of the transaction and unless the customer signs in token of acknowledgment, the transaction is doubtful. It was accordingly submitted that the assessee should be given some more time to obtain the authenticated documents from the bank to prove his case.

4. However, the ld.CIT(A) was not satisfied with arguments advanced by the assessee and uphold the action of the AO by observing as under:-

*"5. I have considered the submissions of the appellant, findings of the Assessing Officer in the order of the assessment carefully. All the grounds of appeal are against addition of Rs. 52,07,200/- made u/s. 69A rws 115BBE of the IT Act treating the cash deposits as unexplained money. The contention of the AR of the appellant was that this money does not belong to the appellant. In support of the claim, AR of the appellant submitted that one person Sri. Narahari Satyanarayana, Kurnool misused the bank facility during the cash deposits made on 24-11-2016 which falls in the demonetization period. However, no confirmation was produced to prove that Sri. Narahari Satyanarayana misused the appellant's bank account. On perusal of the bank account, I find that huge cash was deposited during the demonetization period and also during the subsequent period of the Financial Year. There were certain credits also in the bank account which was not explained by the appellant with any documentary evidence. The contention of the appellant that the gold shop owner of M/s. Zaveri Gold to whom the money was transferred by cheque from the appellant's bank account on 24.11.2016 did not obtain the signature of the customer on the tax invoice bill and hence the transaction belong to the appellant is not acceptable. The tax invoice mentions that the gold was sold to Sri. Balaji Medical Surgicals which' happened to be the appellant's proprietary concern and the cash deposit made on 24.11.2016 was transferred to Mis. Zaveri Gold on 24.11.2016 through RTGS. This apparently shows that the appellant had deposited money in cash and cheques on various dates in the appellant's bank account for which the explanation given is not satisfactory. Hence, I confirm the addition made by the assessing officer. Hence, the ground of appeal raised on this issue is rejected."*

5. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds.

1. The ld.CIT(A) erred on facts and law by upholding the order of the AO.

2. *The ld.CIT(A) erred on facts and law by confirming the addition of Rs.52,07,000/- u/s.69A.*

6. The ld. Counsel for the assessee submitted that the AO has passed the ex-parte order and the ld.CIT(A) without considering the submissions made before him sustained the addition made by the AO, which is not justified. He accordingly submitted that one more opportunity should be granted to the assessee to substantiate his case.

7. The ld. DR on the other hand heavily relied on the order of the ld.CIT(A). He submitted that assessee has not filed any documentary evidence to substantiate that any fraud has taken place. He submitted that when the money was deposited in the bank account in the year 2016, asking the details in the year 2019 does not show the bonafideness of the assessee. He accordingly submitted that since the order of the ld.CIT(A) is a speaking one, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.52,07,200/- u/s.69A r.w.s. 115BBE on the ground that assessee could not explain the nature and source of cash deposit of Rs.52,07,200/- made in the bank account of the assessee during the FY 2016-17 which includes an amount Rs.39,80,000/- being cash deposit made during the demonetization period i.e between 09.11.2016 to 31.12.2016. We find the ld.CIT(A) upheld the action of the AO, the reason of which have already been reproduced in the preceding paragraph. It is the submission of the ld. Counsel for the assessee that the so called cash deposits in the bank account were not made by the

assessee and an amount of Rs.39.8 lakhs was deposited on 24.11.2016 by Shri Narahari Satyanarayana, Siri Microfinance, Kurnool, who misused the bank facility. It is his submission that matter may be restored to the file of the AO for fresh adjudication.

9. We find in the instant case, there is no dispute to the fact that cash of Rs.39,80,000/- was deposited during the demonetization period i.e between 09.11.2016 to 31.12.2016. There is also no dispute to the fact that the total amount of cash deposited during the FY 2016-17 is Rs.52,07,200/-. It is also undisputed fact that number of notices /reminders were issued to the assessee during assessment proceedings giving opportunity to the assessee to substantiate his case and despite number of opportunities granted including the final show cause notice issued proposing the completion of assessment u/s. 144 of the I.T.Act determining the total income at Rs.52,07,200/-, the assessee never bothered to appear before the AO which shows his scant regard to the statutory notices. It is also an admitted fact that despite the amount of Rs.39,80,000/- allegedly deposited into the cash credit account of the assessee during the demonetization period by one shri Narahari Satya Narayana, the assessee never raised any objection before the bank authorities and indirectly accepted the same and was continuing transaction in the said bank account. Since the assessee had given his mobile number to the bank, the bank must be sending SMS and therefore the assessee cannot be said that he was not aware of the cash deposit in his bank account till 2019. Therefore, it cannot be said that assessee was not aware of the so called misutilization of the bank account by one Shri Narahari Satyanarayana. Further, assessee in his paper book has also filed an invoice copy of Jhaveri Gold placed at page 8 of the paper book. If the assessee was not aware of the same transaction, how it came to his position also remains doubtful. On being questioned by the Bench as to whether any police

complaint has been filed for misutilization of the bank account of the assessee by somebody else, the ld. counsel for the assessee stated that no such complaint has been filed. Under these circumstances, the request of the assessee that the matter may be restored to the file of the AO/CIT(A) does not carry any force. It is also to be mentioned here that an amount of Rs.38,25,063.25/- was transferred through RTGS to Zaveri Gold by cheque No.666113 which belongs to the assessee and the assessee cannot say that the cheque was also fraudulently taken by Shri Narahari Satyanarayana. No evidence whatsoever was filed before the ld.CIT(A) except the story and some RTI application. All these facts clearly indicate that assessee is creating the story, which under the facts and circumstances of the case cannot be believed. It is not the case of the assessee that the cheque was also stolen and mis-utilized, and if so, then why any police complaint was not registered even till today. In this view of the matter and in absence of any other evidence before us to show the source of such huge cash deposits during demonetization period, we do not find any infirmity in the order of the ld.CIT(A) sustaining the addition to the extent of Rs.39,80,000/-.

10. However, the explanation of the assessee for the balance amount of Rs.12,27,200/- which was admittedly deposited on various dates during the year finds some force. The assessee here is engaged in the business of sale of medical and surgical goods as per the regular business of the assessee. Since the assessee had not filed his return of income and is engaged in the business of sale of surgical and medical equipments, therefore, addition of the whole amount is not justified and estimation of profit @5% on such deposit of Rs.12,27,200/- under the facts and circumstances of the case, in our opinion, will meet the ends of justice. We hold and direct accordingly. The AO shall restrict the

addition to the tune of Rs.61,360/- and the assessee gets relief of Rs.11,65,840/-

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 27<sup>th</sup> September, 2022.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 27<sup>th</sup> September, 2022.

**Thirumalesh/sps**

Copy to:

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3	CIT(A)-7, Hyderabad
4	Prl.CIT-7, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*