

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

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

ITA No.546/Bang/2022
Assessment Year : 2017-18

Balaji Auto Enterprises Mysore Pvt. Ltd., No.19, 1 st Main, Swimming Pool Road, Saraswathipuram, Mysuru-570 009. PAN – AADCB 9614 M	Vs.	The Asst. Commissioner of Income-tax, Circle-1(1) & TPS Mysuru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, Advocate
Respondent by	:	Smt. Priyadarshini Baseganni, Addl.CIT (DR)

Date of Hearing	:	18.10.2022
Date of Pronouncement	:	20.10.2022

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER :

This appeal filed by the assessee is against the order of CIT(A)-2, Panaji dated 04.05.2022 for the assessment year 2018-19 with the following grounds of appeal:-

"1. The order passed by the learned Commissioner Income Tax(Appeals), passed under section 250 of the Act is so far as it is against the Appellant is opposed to law, weight of evidence,

natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies itself liable to be assessed to an income of Rs. 3,01,72,281/- against the income returned of Rs. 2,79,02,690/- on the facts and circumstances of the case.

3. The learned CIT(A) was not justified in appreciating that the cash deposited of Rs. 8,33,450/- was out of business receipts and the same are available in the audited financials, on the facts and circumstances of the case.

4. The authorities below failed to appreciate that the cash received was from sale of cars and consequently business receipts could not be held as being unexplained, on the facts and circumstances of the case.

5. The learned CIT(A) was not justified in appreciating that the cash received during the demonetised period was due to reasonable cause and the same was legitimate tender until 30/12/2016, and no inference ought to have been made that the said cash was unexplained, on the facts and circumstances of the case.

6. The learned CIT(A) ought to have appreciated the submissions filed online and available on record, to draw an erroneous inference that the cash deposited was unexplained, on the facts and circumstances of the case.

7. The appellant craves to add, alter, amend, substitute, change and delete any of the grounds of appeal.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

2. The brief facts of the case are that the assessee filed return of income 30/10/2017 declaring an income of Rs.2.79 crores. The assessee company engaged in the business of car sales and services and had derived income from business. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings, it was noticed that the assessee had deposited cash into the bank of Rs.31,59,000/- in old currency during demonetization

periods. As per information received from the bank, the assessee was asked to produce source of cash deposit. In response, the assessee produced cash book and source of income. It was observed that there was opening cash balance on 08/11/2016 of Rs.23,25,515/-, therefore, the difference of Rs.8,33,450/- was added u/s 69A of the Act into the total income of the assessee.

3. The AO further observed that the assessee had claimed in the profit and loss account under the head 'test drive expenses' of Rs.65,83,275/- and reimbursement expenses of an amount of Rs.29,91,000/- under the head 'reimbursement of expenses'. The AO made ad-hoc disallowance of 15% on the said expenses and completed the assessment accordingly.

4. Aggrieved from the order of the AO, the assessee filed appeal only in respect of addition made towards sec. 69A of the Act but he did not challenge the ad-hoc addition made by the AO.

5. After considering the submission, the CIT(A) dismissed the appeal of the assessee.

6. The Id.AR submitted that the cash deposits are explained before the AO as well as before the CIT(A) but he did not consider the same. The cash books were produced before the

AO and the business receipt which has been deposited in the bank account of the assessee was also produced.

7. On the issue of ad-hoc addition, he submitted that he had sufficient vouchers to show that there was genuine expenditure incurred by the assessee.

8. On the other hand, the Id.DR relied on the order of the lower authorities & submitted that the additional ground should not be admitted.

9. After hearing both sides, perusing the entire materials on record and after examining the orders of the lower authorities, we observe that as per ground No.3 to 6, the assessee has challenged the addition made on cash deposit during demonetization period of Rs.8,30,000/-. We observe from the order of the lower authorities that this issue should have been examined in the light of CBDT Circular dated 09.08.2019 in F.no.225/145/2019 ITA II but the AO has not done so. 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.”

9.1 Respectfully following the decision in the case of M/s Bhoopalam Marketing Services cited supra, the AO is directed make fresh examinations on the cash deposited during the demonetization period in accordance with law and as per the CBDT guidelines. The AO is directed to give reasonable opportunity of being heard to the assessee. The assessee is also directed to produce necessary documents/evidence for substantiating his case for early disposal of the appeal and not to seek unnecessary adjournments.

10. On going through the additional ground raised by the assessee in regard to ad-hoc addition, since this issue is not emanating from the order of the CIT(A) and it is not a legal issue, it is totally depends upon the facts of the case, therefore, it cannot be admitted for adjudication by us. The assessee has filed appeal before us against the order passed by the CIT(A). Accordingly this additional ground of appeal is dismissed.

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

Order pronounced in the open court on 20th October, 2022.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 20th October, 2022.
Vms

Copy to:

- 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.
14. Dictation note enclosed.....