

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.535/Bang/2021
Assessment Year: 2017-18

Mrs. Jigana No.G-65, P.C. Road Balepet Cross Bengaluru 560 002  <b>PAN NO : AFCPJ0012N</b>	<b>Vs.</b>	ITO Ward 5(2)(5) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Narendra Kumar Jain, A.R.
<b>Respondent by</b>	:	Shri Ganesh R. Ghale, Standing Counsel

<b>Date of Hearing</b>	:	27.10.2022
<b>Date of Pronouncement</b>	:	27.10.2022

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of CIT(A) dated 1.9.2021 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

- The order of Honourable Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT(A)" for brevity) to the extent prejudicial to the Appellant is bad in law.*
- The learned CIT(A) has erred in confirming the action of Assessing Officer ('AO') in passing the assessment order without adhering to the principles of natural justice and without issuing notice u/s 129 of the Act.*

**GROUND RELATING TO CASH DEPOSIT**

- The CIT(A) has erred in confirming the action of the AO in making addition of Rs.16,00,500/- u/s 69A of the Act without appreciating that;*

- a) *Section 69A is not applicable to the Appellant once the source of cash deposits are relatable to earlier years income and past savings;*
- b) *Earlier years income and past savings have already been offered to tax in earlier years and therefore treating the cash deposits made out of such earlier year income and past savings as unexplained income has led to double taxation.*

**GROUND RELATING TO SECTION 115BBE**

4. *The CIT(A) has erred in confirming the action of AO in computing the tax u/s 115BBE at 60% plus applicable surcharge and cess without appreciating that:*
  - (a) *The amendment to Section 115BBE is effective from December 15, 2016 and therefore not applicable.*
  - (b) *The increased tax rate provided under section 115BBE of the Act cannot be given retrospective effect as the amendment is substantive in nature.*

**GROUND RELATING TO INTEREST**

5. *The CIT(A) has erred in confirming the action of the AO in levying interest under section 234A and 234B of the Act of Rs.99,624/- and Rs.3,98,496/- respectively. On the facts and in the circumstances of the case, interest under section 234A and 234B is not leviable, being consequential in nature.*
2. At the time of hearing, the Ld. A.R. has pressed only ground No.3 and not pressed any other grounds. Accordingly, ground Nos.1, 2, 4 & 5 are dismissed as not pressed.

3. Facts of the case are that in this case, the assessee, an individual, filed her Return of Income for A.Y, 2017-18 on 30.03.2018 declaring total income of Rs. 3,36,780/-. Subsequently, the case was selected for limited scrutiny under CASS for the reason "Cash deposit during demonetization period". The assessee has made cash deposits of Rs. 13,70,000./- in his saving bank account maintain with State Bank of India having account number 64044568147 and a sum of Rs. 2,30,500/- in his saving bank account maintain with Indian Bank/IDBI Bank during the demonetization period. Accordingly, notice u/s 143(2) of the Income-

tax Act,1961 ['the Act' for short] was issued on 28.09.2018 which was duly served to the assessee. But there was no response from the assessee to the above notice. Further notice u/s 142(1) of the Act, dated 25.10.2019 and 31.10.2019 were issued to the assessee giving another opportunity to substantiate the sources of cash deposits on her bank account during the demonetization period. However, the assessee once again failed to submit any details in compliance to the said notices. Finally, a show cause notice was issued to the assessee on 18.11.2019 but assessee has not made any reply. After perusal the facts of the case, the case has been completed u/s 144 of the Act dated 26.11.2019 with addition of Rs. 16,00,500/- u/s 69A of the Act being the cash deposited in his saving bank account as unexplained money.

4. The Ld. CIT(A) observed that assessee is not able to justify the source of cash deposit during the relevant assessment year whether they are from known sources or made any efforts to justify its nature. According to the Ld. CIT(A), the assessee has not furnished sufficient evidence to support the source of cash deposit during demonetization period at Rs.16,00,500/-. Accordingly, addition was sustained by the Ld. CIT(A). Ld. A.R. submitted that the assessment in this case was done u/s 144 of the Act i.e. Ex-parte assessment order and the Ld. CIT(A) has also not given fair opportunity of hearing to the assessee and the assessee was not able to furnish all the necessary information before Ld. CIT(A) as this was done through faceless. He sought an opportunity of hearing before the AO to produce all the necessary documents to support the source of deposit. Further, he submitted that the assessee has filed additional evidence before the Ld. CIT(A) along with application for admission of additional evidence, which are listed before us in paper book page Nos.95 to 102, which were not properly considered by the Ld. CIT(A).

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Hence, he requested that the issue may be remitted to AO for fresh consideration.

5. The Ld. D.R. opposed the argument of Ld. A.R. and supported the order of lower authorities and submitted that assessee has not used the opportunity of hearing given to her.

6. I have heard the rival submissions and perused the materials available on record. Admittedly, the assessment order was passed by the AO ex-parte u/s 144 of the Act. There was no proper opportunity of hearing to the assessee. Further, assessee has filed additional evidence before Ld. CIT(A) listed in paper book page Nos.95 to 102. There was no discussion about these documents in the order of Ld. CIT(A). In my opinion, fair opportunity of hearing is to be given to the assessee before deciding the issue. Hence, in the interest of justice, I remit the entire issue to the file of AO for fresh consideration. The assessee is at liberty to place necessary evidences to support her case to explain the source of deposit into various bank accounts.

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

Order pronounced in the open court on 27<sup>th</sup> Oct, 2022

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 27<sup>th</sup> Oct, 2022.  
VG/SPS

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.**