

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU (SMC) "B" BENCH, BENGALURU**

Before Shri Laxmi Prasad Sahu, Accountant Member

ITA No. 451/Bang/2021 (Assessment Year: 2017-18)		
Shri A. Manoharan #52/53, Ground Floor Anam Plaza, 8th F. Main Road 3rd Block, Jayanagara Bengaluru 570001 PAN - AEGPM1479K	vs	The Income Tax Officer Ward 4(3)(3) Bengaluru
(Appellant)		(Respondent)

Assessee by:	Shri Hiran Krishnaswamy, Advocate
Revenue by:	Shri Ganesh R. Gale, Standing Counsel

Date of hearing:	11.01.2023
Date of pronouncement:	20.01.2023

ORDER

Per: L.P. Sahu, A.M.

This is an appeal filed by the assessee against the order of the learned CIT(A), NFAC, Delhi dated 30.03.2021 for AY 2017-18.

2. There is a delay of 116 days in filing the appeal before the Tribunal. The assessee has filed an application for condoning the delay wherein it is submitted that the assessee was undergoing eye treatment for Peripapillary CNVM. The assessee had to undergo eye surgery on 14.05.2021 and advised rest for one month. Further due to Covid-19 restrictions the assessee could not file the appeal within the stipulated time. Form the above submission of the assessee, I observe that the assessee has good and sufficient reason for filing the appeal belatedly. Therefore, following the Supreme Court decision of Collector, Land

Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471 (SC), I am of the view that there was reasonable cause for the delay in filing the appeal and condone the delay.

3. The source of substantive issue raised by the assessee is that during the demonetisation period the assessee deposited cash into his bank account of Rs.12,75,802/-.

4. The brief facts of the case are that the assessee filed return of income on 07.02.2018 declaring income of Rs.3,02,600/-. The case was selected for scrutiny and statutory notices were issued to the assessee. From the record the AO observed that during the demonetisation period the assessee deposited cash of Rs.14.76 lakhs but on the documents available with the Department cash balance as on 31.03.2016 was shown as Nil. Information were called for from the assessee and it was also called from Bank under Section 136(6) of the Income Tax Act, 1961 (the Act). It was noticed that the assessee received a loan of Rs.25,00,000/- on 23.03,2013 and the said loan was utilised for repayment of loan also exists in the name of Shri D. Murthy, Shri G.V. Krishnaiah and Shri N. Narayanasetty - Rs.5,00,000/-, Rs. 10,00,000/- and Rs.10,00,000/- respectively. A copy of the material gathered were forwarded to the assessee and summons under Section 131 of the Act were issued to the above three parties but they did not appear.

5. On 05.05.2019 assessee submitted reply regarding the source of cash deposited but after examination of the document the AO observed that the cash deposited was not supported by cogent material. The AO allowed basic threshold limit of Rs.2,00,000/- and the balance amount of Rs.12,75,802/- was treated as unexplained expenditure and brought to tax under the I.T. Act. Aggrieved, the assessee filed appeal before the

CIT(A). The learned CIT(A) also dismissed the appeal of the assessee. Aggrieved, assessee filed appeal before the Tribunal

6. The learned A.R. submitted that the AO is not justified in making addition as per Section 69 of the Act. on cash deposited during the demonetisation period. The assessee has derived income from house property of Rs.3,02,900/- which has not been disputed by the AO and he submitted that the AO did not consider the evidences for the cash withdrawn from the bank in 2013 from the Corporation Bank of Rs.9,30,000/- and Indian Bank of Rs.13,80,000/-. The assessee is a senior citizen and the money was kept with him for emergency medical treatment and he also submitted that he has house property, which was let out during the past period but the income was below the taxable limit, therefore, he did not file return of income regularly and the assessee is also not required to maintain books of accounts as per Section 4AA(2) of the Act, During the course of hearing the learned A.R. also filed details of total income earned by the assessee since 2011 to the assessment year under consideration as follows: -

Sl. No.	Assessment Year	Income shown in the Income Tax Return (in Rs.)
1	2011-12	1,66,514
2	2012-13	1,81,371
3	2013-14	2,20,520
4	2014-15	2,67,760
5	2015-16	Nil
6	2016-17	2,57,600
7	2017-18	3,02,400

The ld. AR submitted that the assessee was earning regular income also it was kept as cash-in-hand. IN support of his arguments the learned A.R.

relied on the judgement of the coordinate bench of the Tribunal in the case of Kiran Sharma vs. ITO in ITA No. 465/Bang/2018 dated 22.02.2021.

7. The learned D.R. relied on the judgement of the lower authorities and he submitted that the CIT(A) has rightly confirmed the addition made by the AO. The assessee could not establish the source of cash available on the date of cash deposit into his bank account during the demonetisation period. He also submitted that cash was withdrawn from the bank in the year 2013, nobody can keep cash for so long period whereas he has maintained two saving bank accounts. He also relied on the judgement of the coordinate bench of the Delhi Benches in the case of Leela Devi vs. ITO in ITA No. 1423/Del/2020 for AY 2017-18 order dated 01.02.2021 and he submitted that the issue is similar and the Hon'ble Tribunal has dismissed the appeal of the assessee. He also submitted that no any statement of affairs for any preceding AY's were submitted during any stage of income tax proceedings, therefore, the assessee's arguments are not tenable.

8. In the rejoinder the learned A.R. submitted that the assessee has filed return of income regularly and only in AY 2016-17 he has not filed his return of income because the income was below taxable limit and he requested that a lump sum of Rs. 6,00,000/- may be confirmed.

9. After hearing the rival contentions I observe that the AO has made the addition under Section 69 of the Act of Rs.12,75,802/- for want of proper explanation of cash deposited during demonetisation period. The assessee tried to justify the same by submitted that the assessee had withdrawn cash from his Corporation Bank and Indian Bank accounts in the two financial years, i.e. on 26.03.2013 Rs. 9,00,000/- and on 04.04.2013 Rs. 30,000/- from Corporation Bank and Rs.13,00,000/- and

Rs.80,000/- from Bank of India on these dates. It was also observed that the details of income earned and return filed since AY 2011-12 were submitted as noted supra. During the course of assessment proceedings as well as during the first appellate proceedings the assessee did not file any cash flow statement or any statement of affairs for justifying the cash lying with him in the past years. Though he was not required to maintain books of accounts as per section 44AA(2) but can prepare statement of affairs for justifying his closing cash balance at the end of year. I found substance on submission of the ld. DR.

9.1. Looking to the age of the assessee and income earned by the assessee as shown above, I think it fit to restrict the addition to the extent of Rs.8,00,000/-. Ordered accordingly.

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

Dictated and pronounced in the open Court on 20th January, 2023.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bengaluru, Dated: 20th January, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) - NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.