

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

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

|  |     |   |
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| ITA.No.634/Hyd/2022  |     |   |
| Assessment Year: 2017-18   |     |   |
| Naveen Kumar Sriram,<br>H.No.4-13, Alladurg,<br>Medak District – 502 269,<br>Telangana.<br><br>PAN : ENJPS0470N<br><br>(Appellant) | Vs. | The Income Tax Officer,<br>Ward – 1,<br>Sangareddy.<br><br><br><br><br><br>(Respondent) |
| Assessee by:   |     | Shri T. Rajendra Prasad, C.A.   |
| Revenue by:  |     | Shri Kumar Adithya.   |
| Date of hearing:   |     | 24.01.2023  |
| Date of pronouncement:   |     | 30.01.2023  |

**ORDER**

**Per Laliet Kumar, J.M.**

This appeal is filed by the Assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27.09.2022 for the AY 2017-18 on the following grounds :

*“1.The Ld CIT-A erred in law and in facts of the case in confirming the assessment order passed u/s 143(3) who determined the total income at Rs.8,00,870/- and the taxes and other sums payable at Rs.4,98,804/-.*

*2. The Ld CIT-A erred in law and in facts of the case in confirming the additions made by the AO of Rs 475,500/- U/S 69A who ignored the fact that the cash deposited during the demonetization period was nothing but the sale proceeds which arose during the course of business and the running opening balance of surplus cash, both of which were already considered in ascertaining the taxable income;*

*3. The Ld CIT-A erred in confirming the order of the AO who failed to appreciate the nature of the business of the appellant before making addition U/S 69A merely based on the cash deposited during the demonetization period;*

*4. The Ld CIT-A erred in law and on the facts of the case in confirming the assessment order which levied interest U/S 234B of Rs 123,717/-.”*

2. The brief facts of the case are that assessee is an individual, engaged in the business of agency of wholesale mobile recharge of Bharati Airtel Limited, filed its return of income for A.Y. 2017-18 on 16.06.2017 admitting total income of Rs.3,25,370/-. The assessee filed revised return of income on 29.10.2018, admitting the same. The case has been selected for scrutiny under CASS and notice u/s 143(2) of the Act dt.11.08.2018 and 27.09.2019 have been issued and the same have been duly served on the assessee. Subsequently, notice u/s 142(1) of the Act was issued calling for certain information. Thereafter, based on the information furnished by the assessee, Assessing Officer had accepted explanation in respect of Rs.1,34,000/- only which had been deposited on 10.11.2016 to be out of sales made on 08.11.2016 but considered the source of remaining amount of Rs.4,75,000/- as unexplained and added the same as unexplained income of the assessee u/s 69A of the Act and levied tax under section 115BBE of the Act. Thus, the Assessing Officer had completed the assessment u/s 143(3) of the Act.

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A). However, the Ld. CIT(A) had also not granted the relief to the assessee.

4. Feeling aggrieved by the order passed by the Ld. CIT(A), the assessee is in appeal before us on the grounds mentioned herein above.

5. In support of the case of the assessee, the Ld.AR for the assessee had submitted that the cash deposited during the demonetization period was nothing but the sale proceeds of the sales made post demonetization period and the opening balance of cash available with him and that Assessing Officer had wrongly treated SBNs of Rs.4,75,500/- during demonetization period as unexplained money u/s 69A of the Act ignoring the business practice prior to demonetization period and also by ignoring the explanation given by the assessee that he would receive cash from various retailers like PAN shops, mobile shops, hotels on the roads and kirana shops for selling the recharge coupons of Airtel etc and filed the following case laws in support of his case.

1. Sumati Dayal Vs. CIT (1995) 80 Taxman 89 SC.
2. Agason Global Vs. ACIT (2020) 115 Taxmann.com 342.
3. ACIT Vs. Hirapanna Jewellers 128 taxmann.com 291.

5.1. In support of the case of the assessee, the AR of the assessee had filed the following written submissions to the following effect; –

*“Submissions: The action of the AO in treating the cash deposited of Rs 475,500 as unexplained money U/S 69A is not legal and proper in view of the following detailed submissions:*

6.1. The appellant once again reiterate that his main business collections are in cash only. These cash collections would be deposited into his bank account and transferred to Bharti Airtel to purchase the Airtel Talktime.

6.2. The business practice viz., 'The collection in cash, depositing into current account of the appellant and transferring to Bharti Airtel towards talk time' is being followed by the appellant consistently before the demonetization period, during demonetization period and post demonetization period also and the appellant never deposited any unaccounted cash in his bank account.

6.3. For instance, the total turnover in the immediate prior period i.e FY 2015-16 amounted to Rs 3,96,46,584 whereas the sales during demonetization period i.e FY 2016-17 amounted to Rs 4,14,20,431. Further, the sales during post demonetization period i.e FY 2017-18 amounted to Rs 2,86,76,450. The entire cash deposited represented the sales income and does not represent any unaccounted cash. Further, these amounts are duly disclosed in the returns for the respective assessment years.

Thus, it can be noticed that the cash sales is the trade practice and custom involved and the cash deposited during demonetization is the opening balance and cash sales made till that date.

**6.4. Statement of Sales during pre-demonetization, during demonetization and pos demonetization period:**

| Sales Prior to Demonetization period |                       | Sales During Demonetization period |                       | Sales Post Demonetization period |                       |
|--------------------------------------|-----------------------|------------------------------------|-----------------------|----------------------------------|-----------------------|
| Months                               | Sale of talktime (Rs) | Months                             | Sale of talktime (Rs) | Months                           | Sale of talktime (Rs) |
| Apr-15                               | 26,76,218             | Apr-16                             | 39,68,230.99          | Apr-17                           | 26,51,631.51          |
| May-15                               | 23,92,704             | May-16                             | 39,86,197.14          | May-17                           | 23,29,564.69          |
| Jun-15                               | 31,99,966             | Jun-16                             | 38,44,447.69          | Jun-17                           | 22,82,000.10          |
| Jul-15                               | 30,24,264             | Jul-16                             | 38,21,825.62          | Jul-17                           | 29,68,242.52          |
| Aug-15                               | 31,47,823             | Aug-16                             | 39,33,396.37          | Aug-17                           | 25,39,705.66          |
| Sep-15                               | 33,59,238             | Sep-16                             | 38,27,346.68          | Sep-17                           | 26,65,280.11          |
| Oct-15                               | 39,86,254             | Oct-16                             | 34,49,528.03          | Oct-17                           | 23,54,734.10          |
| Nov-15                               | 37,49,555             | Nov-16                             | 31,95,153.50          | Nov-17                           | 24,05,250.28          |
| Dec-15                               | 31,41,238             | Dec-16                             | 31,20,367.69          | Dec-17                           | 22,57,498.39          |
| Jan-16                               | 33,24,686             | Jan-17                             | 27,41,911.92          | Jan-18                           | 22,36,360.82          |
| Feb-16                               | 36,25,830             | Feb-17                             | 30,17,368.14          | Feb-18                           | 21,04,136.46          |
| Mar-16                               | 35,18,309             | Mar-17                             | 25,14,657.23          | Mar-18                           | 18,82,045.35          |
| FY 2015-16                           | 396,46,585            | FY 2016-17                         | 414,20,431            | FY 2017-18                       | 286,76,450            |

This indicated that receiving cash is a common phenomenon before, during and after the demonetization period.

As the entire cash deposited during demonetization period represented the sale proceeds of the business and opening balance as at 9th Nov 2016, the cash deposited during the demonetization period of Rs 609,500 should not be construed as unexplained money and hence should not be subjected to additional tax as it was already forming part of returned income. The AO gave a meagre relief for Rs 134,000 and treated the balance amount of Rs 475,500 as unexplained money U/S 69A of the IT Act, 1961.

*The AO failed to appreciate the business practices and treated Rs 475,500 during the demonetization period as unexplained money.*

*6.5: Further, it is to submit that the total deposits (cash / online) in the accounts of the appellant were Rs 4,11,74,987 while the total amounts transferred to Bharti Airtel were Rs 4,09,95,146 which indicates that there are no unaccounted money.*

*Summary of deposits into the bank and amounts transferred to Bharti Airtel during the FY 2016-17*

| <b>Particulars</b>               | <b>Andhra Bank</b> | <b>SBI</b>  | <b>Total</b>       |
|----------------------------------|--------------------|-------------|--------------------|
| <b>Total withdrawals /</b>       | 1,97,79,141        | 2,13,95,846 | <b>4,11,74,987</b> |
| <b>Transfer to Bharti Airtel</b> | 1,96,22,100        | 2,13,73,046 | <b>4,09,95,146</b> |
| <b>Other Debits</b>              | 1,57,041           | 22,800      | <b>1,79,841</b>    |

*6.6: The objective of demonetization is to curb the menace of the black money which is stacked in the form of unaccounted cash. In the instant case, the sales consideration is received in the form of cash which is the prevalent trade practice and never represented the black money.*

*6.7: It is a settled principle of law that where the basic conditions of Sec 69A are not satisfied, then the AO cannot invoke the provisions of Sec 69A.*

*Provisions of Sec 69A is reproduced here under.*

*'Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year. '*

*Thus, from the above, it can be observed that additions U/S 69A can be made only when the assessee offers no explanation or the explanation offered by the assessee is not satisfactory.*

*Attention is drawn to the judgement given by the Apex Court in `Sumati Dayal Vs CIT (214 ITR 801 / 80 Taxman 89) (1995) where it was held that that while considering the explanation of the assessee, the AO cannot act unreasonably, and his satisfaction that a particular transaction is not genuine must be based on relevant factors and on a just and reasonable inquiry. The ratio of this judgment delivered in the context of Sec 68 shall be applicable to Ae provisions of Sec 69A also.*

*In the instant case, it is an undisputed fact that the explanation is given by the appellant that the money deposited represented the Opening balance of money and sales made during the running business.*

*Thus, the action of the AO is perverse, contrary to the settled legal principles and the principles of natural justice.*

*6.8: Attention is drawn to the judgement given by the Honourable Delhi Tribunal in the case of `Agson Global Pvt Ltd Vs ACIT' [2020][115 Taxmann.com 342] [Delhi-Trib] whereby it was held that where the cash deposited during demonetization period represented the sale proceeds, addition made is to be deleted.*

*6.9: Attention is also drawn to the drawn to the judgement given by the Honourable Vijaz Tribunal in the case of 'ACTT Vs Hirananna Jewellers' [2021][128 Taxmann.com 291][Vijaz-Trib] where it was held that where the cash deposited during demonetization period represented sales made, addition is liable to be deleted.*

*In the instant case also, the amounts deposited represented the sales made and the opening balance and hence the addition made by the AO is to be deleted."*

6. Per contra, the Ld. DR for the revenue relied upon the orders passed by the lower authorities and also on the decision in the case of Vaishnavi Bullions Pvt Ltd. Vs. CIT reported in [2022] 145 taxmann.com 197 (Hyderabad - Trib.)

7. We have heard the rival contentions of the parties and perused the material available on record. It is the admitted case of the assessee before us that the deposits were made by the assessee between 09.11.2016 to 31.12.2016. During this period, the assessee had deposited sum of Rs.6,09,500/- in the bank account. The part of the said amount was from the opening balance and the Assessing Officer had accepted the explanation in

respect of cash of Rs.1,34,000/- being the cash in hand as on 12.11.2016. However, for the remaining amount, the lower authorities have confirmed the addition. Before us, it was pointed out by the Id.AR that the assessee was having sale in the same proportion in the financial years 2015-16 to 2017-18. It was his contention that the assessee was having the turnover of more than Rs. 4 crore in all these years and the Assessing Officer had made the addition for the amount of Rs.4,75,500/- without considering the turnover of the assessee. It was submitted that the assessee was in an essential services of selling the recharge coupons and prepaid vouchers of Bharati Airtel to its various retailers like mobile shop, PAN Shop etc. Though, the assessee has made the sale in old currency notes of the recharge coupons, however, we are not oblivious to the gross root realities that the use of mobile is life-line for the entire society. In the absence of recharging of the mobile, a lot of citizens would be high and dry and on account of non-availability of mobile connection, they were bound to suffer a lot. Undoubtedly, the sale made in old currency notes is against the demonetization notification issued by the Central Government on 08.11.2016. The reliance of the assessee on the Board Notification dt.18.11.2016, in our opinion, is misplaced. The said notification is reproduced hereinbelow for ready reference.

*Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
New Delhi,*

*18th November, 2016.*

*PRESS RELEASE*

*Sub: Demonetisation of Old High Denomination Currency & Cash Deposits  
in Bank Accounts*

*It was announced by the Government earlier that small deposits made in the banks by artisans, workers, housewives, etc. would not be questioned by the Income-tax Department in view of the fact that present exemption limit for Income-tax is Rs. 2.5 lakh.*

*Reports are being received of instances where people are using other persons' bank accounts to convert their black money into new denomination notes for which reward is also being given to the account holders who agree to allow their accounts to be used. This activity has been reported in case of Jan-Dhan Accounts also.*

*It is hereby clarified that such tax evasion activities can be made subject to Income-tax and penalty if it is established that the amount deposited in the account was not of the account holder but of somebody else. Also the person who allows his or her account to be misused for this purpose can be prosecuted for abetment under Income-tax Act.*

*However, genuine persons depositing their own household savings in cash into their bank accounts would not be questioned.*

*The people are requested not to get lured by black money converters and be a partner in this crime of converting black money into white through this method. Unless all citizens of the country help the Government in curbing black money, this mission of black money will not succeed. Also the people who are against the black money should give information of such illegal activities going on to the Income-tax department so that immediate action can be taken and such illegal transfer of cash can be stopped and seized.*

*Black money is a crime against humanity. We urge every conscientious citizen to help join the Government in eradicating it.*

*(Meenakshi J. Goswami)*

*Commissioner of Income Tax*

*(Media and Technical Policy)*

*Official Spokesperson, CBDT.*

8. From the perusal of the above said notification, it is clear that the notification was only applicable to the artisan, workers or the house-wife. In the present case, the assessee is a dealer of mobile recharge coupons. Therefore, he was not entitled to the benefit of the said Notification.

9. Recently, while examining the issue of sale made by jeweller, we had the occasion to examine the various provisions of RBI Act, Sale of Goods Act, Contract Act in the case of Vaishnavi Bullions Vs. CIT reported in [2022] 145 taxmann.com 197 (Hyderabad - Trib.) wherein we have held that the sale made by the assessee in lieu of specified bank notes is not a legal sale and therefore, the addition made by the Assessing Officer u/s 69A of the Act is in accordance with the law.

10. Though, the average sale of the assessee is in the same range, however, we are bound by our own decision in the case of Vaishnavi Bullions Pvt. Ltd (supra), therefore, appeal is to be decided against the assessee by following the said decision. The assessee, in the paper book had relied upon the decision in the case of Agason Global Vs. ACIT reported in (2020) 115 Taxmann.com 342 is of no help to the assessee and the facts of the said case were different to the facts of the present case. Moreover, the Tribunal as well as the High Court had no occasion to examine the sale made by the assessee in the said case after the demonetization in the light of the provision of RBI Act, Sale of Goods Act, Contract Act etc. Therefore, the said decision of the Tribunal is distinguishable on facts as well as on law. The other decisions relied upon by the assessee are not applicable to the facts of the present case. In the light of our decision in the case of Vaishnavi Bullion Pvt. Ltd (supra), we do not find any merit in the appeal of the assessee and accordingly, the appeal of the assessee is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 30<sup>th</sup> January, 2023

**Sd/-**

**Sd/-**

|   |   |
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| <b>(RAMA KANTA PANDA)</b><br><b>ACCOUNTANT MEMBER</b> | <b>(LALIET KUMAR)</b><br><b>JUDICIAL MEMBER</b> |
|---|---|

Hyderabad, dated 30<sup>th</sup> January, 2023

***TYNM /sps***

Copy to:

| S.No | Addresses   |
|------|---|
| 1    | Naveen Kumar Sriram, H.No.4-13, Alladurg, Medak District – 502 269. |
| 2    | ITO, Ward – 1, Sangareddy,  |
| 3    | CIT(A), NFAC, Delhi.  |
| 4    | DR, ITAT Hyderabad Benches  |
| 5    | Guard File  |

*By Order*