

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “A” BENCH, BENGALURU**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 762/Bang/2022</b> (Assessment Year: 2017-18)		
Shri Vishwanath Kuntavalli Prop. VTECH Engineers Kuntavalli, Melige Post Thirthalli - 577145 PAN – AZZPK9473D	vs	The Income Tax Officer- 4 No. 75, 100 Ft Road Gopal Gowda Extension Shimoga 577201
(Appellant)		(Respondent)

Assessee by:	Shri Tata Krishna, Advocate
Revenue by:	Shri Kannan Narayanan, Addl CIT

Date of hearing:	10.01.2023
Date of pronouncement:	06.03.2023

**ORDER**

**PER: BEENA PILLAI, J.M.**

The present appeal is filed by the assessee against the order dated 23.06.2022 passed by NFAC, Delhi for AY 2017-18 on following grounds of appeal: -

- “1. *The Order of the Learned CIT(A) is not justified in law and on facts and circumstances of the case.*
- 2. As regards the Learned CIT(A) remanding the matter back to the Learned Assessing Officer:**
  - 2.1. *The Learned CIT(A) has failed to appreciate that section 251(1)(a) was amended by Finance Act 2001, wherein the power of the CIT(A) to set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment has been omitted.*
  - 2.2. *The Learned CIT(A) having examined the details furnished and accepted the contentions of the Appellant with respect to the disallowance/ additions, ought not to*

have remanded the case back to Learned Assessing Officer for verification which is against the mandate of section 251(1)(a) of IT Act.

**3. Without prejudice to the above, the disallowance of expenditure under section 40(a)(ia) of Rs.69,11,858/-:**

3.1. The Learned CIT(A) has erred in failing to delete the disallowance wrongly made by the Assessing Officer under section 40(a)(ia) of Rs.69,11,858/- on the payments made to contractors without appreciating that the Appellant effected TDS under section 194C in respect of all such payments.

3.2. The lower authorities being in possession of details of TDS made in the form of Form 27A filed by the Appellant are not justified in disallowing Rs.69,11,858/- under section 40(a)(ia).

**4. Without prejudice to the above, treating the differential value of VAT of Rs.2,10,250/- as income:**

4.1. The Learned CIT(A) has erred in failing to delete the addition wrongly made by the Learned Assessing Officer by wrongly treating the differential value represented by VAT of Rs.2,10,250/- as income.

4.2. The Learned CIT(A) has erred in stating that while concluding assessment these facts could not be explained by the Appellant in answer to the related query raised, as it seems, by the Ld AO in the impugned assessment proceedings, without appreciating the invoice was furnished during assessment proceedings and the same was self-explanatory.

**5. Without prejudice to the above, treating cash deposits of Rs.1,56,75,000/- as unexplained cash credit under section 68:**

5.1. The lower authorities are not justified in treating the 75% of cash deposits of Rs.1,56,75,000/- ( $2,09,00,000 * 75\%$ ) on adhoc basis as unexplained cash credit under section 68, when the conditions for invocation of the said section were not satisfied in the instant case.

5.2. The lower authorities have failed to appreciate that the addition made under section 68 is not sustainable for the reason that Appellant has maintained proper book of accounts and offered explanation about the nature and source of transaction during the assessment proceedings.

5.3. The lower authorities are not justified in recording perverse findings without application of mind and

*without properly appreciating the evidence furnished by the appellant.*

- 5.4. The lower authorities have erred in invoking section 68 when the sales declared and offered as income have been accepted, when the genuineness of books of account was not doubted, when books of account upon which basis income was offered to tax were not rejected and when turnover relating to the said cash receipts of Rs.1,85,94,681/- (1,32,56,556 + 53,38,125) were declared in the VAT return and accepted by the sales tax department.*
- 5.5. The lower authorities have erred in treating the entire cash balance as on 08.11.2016 of Rs.2,11,44,291/- as advances without appreciating that the same consists of proceeds of sales concluded before demonetization (i.e., 08.11.2016) of Rs.1,32,56,556/-, the advances received Rs.53,38,125/- with respect to the sales concluded post demonetization and Rs.25,49,610/- received from Appellant's father for the purpose of construction of house.*
- 5.6. The lower authorities have failed to appreciate that the cash deposits of Rs.2,09,00,000/- made by the Appellant post demonetization represents the cash sales proceeds of Rs.1,32,56,556/-, advances of Rs.53,38,125/- and cash receipt of Rs.25,49,610/- from Appellant's father for construction of house prior to demonetization as evident from the cash book.*
- 5.7. The lower authorities have erred in making addition under section 68 by merely sending notices to about 11 persons and of whom, only 4 persons replied, ignoring the confirmations furnished by the appellant in respect of most of them.*
- 5.8. The Learned CIT(A) has failed to appreciate that the Learned Assessing Officer failed to adduce opportunity to cross examine three persons who have given adverse replies, thus breaching the principles of natural justice.*
- 5.9. Without prejudice, the Learned CIT(A) has erred in restricting the further relief only in respect of advances received prior to demonetisation but sales made thereafter without appreciating that entire Rs.2,11,44,291/- did not represent such advances, but consisted of proceeds of sales concluded before demonetization (i.e., 08.11.2016) of Rs.1,32,56,556/-, the advances received Rs.53,38,125/- with respect to the sales concluded post demonetization and Rs.25,49,610/- received from Appellant's father for the purpose of*

*construction of house, and ought to have extended relief even in respect of Rs.1,32,56,556/- and Rs. 25,49,610/-.*

*5.10. Without prejudice, the lower authorities, having stated, albeit wrongly, that the Appellant actually made sales by accepting SBNs during demonetization period and deposited the same during such period and showed advance of Rs.2,11,44,2911- as on 08.11.2016 to cover the same, ought not to have invoked section 68 as the source of deposit being sale proceeds stood accepted by them.*

*5.11. The lower authorities are not justified levying tax on aforesaid addition under section 115BBE on Rs.1,56,75,000/- when the very addition under section 68 is not sustainable.*

*5.12. The lower authorities have failed to appreciate that taxing the aforesaid addition under section 115BBE amounts to taxing Rs.1,56,75,000/-twice over when the said amount was already taxed under the normal provisions.*

*6. The lower authorities have erred in levying interests of Rs. 47,77,410/-under section 234B and Rs.1,14,456/- under section 234C.*

*7. The Learned CIT (A) is not justified in upholding the action of the Learned Assessing Officer in levying interests of Rs.47,77,410/- under section 234B and Rs.1,14,456/- under section 234C, when the said disallowance is not tenable, and thus question of levy of interest does not arise.”*

2. The brief facts of the case are as under: The assessee is engaged in manufacturing of areca dehusking machine and other agricultural implements under the name and style of M/s. VTECH Engineers. The assessee filed return of income for the year under consideration on 31.10.2017 declaring total income of Rs.1,73,10,290/-. The case was selected for scrutiny and assessment order under Section 143(3) of the Act, was passed on 31.12.2019 by making the following additions: -

- i) Addition of Rs.69,11,858/- on account of disallowance of 30% of expenditure as per provisions of Section 40(a)(ia) of the Act.
- ii) Addition of Rs.2,10,250/- on account of difference between price of Laser Cutting Machine in Balance Sheet of the assessee and invoice of supplier M/s. Indus Arc Power Pvt. Ltd.

- iii) Addition of Rs.1,56,75,000/- as unexplained cash credit under Section 68 of the Act and brought to tax at rates applicable as per Section 115BBE of the Act.

3. Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) in the impugned order remanded the issues to the Ld.AO to carry out necessary verifications in respect of the disallowance of provision under Section 40(a)(ia) of the Act and addition made on account of difference in invoice and purchase value, on which input tax was claimed and adjusted against VAT output. In respect of cash deposits during demonetisation period the Ld.CIT(A) granted relief to the extent of Rs.51 lakhs approximately. The Ld.CIT(A) remitted the issue to the Ld.AO for necessary verifications, after regarding the relevant observations therein. Aggrieved by the order of the Ld.CIT(A) the assessee is in appeal before the *Tribunal*.

4. At the outset, the Ld.A.R. raised the issue in Ground No. 2 that the Ld.CIT(A) does not have the power to remand to the Ld.AO pursuant to the amendment made by Finance Act, 2001.

5. We have perused the submissions of the assessee in this regard which is filed in the paper book and the observation of the Ld.CIT(A) on the issues that are remitted. The primary reason for the remission by the Ld.CIT(A) is because various details called for were not filed by the assessee, and therefore necessary verification could not be carried out. In any event the addition made by the Ld.AO deserves to be verified properly based on the evidences/documents filed by the assessee and accordingly prima facie there is no harm caused to the assessee.

6. However, it is a fact that the Income Tax Act did not grant power to the Ld.CIT(A) to remit any issue to the Ld.AO for

necessary verification post-2001. Considering the fact that the issue raised by the assessee in Ground Nos. 3-4 deserves necessary verification at the end of the Ld.AO we remand this issue back to the Ld.AO with a direction to carry out detailed verification, and to consider the claim of the assessee in accordance with law. The assessee is directed to file necessary documents/details in respect of the claim raised in Ground Nos. 3-4.

**Accordingly, Ground Nos. 3-4 raised by the assessee stand allowed for statistical purposes.**

7. **Ground No. 5** raised by the assessee is in respect of treating cash deposits in specified SBM during demonetisation period as unexplained under Section 68 of the Act.

7.1 We have perused the submissions advanced by both sides in the light of records placed before us.

We are of the opinion that there is a violation of natural justice in respect of not granting sufficient time to the assessee for representing its case before the Ld.PCIT. However, considering the fact that in any event, the issue would have to be remanded to the Ld.AO in order to verify the cash deposit of Rs.1,56,75,000/- in specified bank notes during the demonetisation period in its bank account in accordance with various instructions referred to by the Ld.DR hereinabove.

7.2 Admittedly, the assessee had accepted the SBNs which were no longer a legal tender and were to be explained in accordance with the relevant circular mentioned hereinabove.

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.

7.3 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.

7.4 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.

7.5 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.

**Accordingly Ground no. 5 stands partly allowed for statistical purposes.**

8. In the result, the appeal filed by the assessee is allowed.

Dictated and pronounced in the open Court on 06<sup>th</sup> March, 2023.

Sd/-  
**(CHANDRA POOJARI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Bengaluru, Dated: 06<sup>th</sup> March, 2023

*Copy to:*

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT*
- 4. The DR, ITAT, Bengaluru*
- 5. Guard File*

*By Order*

*//True Copy//*

*Assistant Registrar  
ITAT, Bengaluru*

n.p.