

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

**Before Shri Laxmi Prasad Sahu, Accountant Member**

<b>ITA No. 57/Bang/2023</b> (Assessment Year: 2017-18)		
Shri Manjunath Shivappa Sunagar 4693, Near Gramdevi Temple Hangal, Dist. Haveri 581104 Karnataka PAN – DDOPS1475K  (Appellant)	vs.	The Income Tax Officer Ward- 1, Haveri     (Respondent)
Assessee by:	Shri Shambu G. Kulkarni, CA	
Revenue by:	Shri Ganesh R. Ghale, Standing Counsel	
Date of hearing:	29.03.2023	
Date of pronouncement:	03.04.2023	

**ORDER**

This is an appeal filed by the assessee against order passed by the NFAC Delhi u/s 250 of the I.T.Act. 1961, DIN & Order No. ITBA/NFAC/S/250/2022-23/1048028773(1) dated 15.12.2022 on the following grounds of appeal: -

- 1) *The learned Commissioner of Income Tax (Appeals) has erroneously dismissed my appeal without giving an opportunity of being heard. The Commissioner of Income Tax (Appeals) has neither called for hearing nor served notice for seeking explanation in my case. Based on my voluntary submission in the communication window of income tax portal has been dismissed.*
- 2) *The learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the Assessing Officer under Section 144 based on interpretation of the notification without appreciating the facts.*

3) *The order passed by the authorities is against the facts of the case.”*

2. The brief facts of the case are that during online verification under Operation Clean Money on the basis of data analytics furnished, the Income Tax Department gathered a list of assessees who had deposited substantial cash in bank accounts during the demonetisation period who has not filed return of income for AY 2017-18. The data reveals that there is cash deposit amounting to Rs.1,12,75,880/- in Account No. 5849201000027 maintained with Canara Bank, Hangal for Financial Year 2016-17 and the cash deposits during the demonetisation period amounting to Rs.28,93,070/- was observed by the Income Tax Department. From the data itself it was revealed that the assessee had not filed return of income within the due date as per Section 139(1) of the Income Tax Act, 1961 (the Act) for the relevant assessment year. Accordingly notice under Section 142(1) of the Act dated 30.11.2017 was issued and duly served on the assessee. In response the assessee did not file return of income. Again notice under Section 142(1) of the Act was issued to the assessee for giving opportunity before exercising Section 144 of the Act. In response the assessee filed letter dated 12.09.2019 and submitted that the assessee is dealing in Bharati Airtel currency under the name and style of S.V.V. Communication in the capacity of distributor of such currency and he submitted that the cash deposited into the bank account is out of cash receipts from retailers and the company allows him 4.25% commission out of which he allows 3% commission to the retailers and the net commission earned by the assessee is 1.25% only. Accordingly, return of income was not filed because the income in the impugned assessment year was below the threshold limit. The Assessing Officer (AO) after examination noticed that Rs.11,37,000/- is unexplained money under Section 69A of the Act and added to the total income of the assessee. Accordingly, the AO assessed the income at Rs.12,65,460/-.

3. Aggrieved by the above order of the AO the assessee filed appeal before the CIT(A). During the appellate proceedings the learned A.R. submitted that RBI had provided exemption for acceptance of specified bank notes, one of which is for payment of utility bills and the notification for exemption was further extended. The learned CIT(A) observed that the exemption has been provided only to the retailers and not the currency distributors. After considering the entire issue the learned CIT(A) dismissed the appeal of the assessee.

4. Aggrieved by the above order the assessee filed appeal before the Tribunal. The learned A.R. reiterated the submissions made before the CIT(A) and he also submitted that proper opportunity was not granted by the learned CIT(A).

5. The learned A.R. also filed copy of bank statement maintained with Canara Bank, copy of VAT registration certificate dated 14.07.2016 and copy of Sales/Revenue record containing Sr. No. 1 to 10 regarding confirmation of purchase of Airtel currency by the retailers along with their PAN and Aadhar Card and he requested that the assessee may be granted one more opportunity for substantiating his case.

6. The learned D.R., on the other hand, submitted that during the course of proceedings before the lower authorities the assessee was given ample opportunities in spite of the assessee did not file requisite documents. Now the assessee is filing documents before the Tribunal. Therefore, these require verifications.

7. After hearing the rival submissions and the material available on record and the orders of the authorities below, I noted from the assessment order that the assessee had deposited cash in the Canara Bank account No. noted supra and cash was also deposited during the demonetisation period for which the

assessee did not give any explanation before the AO. Accordingly, the AO treated the cash deposited during the demonetisation period as unexplained cash deposit to the extent of Rs.11,37,000/- and the CIT(A) has also dismissed the appeal of the assessee. The learned A.R. filed before me the aforesaid documents placed on record which were not filed before the lower authorities. Considering the prayer of the assessee and the issue involved in this case regarding cash deposits during the demonetisation period the case would have been examined in the light of the CBDT circular F. No. 225/145/2019 ITA II dated 09.08.2019. I observe that similar issue has been decided by the coordinate bench of the Tribunal in the case of M/s. Bhoopalam Marketing Services Pvt. Ltd. in ITA No. 375/Bang/2022 in which it has been held as under: -

*“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 postdemonetization 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 Bhoopalram 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.”*

Respectfully following the decision in the case of Bhoopalam Marketing Services Pvt. Ltd. (supra) the AO is directed to make fresh examination on the cash deposits during demonetisation period in accordance with law and the CBDT guidelines. The AO is directed to give reasonable opportunity of being heard to the assessee and the assessee is directed to produce necessary documents/evidences for substantiating his case for early disposal of the appeal and not to seek unnecessary adjournments.

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

Order pronounced in the open Court on 3<sup>rd</sup> April, 2023.

Sd/-  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

Bengaluru, Dated: 3<sup>rd</sup> April, 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.

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	29.03.2023		Sr. PS/PS
2	Draft placed before author	30.03.2023		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			