

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No. 668/Coch/2022
Assessment Year : 2017-18

Shri Sajeer Basheer, Varuvila Veedu, Chathinamkulam, Kollam. PAN: BTTPB3179A	Vs.	The Income tax Officer, Ward – 2, Kollam.
APPELLANT		RESPONDENT

Assessee by	:	Shri Rajagopal, CA
Revenue by	:	Smt J M Jamuna Devi, Sr. AR

Date of Hearing	:	11-01-2023
Date of Pronouncement	:	30-03-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order passed by NFAC dated 10.12.2021 for A.Y. 2017-18 on following grounds of appeal:

- “1) The order of the CIT(A) is against, law, facts and circumstances of the case.*
- 2) The Commissioner of Income tax(Appeals) has erred in dismissing the appeal in the facts and circumstances of the case.*
- 3) The Commissioner of Income tax(Appeals) ought to have found that the action of the assessing officer in assessing the cash deposits u/s.69A of the Income tax Act is patently erroneous and unsustainable in the facts of the case.*
- 4) The Commissioner of Income tax(Appeals) ought to have found that the cash deposits into the current account were*

made out of the business receipts of the appellant and is reflected in the books of accounts and hence the addition ought to have been deleted.

5) The assessing officer having accepted the source of the cash deposits made during the non-demonstization period as coming out of the business receipts, should not have disbelieved the source of the cash deposits during the demonetization period without any reason.

6) The Commissioner of Income tax(Appeals) has grossly erred in confirming the addition of Rs.1619000/- made u/s.69A of the Income tax Act particularly when the Department has accepted the existence of business and the source for the cash deposits were substantiated by Profit and Loss account. Balance sheet. VAT Return and books of accounts.

7) The explanation of the appellant should have been accepted more so when the cash deposits have not been found to be unreasonable and very much less than the declared turnover of the appellant.

8) The assessing officer as well as the Commissioner of Income tax(Appeals) ought not have disbelieved the explanation of the appellant merely because the return of income was not filed within the due date by appellant.

9) The Commissioner of Income tax(Appeals) ought to have found that the action of the assessing officer in invoking the provisions of section 415BBE of the Income tax Act is not proper and deserves to be deleted.

10) Any other ground that may be adduced at the time of hearing.”

2. Brief facts of the case are as under:

2.1 The assessee is doing wholesale & retail sale of mattresses and earned commission and incentives for distribution of the same. A notice u/s. 142(1) was issued to the assessee on 15-03-2018, the assessee could not respond to the notice in time due to some unforeseen circumstances. The assessee e-filed ROI on 02/10/2019 declaring total income of Rs.397050.00/-. Show cause notice was issued to the assessee on 10-09-2019 and in response to the show cause notice, the appellant filed Profit & Loss Account, Balance Sheet, Bank Statements.

2.2 The Ld.AO observed that during the de-monetization period, from 09-11-2016 to 30-12-2016 the assessee made cash deposit of Rs.1697500.00. The cash deposits in bank account are explained as sourced from cash sales of the business; and the assessee substantiated it by producing balance sheet, Profit & Loss account, Ledger Accounts. Bank statements etc. Without accepting the submissions of the assessee, the Ld.AO estimated the income at Rs.16,97,500/- and taxed at higher rate of 60% u/s.115BBE of the Act.

2.3 Aggrieved by the assessment order, the assessee filed appeal before the Ld.CIT(A).

2.4 The Ld.CIT(A) after considering the submissions of assessee observed and held as under:

“5. Finding and decision:

All the ground are interlinked and pertain to single issue of addition on account of cash deposit in bank account. During the course of appellate proceedings. the appellant was granted opportunity to file submissions and documents in support of its grounds of appeal vide notices dated 22.01.2021 (fixing date of compliance 29.01.2021) and 14.10.2021 (fixing date of compliance 21.10.2021) after implementation of faceless appeal scheme. However, till date there has been no response from the appellant. Therefore, it is apparent that the appellant have no submissions/documents to submit in support of its grounds of appeal. I have considered the statement of facts and grounds of appeals filed as well as the assessment order. It is a fact that there was cash deposit in bank accounts which appellant could not explain. No return was also filed by the appellant either suo moto or in response to notice u/s 142(1) of the Act. The return stated to have been filed is invalid, as has been discussed in assessment order. On carefully considering the facts and circumstances and assessment order, I find no infirmity in the assessment order. Accordingly the addition made by the AO is confirmed.

Thus all grounds of appeal fail and hence dismissed.”

2.5 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

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

3. Admittedly cash has been deposited to the current account of the assessee amounting to Rs.16,97,500/- in specified bank notes. The only explanation offered by assessee is that the source of cash deposits are from cash sales of the business. We note that the Ld.AO while verifying the claim has not considered the circulars issued by CBDT pertaining to cash deposits during demonetisation period.

We note that no specific query was raised by the Ld.AO, in respect of the cash deposits during the demonetisation period. The Ld.AO did not follow the circulars issued by the CBDT to carry out necessary verifications in respect of the genuineness of cash deposited by the assessee during the relevant time.

3.1 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.

3.2 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.

3.3 The instruction dated 21/02/2017 requires the assessing officer to verify 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 has 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.

3.4 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.

3.5 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, we direct the Ld.AO to verify the cash deposited in the light of the above circular by granting proper opportunity of being heard to the assessee.

4. We thus remand this issue to the Ld.AO to carry out necessary verification of the cash deposited in the bank account of the assessee in the light of the above circulars and instructions. Needless to say that proper opportunity of being heard may be granted to assessee by way of a physical hearing. Accordingly all the grounds raised by assessee being common issue stands allowed for statistical purposes.

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

Order pronounced in open court on 30th March, 2023.

Sd/-
(PADMAVATHY S)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Cochin,
Dated, the 30th March, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Cochin
6. Guard file

By order

Assistant Registrar,
ITAT, Cochin