

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'C' BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 290/Bang/2023
Assessment Year : 2017-18

Shri Muddabyraiah Ravishankar, No. 1070/E, 5 th Block, West of Chord Road, Rajajinagar, Bangalore – 560010. PAN: ADAPR6008A	Vs.	The Income Tax Officer, Ward -2 (2)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Paresh .S. Shah, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate- Standing Counsel for Revenue

Date of Hearing	:	20-06-2023
Date of Pronouncement	:	20-06-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 22.02.2023 passed by NFAC, Delhi for A.Y. 2017-18.

2. The issues that are raised by assessee in the present appeal is in respect of

- a) Disallowance made by the Ld.AO towards ESI and PF amounting to Rs.3,41,111/-.

b) Addition made towards cash deposited into bank amounting to Rs.17,93,000/- in specified bank notes during the demonetisation period.

3. Brief facts of the case are as under:

3.1 The assessee is an individual deriving income from business and income from other sources during the assessment year 2017-18 relevant to the financial year 2016-17, the total income declared by assessee Rs.13,82,650/- as per the return of income which was filed voluntarily online.

3.2 An intimation u/s. 143(1) passed on 08.02.2018 accepting the return of income filed. Subsequently the case was selected for scrutiny under CASS and the respondent served the notice u/s 143(2) of the I.T.Act, 1961 through email and called for the details. information and explanation of all the incomes earned by the assessee.

3.3 The assessee had submitted all the details/information/records/books of accounts called for by the respondent and explained the same to the Respondent at the time of scrutiny assessments on various hearing dates. However, the applicant also uploaded required documents as required by the respondent, through e-proceedings in the income tax department website.

3.4 There are only two issues involved in this appeal:-

1. The Ld.AO noted that assessee added Rs. 3,41,111/- towards payments made to ES1 at Rs.94,277/- and Rs.2,55,647/ respectively. However, the respondent had allowed Rs.8813 out of total amount debited to profit and loss account at Rs.3,49,924/-

and the remaining of Rs.3,41,111/- has been disallowed in the absence of documentary evidences.

2. The Ld.AO further noted that assessee made an addition to the tune of Rs.17,93,000/- as cash deposits into the bank, stating that there are no entries specifying the particulars of the transaction for debits and credits in the said cash book.

3.5 The Ld.AO thus passed an intimation u/s. 143(1) of the act disallowing the two items.

3.6 Aggrieved by the order u/s. 143(3) of the act, assessee filed an appeal before the Ld.CIT(A).

3.7 The Ld.CIT(A) dismissed the claim of assessee in respect of the employees contribution to PF & ESI by placing reliance on the decision of *Hon'ble Supreme Court* in the case of *CHECKMATE SERVICES PVT LTD VS CIT-1 in CIVIL APPEAL 2833/2016 vide its judgment dated 12 October 2022* and in respect of addition being cash deposits in bank account during the demonetisation period, upheld the disallowance made u/s. 68/69A of the act.

3.8 Aggrieved by the order of NFAC, assessee is in appeal before this *Tribunal*.

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

4. The Ld.AR in respect of the first issue of disallowance made in respect of the employees contribution towards ESI/PF, submitted that, the payments were made within the due date, however the details of contributions made has not been recorded in Col. 20 of the audit report. He submitted that the challans in respect of the payments having made within the respective due dates are placed in the paper book which is self explanatory. He thus prayed for

the issue to be remanded to the Ld.AO for necessary verifications. The Ld.DR on the contrary though objected could not controvert the documents filed in respect of the payments made.

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

5. We note that, the details in respect of ESI/PF filed by the assessee has not been verified by the authorities below and has dismissed the claim.

In the interest of justice, we remand this issue to the Ld.AO to carry out necessary verification in respect of the claim of the assessee in the light of the documents filed. Assessee is directed to file all necessary evidence establishing the employees contribution having deposited within the due date of the relevant statute. In the event, the details are verified, the claim of assessee may be considered in accordance with law.

Accordingly this issue raised by assessee stands partly allowed for statistical purposes.

6. The next issue raised by the Ld.AR is in respect of the cash deposits in specified bank notes during the demonetisation period.

6.1 At the outset, the Ld.AO/CIT(A) has not verified the cash deposits in light of the CBDT circular applicable to the present assessee. We note that, 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.

6.2 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 also suggests 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.

6.3 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions according to the present facts of the case. 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, this issue raised by assessee stands partly allowed for statistical purposes.

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

Order pronounced in the open court on 20th June, 2023.

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 20th June, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore