

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

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

ITA No.261/Bang/2023
Assessment year : 2017-18

Shri Neralakere Marulasiddappa Dayananda, S/o NS Marulasiddappa, Neralekere Post, Tarikere. PAN - ASWPD 5306 N	Vs.	The Income-tax Officer, Ward-1, Chikmagalur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vevek A.R, Advocate
Revenue by	:	Smt. Priyadarshini Besaganni, CIT (DR)

Date of hearing	:	15.06.2023
Date of Pronouncement	:	22.06.2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by the assessee against the order dated 2/2/2023 passed by the NFAC for the assessment year 2017-18 on following ground of appeal:-

- 1. The entire Appeal order passed by Learned CIT in so far it is against the Appellant is opposed to principle of equity and justice.*
- 2. The Learned AO erred in bringing amount of Rs.18.44 lakhs to tax without appreciating the fact that, Appellant is an agriculturist and has given all particulars which were sought by the learned AO.*
- 3. The learned AO ought to have considered the income of HUF also while concluding the Assessment.*

4. The learned AO erred in computing unexplained investment to total amount of Rs.18.44 lakhs and not deducting the gross agricultural income of Rs.1 1,50 lakhs which he has admitted and aggregated in computing the tax.

5. The learned AO erred in making addition of Rs.18.44 lakhs as unexplained investment U/s.69 and levying tax U/s.1 15BBE of the Act.

6. The Learned CIT (A) ought not to have upheld the addition of Rs. 18,44,000/- when the Appellant has produced the ownership of agricultural lands yield of agriculture produce, selling rates of agriculture produce without any other adverse materials.

7. The Learned Authorities ought to have appreciated that Sec. 115BBE can be invoked only in case income referred to in Sec. 68, Sec. 69, Sec. 69A, Sec. 69B, Sec. 69C or Sec. 69D is assessed. If a part of agriculture income is disbelieved for want of documentary proof and if it is not used for any investment or unexplained expenditure, the same cannot be brought to tax U/s. 115BBE of the Act.

8. That the CIT(A) has erred in confirming the addition of Rs. 1844000/- on account of cash deposited in Bank Account U/s. 68 without appreciating that bank passbook or statement are not books of accounts and as such no addition can be made u/s 68. Reliance is being placed in following judgements ;

(2023) TaxCorp (A.T.) 103522 (ITAT-AMRITSAR), SH. SATBIR SINGH BHULLAR VERSUS INCOME TAX OFFICER, WARD-5 (4), AMRITSAR

Smt. Ramilaben B. Patel v. Income Tax Officer, Ward-3, Gandhinagar, [2018] 100 taxmann.com 325 (Ahmedabad - Trib.)

Income-tax Officer, Barabanki v. Kamal Kumar Mishra [2013] 33 taxmann.com 610 (Lucknow - Trib.)

Mehul V. Vyas v. Income-tax Officer, 23(2)(3), Mumbai [2017] 80 taxmann.com 311 (Mumbai - Trib.)

9. Learned Authorities ought to have given sufficient opportunity of being heard if the submission of the appellant is disagreed.

10. The learned CIT, ought to have excised his power U/s.250 of the Act, for further enquiry before disposing the appeal against the appellant.

11. Entire order bad in law and against the principals of natural justice.

12. The Appellant reserves the right to add, delete, substitute the grounds of appeal.”

2. Only issue contested by the assessee is in respect of cash deposited amounting to Rs.18,44,000/- during the by cash deposit. The assessee has submitted before the authorities below that the sources of deposit are out of agricultural income and LIC commission, which is received through bank transfers. Categorically, the assessee submitted before the authorities below that the cash during the demonetization period into bank account is out of agricultural proceeds only, which has been declared in the return of income. The ld.AO after considering various submission of the assessee made addition of Rs.18,44,000/- as assessee failed to furnish any satisfactory explanation with documentary evidences regarding the nature and source of cash deposits made.

3. On appeal before the ld.CIT(A), the addition made by the AO was up held by observing as under:-

“7. Decision:

7.1 GROUND No. 1 to 5:-These grounds are in respect of the addition of Rs.18.4 lakhs as unexplained investment U/s.69 and levying tax U/s.115BBE of the Act.The appellant is an agriculturist having agricultural income and is also an agent of the Life Insurance Corporation of India for selling policies. The appellant earned Rs.75,698/- commission income during the year and offered the same for taxation. The appellant has submitted that he had deposited cash during the demonetization (SBNs) only to extent of Rs.19,000/- and has made cash deposits of Rs.33,96,000/- during the year. Cash withdrawals during the year are Rs,23.49,000/- . The appellant has claimed that he is a member of HUF having agricultural lands to the extent of 12.30 acres. The appellant has further claimed that he is also cultivating lands of HUF and the majority of

sale proceeds are held with the appellant who is the only male child of his father, Sri.Marulasiddappa. The appellant also claims that the land is irrigated. and areca nut is the main cash crop cultivated by the appellant and his HUF. The income of HUF is said to be about Rs.36 lakhs per annum. It is also claimed that all crops are sold in open markets so as to fetch higher prices. All the deposits were claimed to be out of agricultural proceeds only. However, it is evident from the Assessment Order that the Appellant had not submitted the bank statements and the AO had obtained the same through independent enquiries with the bank. The AO has made a detailed analysis of the bank statements and concluded that the appellant has made cash deposits of Rs. 18,44,000/- over and above the cash withdrawals made during the year. At the time of cash deposits to the extent of Rs. 18,44,000/- the assessee was not having any cash in hand. Even the assessee had mentioned that the agricultural sales are at Rs. 11,50,000/- only. Hence, the HUF theory and the handling of cash deposits through agricultural income of the HUF by the appellant look like an afterthought to dodge the rigors of taxation. I am, therefore, not inclined to interfere in the Assessment Order of the AO. The AO has correctly invoked Section 69 of the IT Act, 1961 to tax the unexplained investments as per section 115BBE of the IT Act. 1961. Grounds No. 1 to 5 are, therefore Dismissed.

7.2 GROUND No. 6 to 8 are general/ consequential in nature and no such requirement arose during the course of appellate proceedings. Hence, these grounds are hence Dismissed.”

4. Aggrieved by the order of the Id.CIT(A), the assessee is appeal before the Tribunal.
5. The Id.AR reiterated the submissions before this Tribunal has been submitted before the authorities below.
6. On the contrary Id.DR submitted that cash deposited during the demonetization period has to be verified in the light of the Circular issued by the CBDT. Both sides, thus prayed for the issue to be remanded back to the Id.AO for verification afresh.
7. 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.

8. Instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits or 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 verify whether a 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 Another instruction dated 21/02/2017 requires that 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 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 an 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 as applicable to the present facts of assessee. We are aware of the fact that not every deposit during the demonetization 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 applicable instruction, to the facts and circumstances of the present assessee and to consider the claim in accordance with law.

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

Order pronounced in the open court on 22nd June, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 22nd June, 2023.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore