

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 431/Bang/2023
Assessment Year : 2017-18

Shri Arif Hussain, #35, 5 th Main, Kausar Nagar, R.T. Nagar, Bengaluru – 560 032. PAN: ABGPH8458N	Vs.	The Income Tax Officer, Ward -6(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaina Bhatia, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Revenue

Date of Hearing	:	27-06-2023
Date of Pronouncement	:	27-06-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the order dated 30.03.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.

3. Without prejudice to the above, the learned CIT[A] is not justified upholding the order of the A.O.in completing the assessment u/s 144 of the Act without giving sufficient and effective opportunities of hearing to the appellant,

which is against the principles of natural justice on the facts and circumstances of the appellant's case.

4. The learned CIT[A] is not justified in upholding the addition of Rs.14,55,000/- as unexplained cash deposits made during the demonetization period u/s.69A of the Act and taxing the same u/s.115BBE of the Act, without appreciating that these deposits made by the appellant was also forming part of the business receipts of the appellant and hence, the same could not be regarded as unexplained money liable for tax u/s. 69A of the Act, under the facts and in the circumstances of the appellant's case.

5. The learned CIT[A] is not justified in upholding the assessment of income from business of Rs.17,67,466/- being 8% of the cash deposits made prior to demonization period of Rs.2,35,48,326/- without appreciating that the appellant was merely a commission agent who used to derive income of 1% on the transactions relating to the sale of used cars and hence, the extent of income assessed was excessive and liable to be reduced substantially.

6. Without prejudice to the above, the learned CIT[A] ought to have telescoped the business income estimated by him with the cash deposits made during the period of demonetisation and ought not to have assessed the same separately under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. The only issue raised in this appeal is on account of cash deposited in SBN noted during the relevant Assessment Year under consideration of Rs.14,55,000/- u/s. 69. The Ld.AO also disallowed Rs.17,67,466/- being 8% of Income from business deposited as cash allegedly made prior to the demonetisation period.

It is noted that the only disallowance made by the Ld.AO is in respect of cash deposited in the bank accounts of the assessee amounting to Rs.14,55,000/- and Rs. 2,35,48,326/-.

3. Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). Even before the Ld.CIT(A), assessee failed to furnish necessary evidence in support of the claim that the sum of Rs.14,55,000/- and Rs. 2,35,48,326/- represents sale proceeds of business and therefore this addition so made was upheld.

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

4. The Ld.DR on the contrary, submitted that the cash has been deposited during the period when demonetisation was declared and therefore necessary verification has to be carried out in accordance with the circulars issued by the CBDT. In respect of alleged business income deposited at Rs.2,35,48,326/-, the assessee did not substantiate such huge receipt in cash.

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

We find force in the argument of the Ld.DR.

5. Admittedly cash has been deposited to the account of the assessee amounting to Rs. 14,55,000/-. The only explanation offered by assessee is that the source of cash deposits are from cash sales of the business. Further Rs. 2,35,48,326/- was received by assessee as commission. It is submitted that these are business receipts in the hands of assessee. It is also submitted that the sum was received in cash prior to the date of demonetisation.

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.

5.1 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.

5.2 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 vide 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.

5.3 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.

5.4 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions as the case may be. 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. Assessee is also directed to establish the genuineness of the cash received prior to the date of demonetisation if any by way of evidences and the circumstances under which such cash was received.

5.5 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.

6. 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.

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

Order pronounced in the open court on 27th June, 2023.

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 27th June, 2023.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore