

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

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.462/Bang/2023
Assessment year : 2017-18

Shri Subanna Rajesh, 525, 11 th Cross, 1 st Phase, Stage 1, Chandra Layout, Bengaluru – 560 072. PAN: AGWPR 8400P	Vs.	The Income Tax Officer, Ward 3(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Kiran Kumar, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	25.07.2023
Date of Pronouncement	:	31.07.2023

ORDER

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1053566412(1) dated 06.06.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 on the following grounds of appeal:-

Sl.No.	Ground of appeal	Tax effect
1	The CIT(A) erred in passing Order u/s.250 without Not considering: 1.Additional ground; 2..Additional evidence; applicable 3.Written Submission in support of grounds of appeal.	Not applicable

2	Since: 1.The accounts are audited u/s.44AB. 2.The accounts are complete and correct; 3.All the cash deposit to banks are accounted in books of accounts; the income returned under the head 'profit and gains of business or profession' is acceptable u/s.145.	Not applicable
3	As the specified bank notes deposited in The Karnataka State Co-oP. Apex Bank a/c0003 during demonetization period was Rs.8,02,500 and not Rs.8,72,500 added as income of assessee, the difference of Rs.70,000 is a mistake liable to be deleted.	Rs.54,075
4	The CIT(A) erred in upholding Rs. 8,02,500 (Rs.8,72,500 minus Rs.70,000) as income of assessee u/s.69A since the cash deposits in banks have been recorded in books of account.	Rs.6,19,931
5	The CIT(A) erred in upholding Rs.7,03,500 as income of assessee u/s.69A since the cash deposits in banks have been recorded in books of account.	Rs.5,43,454

2. The brief facts are that the assessee is an individual and filed return of income on 23.10.2017 declaring total income of Rs.6,78,160 under the head 'income from profits & gains from business or profession and 'income from other sources'. The assessee is in the business of trading in civil material (mainly cements). The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings, it was noticed that the assessee did not furnish complete details as called for, hence notice u/s. 133(6) was issued to the bank calling for bank statements of the assessee which was provided by the bank. The AO noted that the assessee has deposited cash in old bank notes during the

demonetisation period and amount of Rs.8,72,500 and Rs.7,03,500 in his two bank accounts in the Karnataka State Co-op. Apex Bank Ltd. The assessee has also deposited Rs.1,72,500 in SBNs in his SB account with that bank which was allowed as cash balance by the AO. However, the amounts of Rs.8,72,500 and Rs.7,03,500 totaling to Rs.15,76,000 as unexplained cash deposit and added u/s. 69A of the Act.

3. The Id. CIT(Appeals) issued notices of hearing to the assessee for which there was no compliance. However, the assessee filed replies which was considered by the CIT(Appeals) and he passed ex-parte order dismissing the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

4. The Id. AR reiterated the submissions made before the CIT(Appeals) and submitted that the assessee maintained regular books of account in computer system as prescribed u/s. 44AA and got audited u/s. 44AB of the Act, obtained tax audit report in the specified format. He submitted that the AO has not rejected the books of accounts of assessee and has not pointed out any single mistake. The turnover of the assessee after considering the entire sales including cash sales made during the demonetisation period has been accepted by the AO. He also submitted that there was sufficient cash balance in the assessee's cash book before depositing cash into the bank account. Once the sales declared by the assessee in its audit report has been accepted, then no further addition can be made because it would

amount to double addition. Therefore, the AO is not justified in treating the entire cash sales of civil material and cash deposits into bank account during the demonization period as unexplained investment and making addition u/s. 69A. He relied on the decision of this Tribunal in the case of *Teena Bethala v. ITO in ITA Nos.1383 & 1384/Bang/2019 dated 28.8.2019 [(2019) TaxPub(DT)5875 (Bang. Trib)]*.

5. The ld. DR relied on the orders of lower authorities and submitted that both the authorities have examined the issue in detail and assessee did not give sufficient reply in regard to cash deposits during the demonetisation period.

6. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that the assessee is trading in civil material (purchasing & Selling of Cements) and books of account have been audited u/s. 44AB of the Act. During the demonetisation period, the assessee deposited cash in his bank accounts of Rs.15,76,000 which has been added u/s. 69A of the Act. The assessee has filed bank statements and cash book at pages 17 to 26 of the PB showing cash sales during the demonetisation period and there is opening balance of Rs.14,53,954 on 9.11.2016, and cash sales have also been done during the demonetisation period which has not been considered by the CIT(Appeals). The assessee has explained the source of cash receipts as cash sales and the cash deposits into bank accounts. I note that the turnover of the assessee has been accepted by

the authorities which includes cash sales during the demonetisation period also and further made addition u/s. 69A of the Act on account of cash deposits during the demonetisation period which is double taxation of the same amount. The AO has not reduced the cash deposits during the demonetisation period from the turnover of the assessee for arriving addition u/s 69A of the I. T. Act. The opening cash balance has not been disputed by the authorities below. The decision relied on by the Id. AR *Teena Bethala (supra)* also supports the assessee' case. Accordingly, the addition made u/s. 69A is deleted.

7. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 31st day of July, 2023.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 31st July, 2023.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.