

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

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

ITA No. 302/Bang/2023
Assessment Year : 2017-18

Shri Sunny Kulathakal, 3424, 3 rd Cross, 10 th Main, Indiranagar 2 nd stage, Bangalore – 560 038. PAN: BOJPK9434C	Vs.	The Income Tax Officer [International Taxation], Ward – 1[2], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Balram R Rao, Advocate
Revenue by	:	Shri Veera Raghavan, JCIT DR

Date of Hearing	:	26-07-2023
Date of Pronouncement	:	09-08-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 20.02.2023 passed by the Ld.CIT(A)-12, Bengaluru for A.Y. 2017-18 on following grounds of appeal:

“1. On the facts and in the circumstances of the case, Ld. CIT (A), erred in upholding the order of the Assessing Officer (AO) in the manner in which he did.

2. Ld. CIT(A) erred in upholding the addition of Rs. 63,74,500/- as unexplained money under section 69A of the Act without appreciating the facts of the appellant's case.

3. The Ld. CIT(A) failed to appreciate the evidences filed by the Appellant during the course of hearing in proper perspective.

4. The Ld. CIT(A) erred in not applying the peak cash credit theory on the cash deposits made during the course of Assessment and has failed to consider the revised submissions filed by the Authorised representative of the Appellant by stating that it was an afterthought.

5. For these and such other grounds that may be urged at the time of hearing of the Appeal the Appellant prays that the appeal may be allowed.”

2. Brief facts of the case are as under:

2.1 The assessee is a non-resident and derives its income from other sources i.e. Bank interest. For the year under consideration, the assessee filed its return of income on 31.03.2018 declaring total income of Rs.12,57,190/-. The case was selected for limited scrutiny to examine the following issues:

- a) Cash deposits during the year
- b) Winning from lottery / crossword puzzles/ horse

Statutory notices u/s. 143(2) of the act along with notice u/s. 142(1) was issued to the assessee on e-portal.

2.2 Subsequently there was a change in the incumbent officer and notice u/s. 142(1) r.w.s 129 was issued through e-portal providing an opportunity to the assessee by calling for the source of cash deposited to the bank during the year and also to explain as to why, the interest income received from the bank as per 26AS amounting to Rs. 19,09,110/- should not be brought to tax as against the return of income declared at Rs.12,66,498/-.

2.3 In response to the statutory notices, assessee furnished bank statements of Central Bank of India and State Bank of India for the relevant financial year under consideration. The Ld.AO after

analysing the bank statements noted that the assessee has two separate accounts with Central Bank of India and an account with State Bank of India. It was noted that the assessee deposited total cash of Rs.63,74,500/- during the financial year relevant to assessment year under consideration.

2.4 The Ld.AO also noticed that as per 26AS, the assessee received income of Rs.19,09,110/- against which TDS of Rs.1,92,870/- was claimed. The Ld.AO noted that, there is a difference of Rs.6,42,612/- that was not brought to tax as “income from other sources”.

2.5 Notices were issued to the assessee to explain the discrepancy and the details of the cash deposited in the accounts held by the assessee. The assessee did not respond to the notices issued and therefore the Ld.AO made addition in the hands of the assessee of Rs.82,74,302/-.

2.6 Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A).

2.7 Assessee furnished various details before the Ld.CIT(A) as additional evidence, which was remanded to the Ld.AO calling for a remand report.

2.8 The Ld.AO filed the remand report dated 09.11.2022 which has been extracted in the order of Ld.CIT(A) and a copy of the same was shared to the assessee.

2.9 In the rejoinder, the assessee submitted that, the source of the cash deposits was from the cash withdrawals made earlier and from the cash received from sale of agricultural produce. It was also submitted that the cash deposits were from the loan obtained from his brother and his brother-in-law and few close

friends. The assessee also submitted that, the assessee received certain loan repayment from a few other people, the details of whom have been mentioned by the Ld.CIT(A) in para 5.3.3 of its order. The assessee filed cash book for financial year under consideration and copies of assessee's bank statements in support.

2.10 The Ld.CIT(A) considered the remand report and the evidences filed by the assessee and observed as under:

5.3.4.1 I have given careful consideration to the facts of the case, the appellant's submissions, the remand report and the rejoinder thereto. The appellant's claim that he had received Rs. 8,74,500/- from the sale of agricultural produce has been effectively rebutted by the AO who has pointed out that the said agricultural land is in fact dry land as mentioned in the purchase deed dated 07.09.1982. Further, the appellant had not provided any RTC or encumbrance certificate in support of his claim of agricultural income. Moreover, the appellant had also not declared agricultural income in the year under consideration as well as the preceding year. This has been admitted as much in the cross-objections filed with the rejoinder wherein it is submitted that the agricultural income was not disclosed in the return due to oversight. No bills, vouchers, etc. of having incurred expense on agricultural inputs were provided nor were any sale invoices for agricultural income provided. All that the appellant had submitted is the confirmation from the appellant's manager Shri Shaiju Kurian which is reproduced below.

"Dear Sir,

Subject: Revenue from your farm produces from 21 acres

Extent of farm land in Sy.No.18 of Thaniyoor Village, Hosakote taluk.

Please find below the statement of income from sale of fruits in your farm.

- I hereby confirm receipt of funds from sale of following items:-

- Grapes and Saporta fruits sold to Mr Mohamed Pasha, Sulebele (Mob:6361972297) and a few others from 2.04.2016 to 7.04.2016 and 10.11.2016 to 15.11.2016 and grapes total 10 tons (sonaka) on 22.04.2016 to 25.04.2016 all together at cost of Rs.8,74,500/-.
- The above said sale proceeds by way of cash were handed over to you.

Sincerely,

Shaiju Kurian

Bengaluru:

24.03.2021”

The appellant has now claimed agricultural expenses of Rs.6,25,915/- but no documentary evidence in support of this claim has been submitted.

5.3.4.2 The appellant has also furnished confirmation letters from his brother, Shri George Thomas K. and his brother-in-law, Shri Thomas Mathew of having given the appellant Rs.15 Lakhs and Rs.10 Lakhs respectively in cash for developing a farm tourism project. The appellant has shown in his cash book, a sum of Rs. 15 Lakh received from his brother on 2nd May 2016. Whereas, in the confirmation submitted by his brother, reproduced below, it has been stated that this amount had been handed over to the appellant over the period 2005 to 2016.

“Dear Sunny,

Subject: Investment with you in Farm Tourism at your lands in Sy.No.18
Thaniyoor, Hosakote.

As my brother, I am happy to confirm that I have handed you Rs. 15 lakhs in cash between the year 2005 until the year 2016 drawn from my NRO account No. 092-00048-006 & 092-000330-006 with HSBG Bank and other sources on various occasions, for the purpose of developing farm tourism project in your captioned lands.

Please keep me advised of the developments.

Best regards,

George Thomas Kulathakal”

As pointed out by the AO the appellant neither furnished any bank statement or return of income of Shri George Thomas K. to show the latter's creditworthiness. The appellant has not explained as to why the entry in the cash book was made only as late as 2nd May 2016. Likewise in the confirmation from the appellant's brother-in-law, Shri Thomas Mathew which is reproduced below, it is stated that the amount of Rs.10 Lakhs was handed over to the appellant before 2016.

"Dear Sunnychayan,

Subject: Investment with you in Farm Tourism at your lands in Sy.No.18 Thanyoor, Hosakote.

As my brother in-law, I am happy to confirm that I have handed you Rs.10 lakhs in before 2016 from different sources, for the purpose of developing farm tourism project in your captioned lands.

Best regards,

Thomas Mathew
30.03.2021"

5.3.4.3 The appellant has not explained why these amounts of Rs.15 Lakh and Rs.10 Lakh were received from the above-mentioned donors in cash when such transfers could have been easily made through banking channels. Further, as correctly pointed out by the AO, if the money had been given to the appellant by his brother and brother-in-law and had not been utilised by him, there is no reason for the appellant to deposit the money into his own bank account instead of returning it to the donors. The appellant's explanations are without substance and do not at all establish his bona fides.

5.3.4.4 Similar is the case of the cash of Rs.25 Lakhs stated to have been received from Shri Issac John for the same farm tourism project. Here too, the appellant has not furnished any bank statement or return of income to establish the creditworthiness of the donor or to show the cash withdrawn by them to give to the appellant. It is clear in the confirmation given by Shri Issac

John, reproduced below, which mentions that Rs. 25 Lakhs in cash was given in the year 2016.

“Dear Sunny,

Subject: Investment with you in Farm Tourism at you land in Sy.No.18 Thaniyoor,
Hosakote.

This is to confirm that I have handed you Rs. 25 lakhs in cash in the year 2016 which was borrowed from my friends and drawn from my NRE account No.67258554163 and my SB Account 67258564965 with SBI Trivandrum Bank, for the purpose of developing farm tourism project in your captioned lands.

Best regards,

Issac John”

No specific date is mentioned, no details of withdrawals from the donor's account have been provided to substantiate the source. The AO has highlighted a pertinent question as to why Shri. Issac John should have given a substantial sum of money without charging any interest and also why this amount was not returned back to the donor instead of depositing in the appellant's account. The AO has also noted that the appellant being non-resident, he needed to explain his presence in the country at the time of claiming to have received the various sums, which has not been done in the present case.

5.3.4.5 As regards the return of hand loan from Shri Jerry Soman of Rs.3 Lakhs, the appellant has stated that this amount was withdrawn and given to Jerrico properties and returned by cheque to the appellant's bank account. However, no evidence of the withdrawal from the appellant's bank account for giving the hand loan to Shri Soman has been provided. In a similar vein, the appellant has claimed that Rs.2 Lakh was the repayment of the hand loan given to Shri Thomas Stephen and deposited in the appellant's bank account. In support, the appellant has furnished a copy of a cancelled cheque issued by Shri Stephen but it does not prove that this amount of Rs 2 Lakh was actually received from that party. The evidence of prior withdrawal for giving the hand loan has also not been provided.

5.3.4.6 It has also been submitted in the rejoinder that the cash deposit is out of cash withdrawals and therefore the peak credit theory should have been applied. I have considered the revised submission made during the appeal proceedings and found that this is a mere afterthought to justify the cash deposits after the AO has, in the remand report, very clearly brought out the discrepancies in the appellant's initial explanation regarding the source of the cash deposits. It was pointed out to the AR vide order sheet noting dated 06.02.2023 that the purpose of the cash withdrawals stated to be the source of the cash deposits was not mentioned in the written submissions filed earlier. The cash book and cash flow statement were not provided to the AO nor in the first instance when the application under Rule 46A was made for admission of additional evidence at the appellate stage. Further, the cash withdrawals are not of significant amounts which could be linked to subsequent deposits. The purpose of the withdrawals has also not been stated.

5.3.4.7 Other discrepancies are also noticed. For instance in the confirmations from Shri George Thomas, Shri Thomas Mathew and Shri Isaac John, it is stated that the cash was lent for farm tourism whereas in the cross-objections it has been stated that the money was borrowed for developing a farm house. The explanations by the appellant in the rejoinder are at variance with the initial submissions made and clearly points to unexplained source of cash deposits. It is very clear from the submissions made in the cross objections to the remand report that this is a belated and futile attempt to explain the source of the cash deposits. In the light of the same the addition made by the AO is sustained.

2.11 The Ld.CIT(A) thus did not allow the claim of the assessee in respect of the cash deposited to the bank accounts.

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

3. Before us the Ld.AR submitted that the assessee do not wish to contest the issue of difference in the interest income between the 26AS, and as declared by assessee in the return of income. The written submission filed by assessee in para 2.4 supports the above observation.

4. In respect of the addition of cash deposited into the bank account u/s. 69A of the act, it is submitted that the assessee wish to file an application Rule 46A wherein the source of cash deposits along with supporting documents are placed to be considered for advancement of substantial justice. It is the submission of the Ld.AR that upon consideration of these documents it could be made out that the cash deposits are all from known and explainable sources. He thus prayed for the evidences to be admitted. The Ld.AR submitted that these details were filed before the Ld.CIT(A) however the same has not been considered. He thus prayed for the issue to be remanded for these documents to be verifiable in the interest of justice.

5. The Ld.DR submitted that, all these documents were filed before the Ld.CIT(A) on which a remand report has been filed by the Ld.AO. It is also submitted that the cash deposits into the accounts of the assessee also pertains to the period when demonetisation was declared. He submitted that as the assessee could not satisfactorily explain the source of cash deposited, the addition deserves to be confirmed.

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

6. We note that assessee filed various confirmation of parties from whom cash said to have been received by assessee in respect of which no enquiries were made. Also in respect of sale of agricultural produce, there has been no further verification by the authorities in order to ascertain the correctness of the crops grown. The assessee has also not filed the RTC copies in respect of the alleged land which was never declared in the return of

income by the assessee in any of the preceding assessment years. It is further submitted by the assessee that, the manager one Shri Shyju Kurian confirmed the cash sales made amounting to Rs.8,74,500/- that was handed over to the assessee.

7. In our considered opinion, the entire issue in respect of the cash deposits need to be considered in the light of the CBDT Circular issued for verifying the demonetisation cash deposited. The Ld.CIT(A) shall consider the relevant part of the circular for verifying the details pertaining to the facts of the present case and then consider the claim of assessee in accordance with law.

We accordingly, remand this issue to the Ld.CIT(A) to carry out necessary verification as per the demonetisation circular issued by the CBDT having regards to the facts of the present case. Needless to say that proper opportunity of being heard must be granted to the assessee.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 09th August, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 09th August, 2023.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,
ITAT, Bangalore