

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” “A”BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT
MEMBER**

ITA No.519/Bang/2023
AssessmentYear:2016-17

Sri Dadapeer Kamar 69/3, 1 st Floor, A.R. Extension 'A' Street GandhiNagar Bangalore 560 009 PAN NO : BDRPK4553K	Vs.	ITO Ward-5(2)(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Mallaharao, A.R.
Respondent by	:	Sri Ganesh R. Ghale, Standing Counsel for Revenue

Date of Hearing	:	25.09.2023
Date of Pronouncement	:	25.09.2023

O R D E R

PER LAXMI PRAASD SAHU, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against order passed by the NFAC Delhi dated 25.05.2023 DIN No.ITBA/NFAC/S/250/2023-24/1053190977(1) for the assessment year 2016-17 on the following grounds of appeal:

- 1) *On the facts and circumstances of the case, the order passed by the National Faceless Appeal Centre (NFAC) for the Assessment, Year 2016-17 vide order dated 25.05.2023 of the Income Tax Act is not maintainable in law.*

- 2) *On the facts and in the circumstances of the case, the learned Commissioner (Appeals) failed to appreciate that the appellant in the event management and conducts business in a small scale. Majority of the transactions of the appellant is performed through cash, during the time of buying the raw materials from vendors and also for the payment of daily wage laborer's, without appreciating the facts and the circumstances of the case, the tax levied by the learned assessing authority, and the same is confirmed by the Commissioner (Appeals) is not maintainable. Therefore the order of the Commissioner (Appeals) without due consideration of the said facts and the additions made and confirmed is against the principle of natural justice, thus order of the both authorities are liable to be set aside in the interest of justice.*

- 3) *On the facts and in the circumstances of the case, the Appellant submits that the notice issued by the learned assessing authority and the learned Commissioner(Appeals) without providing an adequate opportunity and without considering the nature of the business of the appellant, passed the order under section 143(3) of the Act is against the Principle of Justice. Thus the order of the assessing authority and the same was confirmed by the Commissioner (Appeals), hence the order of both the authorities are liable to be set aside.*

- 4) *On the facts and in the circumstances of the case, the Appellant submits that the Assessing authority treated the cash deposit amount of Rs 5,33,000/- as unexplained cash deposit the same has been disallowed and added back to the total income, which is not correct, in fact the source of income and the same is not appreciated by the assessing authority. It is not unexplained income but without providing adequate opportunities to the appellant and wrongly made the addition is excessive and arbitrary and thus liable to be deleted.*

- 5) *Without prejudice the assessing authority made additions and levied of the Tax, Interest & Penalty is excessive and arbitrary liable to be deleted.*
- 6) *For such other grounds that may be urged at the time of hearing, it is prayed that this Hon'ble Tribunal may set aside the order of both and allow the above appeal in the interest of justice and equity.*

2. The assessee has filed additional grounds of appeal as follows:

1. *On the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) for the Assessment Year 3016-17 vide order dated 25.05.2023 under the Income Tax is not maintainable in law.*
2. *On the facts and in the circumstances of the case, the learned CIT(A) failed to consider the submissions made by the appellant and without appreciating the same the CIT(A) upheld the additions, is against the principle of natural justice, thus order of the both authorities are liable to be set aside.*
3. *On the facts and in the circumstances of the case, the learned CIT(A) without providing an adequate opportunity to the appellant & passed order under section 143(3) of the Act is against the Principle of Justice and thus the order of the assessing authority and the same was confirmed by the Hon'ble CIT(A), hence the order of the both authorities are liable to be set aside.*
4. *On the facts and in the circumstances of the case, the appellant submits that the appellant is a sole proprietor and is engaged in the business of event management, where the appellant organises the events such as birthday parties, house warming ceremonies and such other small events. It is submitted that the majority of the transactions or the payments is made in cash as per the convenience of the vendors or to the wage labourers, Hence, pertaining to the nature of business the appellant has regularly made cash transactions.*
5. *On the facts and in the circumstances of the case, the appellant submits that, the appellant being new to the business and due to health issues, was late in filing the returns and hence, filed the belated returns under Sec 139(4) of the Income tax act on 31.03.2018 for the relevant AY 2016-17, where the prior to the amendment effective from 1.04.2017, the time period for filing of*

the belated returns was one year from the end of the relevant assessment year. Hence, the belated ITR filed by the appellant within the time allowed Wider Sec 139(4).

6. *On the facts and in the circumstances of the case, the appellant submits that, the Income Tax Returns of the appellant was selected for limited scrutiny, to assess the cash deposits made during the period of demonetisation. It is to bring to the attention of this Hon'ble court that the learned AO has stated that the cash deposits made by the appellant pertains to the period between 1-4-2015 to 313-2016. However, it is submitted that the limited scrutiny selected by the learned AO as demonetised cash deposits, however, such cash deposits were made during the relevant FY. 2015-16, hence, cannot be brought within the purview of the demonetisation . Therefore, it is submitted that the learned AO has passed the order and made additions arbitrarily without proper enquiry, which is mandatory before passing the order under Sec 143(3), which is frivolous, bad in law and liable to be set aside.*
7. *On the facts and in the circumstances of the case, the appellant submits that, the learned AO and the CIT (A), while passing the speaking order ought to have stated the reasons and the circumstance under which the Learned AO came to such conclusion to make such additions in the assessment order or in the order passed under Sec 250 of the Act. It is further stated that any such order passed without any proper reason, will cause it to be in violation of the principles of natural justice and when a speaking order is passed without any proper reasons as to how such conclusion was arrived, portrays unfairness and arbitrariness in reaching such conclusions. In the present case, the learned AO and in the order passed by the Hon'ble CIT(A), have passed the order without any proper reason or that the reason so stated, based on the mere cash deposits reflected in the bank statements of the appellant and the same being categorized as *monetized cash deposits, which is irrelevant to the relevant assessment year. It is an established precedent and the same has been reiterated in several judgments of the apex court, the extract of the judgment in the case of Kishan Lal v. UOI (1998) 97 Taxman 556 (SC) is reproduced as follows:
" A speaking order reduces arbitrariness. A reasoned order speaks for itself. It embodies in itself the principles of natural justice."*

Further the same is been reiterated by the Apex Court in the case of Asstt. Commissioner Commercial Tax Department, Works Contract and Leasing Quota v. Shukla & Bros. (2010) (4) JT 35:

"it shall be obligatory on the part of the judicial or quasi-judicial authority to pass a reasoned order while exercising statutory jurisdiction. In the absence of a reasoned order, it would become a tool for harassment".

Hence, from the reading of the above contention, the appellant submits that the order passed by the learned AO and of the Order passed by the CIT(A), is in violation of the principles of natural justice, as the which is vague, arbitrary, liable to be set aside, making the whole proceedings to be void ab initio.

8. *The appellant respectfully submits that, the assessment order passed under Sec 143(3), the learned A. O and in the order passed by the Hon'ble CIT (A), has erred by not mentioning the charging section under which the additions in the assessment order passed, making the additions to be vague, intentional and suffers from defects which is in violation of the statutory provisions of the Income Tax Act, 1961, which is vehemently erroneous, bad in law and against the principles and natural justice.*
9. *The appellant respectfully submits that, the learned A. O and in the order passed by the Hon'ble CIT (A), has made the additions in respect of the amount credited in the pass book, and not based on the based on the books of accounts of the appellant. The entries made in the passbook of the assessee cannot be considered as the books of accounts maintained by the assessee. Where it is a settled law _that the income tax proceedings shall be conducted only based on the Books of Accounts of the assessee, which otherwise will make the assessment proceedings to be null and void. In support of the said contention in a recent judgment, the relevant extract of the judgement passed by the Hon'ble Mumbai Tribunal in the case of Smt. Manasi Mahendra Pitkar v ITO [2016] 73 taxmann.com 68 (Mumbai-Trib) held as follows:*

"when the assessee is not maintaining any books of account and section 68 cannot invoked by the AO only on the basis of the bank Pass Book. The ITAT observed that bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year"
10. *In the present case, the learned AO has passed the assessment order based on the bank statement obtained and not based on the books of accounts of the appellant, therefore making the entire proceedings to be null and void and against the principles of natural justice. Hence the order of the both authorities are liable to be set aside.*
11. *Without prejudice the assessing authority made additions and levy of the Tax Interest & Penalty is excessive and arbitrary liable to be deleted.*
12. *For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed and set aside."*

2.1 I heard both the parties on admission of additional grounds. In my opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) I inclined to admit the additional grounds for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

3. The brief facts of the case are that the assessee has filed return of income electronically on 31.03.2018 declaring total income as Nil & current year's loss of Rs. 9,71,296/-. The case was selected for limited scrutiny under CASS for verification for the following issues:

“Cash deposit for demonetization period (9th November to 30th December) is reported as per SFT-14 reporting. No return was filed for preceding assessment year & current year return filed after 7.11.2016.”

3.1 The other statutory notices were issued to the assessee and another notice u/s 142(1) of the Income-tax Act,1961 ['the Act' for short] was issued to the assessee but assessee did not respond. The ld. AO called for information from the ICICI Bank Ltd., Kumara Park Branch, Bangalore and it was noticed that the assessee has maintained account in the above said bank bearing

No.625301223334 and during the period 01.04.2015 to 31.03.2016 from the bank statement, it was noticed that the assessee has deposited cash of Rs.5,33,000/-, which was treated as unexplained income in the hands of the assessee. Aggrieved from the above order, the assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) issued notices on different dates. The assessee did not respond. Accordingly, he dismissed the appeal of the assessee. Aggrieved from the order of ld. CIT(A), the assessee has filed appeal before the Income Tax Appellate Tribunal.

4. The ld. A.R. for the assessee submitted that the demonetization period was started from 08.11.2016 to 30.12.2016, which falls in the financial year 2016-17 relevant to the assessment year 2017-18. However, the case of the assessee is one year prior to it i.e. for the assessment year 2016-17, relevant financial year is 2015-16, which is outside the scope of demonetization period. Therefore, the reasons recorded for selecting the case for scrutiny is beyond the said period. He further submitted that the ld. AO cannot travel beyond its scope in the case of limited scrutiny, as per the limited scrutiny guidelines issued by the CBDT. Therefore, he submitted that the order of the ld. AO does not survive.

5. The ld. D.R. relied on the order of lower authorities and submitted that the ld. AO is rightly made addition on

the basis of information received from bank, which was not explained by the assessee during the course of assessment proceedings. Therefore, the unexplained income credited by the ld. AO is correct and the ld. AO has completed the assessment as per the scrutiny guidelines.

6. Considering the rival submissions, I find substance on the arguments advanced by the ld. A.R. of the assessee that the reasons for selection of scrutiny noted above is outside the purview of the demonetization period. The case of the assessee falls during the financial year 2015-16 and the reasons for selection of limited scrutiny is cash deposits during the demonetization period is not correct and it is also clear from the bank statement obtained by the AO from the ICICI Bank for the period from 1.4.2015 to 31.3.2016, which is also outside the period of the demonetization period on the basis of which ld. AO has made addition under the limited scrutiny, which is not sustainable as per the guidelines of the limited scrutiny issued by the CBDT, the addition made by the AO is on different footing. Accordingly, the addition made by the ld. AO does not survive. I also observe from the Income Tax return filed by the assessee that the assessee has filed complete balance sheet showing cash in hand and balance with banks. Keeping in view of my above observation, the appeal filed by the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.
Order pronounced in the open court on 25th Sept, 2023

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 25th Sept, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.