

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.202/Hyd/2022		
Assessment Year: 2017-18		
Perati Sudarshan Reddy, 2-100, Anantharam, Thorrer, Warangal District – 506163. PAN : BNBPP4854N.	Vs.	The Income Tax Officer, Ward – 1, Warangal.
(Appellant)		(Respondent)
Assessee by:		Shri M. Chandramouleswara Rao, Advocate
Revenue by:		Shri Kumar Aditya, Sr. AR
Date of hearing:		25/09/2023
Date of pronouncement:		26/09/2023

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.23.03.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

“1. The Appellate Order of the National Faceless Centre is bad and erroneous both on the facts and in law.

2. On the facts and in the circumstances of the case, the Ld.Natioanl Faceless Appeal Centre has erred in sustaining the addition made under section 68 for the sales turnover made during demonetization period. It ought to have considered the fact that, the assessee has duly explained the nature and source of the deposits and they represent sales turnover during demonetization periods.

3. On the facts and in the circumstances of the case, the Ld.Natioanl Faceless Appeal Centre has erred in sustaining the addition made under section 68 for the sales turnover made during demonetization period. It ought to have considered that violation of RBI notification does not make sales turnover as unexplained credit u/s 68. The act that the same is included in the turnover declared in P & L A/c. is also ignored and sustained the double addition.”

3. Facts of the case, in brief, are that assessee is an individual, who filed his return of income for the A.Y. 2017-18 on 30.10.2017 declaring total income at Rs.12,61,330/-. Subsequently, the case was selected for limited scrutiny and a notice u/s 143(2) and 142(1) of the Act were issued and duly served on the assessee. In response to the notices issued, assessee submitted the information. The explanation furnished by the assessee was examined and was confronted with the facts that he had deposited the cash in demonetized notes of Rs.6,15,00,000/- on 10.11.2016 and thereafter, made an addition of Rs.28,53,500/- u/s 68 of the Act to the total income of the assessee, as the assessee was unable to prove the sources of the same in his bank account(s) and hence, initiated penalty proceedings separately. Thus, the Assessing Officer completed the assessment and passed assessment order on 30.12.2019 u/s 143(3) of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal which was later migrated to Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before me.

6. Before me, Id. AR for the assessee pointed out some decisions of various Tribunals and the decision of Hon'ble Delhi High Court wherein, assessee got relief. The decisions relied upon by the Id. AR for the assessee are as follows :

1. Mr. Atish Singla Vs. ITO, Ward – 43(1), New Delhi – ITA No.1185/Del/2021.
2. Sri Lateef Abdul Mohd, Hyderabad Vs. ITO, Ward 7(1), Hyderabad in ITA No.501/Hyd/2021.
3. M/s. Purani Hospital Supplies Private Limited Vs. DCIT, Coimbatore in ITA No.489/Chny/2022.
4. PCIT Vs. Agson Global (P) Ltd., reported in (2022) 134 taxmann.com 256 (Delhi).
5. Rama Mepa Odedara, Porbandar Vs. ITO, Ward – 2(4), Porbandar in ITA No.67/Rjt/2019.
6. The DCIT, Madurai Vs. Mr. Kannan Rajendra Babu, Madurai in ITA No.726/Chny/2022.
7. Col. Ranjan Sharma Vs. The ITO, Ward – 3(4), Bengaluru in ITA No.101/Bang/2022.
8. ITO, Ward – 1, Shivamogga Vs. M/s. Manasa Medicals, Shivamogga in ITA No.552/Bang/2022.

9. Prathamika Krushi Patina Vs. ITO – 5, Devangagere in ITA No.593/Bang/2021.
10. DCIT Vs. M/s. Unique Metropolis, Ahemedabad in ITA No.3140/Ahd/2015.
11. Jagadamba Optics Pvt. Ltd. Vs. DCIT, New Delhi in ITA No.1553/Del/2021.
12. Mrs. Usha Narayan Chaware, LH of Late Narayan Dattatraya Chaware Vs. ITO, Ward – 4(5), Pune.

6.1. The learned AR for the assessee also pointed out the decision of the jurisdictional Tribunal in the case of ACIT Vs. Vaishnavi Bullion Private Limited, Hyderabad in ITA No.58/Hyd/2021 for A.Y. 2017-18 dt.28.11.2022 whereby the jurisdictional Tribunal has rejected the claim of the assessee to certain percentage.

7. On the contrary, the learned DR relied upon the jurisdictional Tribunal's decision in the case of Vaishnavi Bullion Private Limited (supra).

8. In rebuttal, the ld. AR had submitted that the decision in the case of Vaishnavi Bullion Private Limited (supra) is the subject matter for adjudication before the Hon'ble High Court and that substantial questions of law has already been framed by the Hon'ble High Court on 24.04.2023 whereby the legality of the order has to be examined by the honorable High Court. Since there are conflicting decisions of the Tribunal to the case of Vaishnavi Bullion Private Limited (supra), ld. AR for the assessee requested the Bench

that the matter may be remanded back to the file Assessing Officer for making afresh adjudication.

9. I have heard the rival arguments of the parties and perused the material available on record. In the present case, Assessing Officer made addition of Rs.28,53,500/- u/s 68 of the Act to the total income of the assessee, as the assessee was unable to prove the sources of the same in his bank account(s) which were deposited during the period of demonetization. After hearing both parties and after considering the totality of the circumstances, more particularly, when the appeal in the case of Vaishnavi Bullion Private Limited (supra) is pending for adjudication before the Hon'ble High Court, and the substantial questions of law has been framed, I, therefore, deem it appropriate to remand the matter back to the file of the jurisdictional Assessing Officer to conduct denovo assessment after considering various decisions on the subject matter passed by the various Tribunals, including the decisions of the jurisdictional Tribunal passed in similar circumstances in ITA No.1185/Del/2021, ITA 501/Hyd/2021, ITA No.114/Hyd/2023 and also in the case of Vaishnavi Bullion Private Limited (supra), and pass a reasoned speaking order considering the fact that assessee's sales for the previous year and the post-year were in the same proportions, as disclosed in the period of demonetization, after verification. Accordingly, I remand back the appeal to the file of Assessing Officer for afresh adjudication. Further, the assessee is directed to appear before the Assessing Officer on the date of hearing fixed by the Assessing Officer and shall file all the documents / evidence in support of its case. In case, the assessee

failed to file any documents in support of its case, Assessing Officer shall decide the matter in accordance with the law. Accordingly, the appeal of assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 26th September, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 26th September, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Perati Sudarshan Reddy, 2-100, Anantharam, Thorrer, Warangal District – 506163.
2	The Income Tax Officer, Ward – 1, Warangal.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order