

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.511/Bang/2023
Assessment Year : 2017-18

Sri Dadapeer Kumar, 69/3, 1 <sup>st</sup> Floor, AR Extension, 'A' Street, Gandhi Nagar, Bengaluru-560 009. <b>PAN : BDRPK 4553 K</b>	Vs.	1. The Income Tax Officer, Ward-5(2)(3), Bengaluru. 2. National Faceless Appeal Center, Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Hitha M, Advocate
Revenue by	:	Shri Parithivel, JCIT (DR)

Date of hearing	:	05.10.2023
Date of Pronouncement	:	09.10.2023

**ORDER**

***Per Laxmi Prasad Sahu, Accountant Member :-***

This appeal filed by the assessee is against the order passed by the NFAC, Delhi dated 16/12/2021 vide DIN No.ITBA/MFAC/S/250/2021-22/1037858025(1) u/s 250 of the Act on the following grounds of appeal:-

- "1. On the facts and circumstances of the case the order passed by the Commissioner of Income Tax (Appeals) for the Assessment year 2017-18 vide order dated under the Income Tax is not maintainable in law.*
- 2. On the facts and circumstances of the case the learned Commissioner ought to have appreciated that, the appellant is in the business of conducting*

*event management. The business of the appellant majorly involves the use of cash with the sponsor's , and also the payment of the laborer's in cash. Without giving any due consideration to the facts of the said case, the assessing officer and the Appellate authority have erred in making the additions which is bad in law. Thus, the assessing officer has erred in holding that the cash deposits were mad wring the period of demonetization, and erroneously passed the assessment order, which is against the law.*

*3. On the facts and in the circumstances of the case, the Appellant submits that the notice issued by the learned assessing authority the learned CIT(A) without providing adequate opportunity and considering the nature of the business of the appellant passed the order under section 144 of the Act is against the Principle of Justice and thus the order of the assessing authority an he same was confirmed by the Hon'ble CIT(A), hence the order of the both authorities are liable to be set aside.*

*4. Without prejudice the assessing authority made additions and levy of the Tax Interest Penalty is excessive and arbitrary liable to be deleted.*

*5. For such other grounds that may be urged at the time of hearing, it is prayed that this Hon'ble authority may kindly allow thee above appeal in the interest of justice and equity."*

2. At the time of hearing, it was noticed that the appeal filed by the assessee was delayed by 411 days, which has been explained by the assessee in the Affidavit dated 04/10/2023.

3. We have heard the rival submission of both the parties and after perusing of the materials placed before us, we are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned. **The Hon'ble Apex court has also decided for exclusion of effect of the Covid 19 reported in [2022] 134 taxmann.com 307 (SC) SUPREME COURT OF INDIA Cognizance for Extension of Limitation, In re MISCELLANEOUS APPLICATION NOS. 665 OF 2021 AND 21 & 29 OF 2022 SUO MOTU WRIT PEITION (C) NO. 3 OF 2020JANUARY 10, 2022 .** We accordingly condone the delay in filing the

appeal after relying on the judgments of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (198) 167 ITR 471.

4. The brief facts of the case are that the assessee filed return of income and declared loss of Rs.51,54,918/- on 31/03/2018. The case was selected for scrutiny under CASS for complete scrutiny and thereafter other statutory notices were issued to the assessee. The assessee filed details and AO noted that the assessee is an individual, engaged as an entertainment professional and proprietor of Kamar Film Factory and observed that the assessee deposited cash as under:-

Name of the Bank	Account No.	Amount (Rs.)
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Axis Bank	916020048403519	7570000
ICICI	625301223334	450000
Total		8020000

5. The assessee was asked to explain source of cash deposit and assessee did not file the reply, therefore, the AO passed ex-parte order u/s 144 of the Act on the basis of material available before him and treated the entire cash deposit in bank accounts of Rs.80,20,000/- as unexplained money u/s 69A of the Act and it was taxed as per sec. 115BBE of the Act.

6. Aggrieved from the above order, the assessee filed appeal before the CIT(A) on 19/05/2020. During the course of appellate proceedings, the CIT(A) granted opportunity to file submission and documents in support of its grounds of appeal. However, the assessee did not file any documents, therefore, the CIT(A) also passed ex-parte order on the basis of material available before him.

7. Aggrieved from the order of the CIT (A) the assessee filed appeal before the Income Tax Appellate Tribunal.

8. The Id.AR submitted that the assessee is an professional and proprietor of Kamar Film Factory and due to lack of knowledge, the assessee could not appear before the AO and could not respond the notices issued by the CIT(A), therefore, she requested that the matter may be sent back to AO for fresh consideration.

9. The Id.DR relied on the order of the lower authorities and submitted that during the assessment proceedings, the assessee was granted opportunity to substantiate the cash deposited during the demonetization period in the above two bank accounts maintained by the assessee. However, the assessee did not prove sources of the cash deposits, therefore, the AO was bound to complete the assessment ex-parte. Even before the CIT(A), the assessee did not appear. Therefore, the Id.DR objected for giving chance to the assessee.

10. We have considered the rival submissions and noted that during the demonetization period, the assessee has deposited cash in the aforesaid two bank accounts as observed by the AO noted supra. The assessee did not appear in spite of the opportunity granted by the CIT(A) and we noted that it was a COVID19 period when the CIT(A) passed order. We also note from the assessment order, it was passed on 10/12/2019 and the CBDT had issued Circular/Notification dated 09.08.2019 in F.no.225/145/2019 ITA II in respect of the examination of the cash deposited during the demonetization period has not been considered by the AO. The similar issue has been decided by the coordinate bench of this Tribunal in the case of Balaji Auto Enterprises Mysore Pvt. Ltd., in ITA No.546/Bang/2022 dated 20/10/2022.

cited Supra, which is as under:-

*9. After hearing both sides, perusing the entire materials on record and after examining the orders of the lower authorities, we observe that as per ground No.3 to 6, the assessee has challenged the addition made on cash deposit during demonetization period of Rs.8,30,000/-. We observe from the order of the lower authorities that this issue should have been examined in the light of CBDT Circular dated 09.08.2019 in F.no.225/145/2019 ITA II but the AO has not done so. The similar issue has been decided by the coordinate bench of the Tribunal in the case M/s Bhoopalam Marketing Services Pvt. Ltd., in ITA No.375/Bang/2002, the relevant part of the order is as under:-*

*“7. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has deposited Rs.298,08,080/- during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of INR 5,82,76,300/- as income of the assessee u/s. 68 of the income*

tax act, by passing assessment order u/s. 144 of the Act. The Ld.AO made such addition as the assessee could not file requisite details as the notice was issued to the email address that was not functional. In the interest of justice, we deem it proper to remand the issues back to the Ld.AO for a de novo verification.

7.1 We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II. 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.

8. In 1 of such 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.

8.1 The instruction dated 21/02/2017 that the assessing officer 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 is 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.*

*8.2 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. 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.*

*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.*

*In the result, the appeal filed by assessee as well as the appeal of revenue stands allowed for statistical purposes.”*

*9.1 Respectfully following the decision in the case of M/s Bhoopalam Marketing Services cited supra, the AO is directed make fresh examinations on the cash deposited during the demonetization period in accordance with law and as per the CBDT guidelines. The AO is directed to give reasonable opportunity of being heard to the assessee. The assessee is also directed to produce necessary documents/evidence for substantiating his case for early disposal of the appeal and not to seek unnecessary adjournments.*

11. Since the issue before us has been decided ex-parte and the AO has also not examined the case in the light of the Circular/Notification issued by the CBDT cited supra and in the interest of justice we therefore, think fit to send the matter back to the AO for deciding the issue afresh in the light of the Circular/notification. The AO is directed

to provide reasonable opportunity of being heard to the assessee and decide the issue as per law. The assessee is directed to provide necessary documents & correct email id/ postal address for communication and not to seek unnecessary adjournment for early disposal of the case.

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

Order pronounced in court on 9<sup>th</sup> day of October, 2023

Sd/-

**(BEENA PILLAI)**  
Judicial Member

Sd/-

**(LAXMI PRASAD SAHU)**  
Accountant Member

Bangalore,  
Dated, 9<sup>th</sup> October, 2023  
/ vms /

Copy to:

Applicant  
Respondent  
CIT  
CIT(A)  
DR, ITAT, Bangalore.  
Guard file

By order

Asst. Registrar, ITAT, Bangalore