

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1093/Bang/2023
Assessment year : 2017-18

Mr. Mohammed Masood, S/o. Bashasab, Water Tank Road, Birur – 577 116, Kadur Taluk. Chikmagalur Dist. PAN: BNNPM 0004K	Vs.	The Income Tax Officer, Ward 1, Chikmagalur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Siddesh Nagaraj Gaddi, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	16.01.2024
Date of Pronouncement	:	19.01.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is against the DIN & Order No.ITBA/NFAC/S/250/2022-23/1057075646(1) dated 16.10.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2017-18 confirming the order of the AO making addition of Rs.10,50,660 towards cash deposits during demonetisation period.

2. The brief facts of the case are that the assessee is having PAN BNNPM 0004K and information was received regarding substantial amount of cash deposits during the demonetisation period and assessee

did not file return for AY 2017-18 within the due date prescribed u/s 139(1) of the act. Accordingly notice dated 12.03.2018 u/s. 142(1) was issued to the assessee calling for return on or before 31.03.2018 but did not respond. The assessee also did not respond to the notice dated 06.03.2019 and the AO independently called information from Karnataka Bank and it was noticed that the assessee as maintained 3 bank accounts no. 9257002100511901, 9257002100498801 and 92525500101037401 and made cash deposits of Rs.10,50,660 during demonetisation period. The JCIT, Hassan Range, Hasan called the records and issued direction u/s. 144A. Accordingly the AO issued show cause notice and intimated the assessee that if the assessee did not comply, assessment shall be completed as per best judgment assessment u/s. 144. Accordingly. The AO completed the assessment and applied 69A of the Act and made addition of entire cash deposit as income of assessee and taxed u/s. 115BBE of the Act.

3. The assessee filed appeal before the CIT(Appeals). However, the assessee did not comply with the notices issued and accordingly the CIT(Appeals) dismissed the appeal of the assessee on the basis of material available before him. Aggrieved, the assessee is in appeal before the Tribunal.

4. The Id. AR submitted that the assessee is an agriculturist and he had no taxable income, therefore the assessee did not file return of income. However, the AO treated the entire cash deposits in the bank accounts as income u/s.69A of the Act which is not correct. During the

assessment proceedings the assessee received notice u/s. 144 r.w.s. 142(1) dated 04.09.2019 which was replied on 16.9.2019 and filed on 17.9.2019 placed at pg. 14 of PB) stating that the assessee took gold loan from Karnataka Bank which was repaid. However the AO passed the order on 25.09.2019 without taking into cognizance the submissions of the assessee. He also filed written submissions dated 25.03.2022 filed before CIT(A) explaining the reason for cash deposits (placed at pg. 20 and onwards) and submitted that the CIT(Appeals) has passed the order on 16.10.2023 without considering the submissions of assessee and the evidence (placed at page 1 to 35 of PB). Accordingly, he requested that the order passed by both the authorities are without taking notice of the submissions made by the assessee and hence the addition deserves to be deleted.

5. The ld. DR relied on the orders of lower authorities.

6. Considering the rival submissions, we note that the assessee is an agriculturist and did not file return of income as he had no taxable income. The explanation of the assessee regarding substantial amount of cash deposits made in the bank accounts during demonetisation period has not been considered by the AO as well as CIT(Appeals).

7. Further since the issue involved in this case relates to the demonetization period the issue has to be examined in the light of the instructions issued by the CBDT in regard to the cash deposited during the demonetization period. The co-ordinate bench of the Tribunal in the case of M/s. Bhoopalam Marketing Services Pvt. Ltd., vs. ACIT in

ITA No. 375 & 564/Bang/2022 vide order dated 15.09.2022 has held as under:-

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. 225/363/2017ITA.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 sales 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. Nonavailability 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 or 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.”

8. Respectfully following the above decision, we deem it fit to remit the issue to the file of AO to decide the issue afresh in the same terms. The AO will consider the explanation furnished by the assessee in respect of the cash deposited during the demonetization period and in light of the CBDT instructions, if applicable to the assessee being an agriculturist. The AO is directed to give reasonable opportunity of being heard to the assessee and decide the issue as per law. The assessee is also directed to produce evidence/documents in substantiating his case. The assessee is directed not to seek unnecessary adjournments for early disposal of the case.

9. In the result, the assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on this 19th day of January, 2024.

Sd/-

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 19th January, 2024.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.