

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

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

ITA No. 1157/Bang/2023
Assessment Year : 2017-18

Shri Aijaz Ahmed Suri, Chalukya Nagar, 1 st Cross, Badami, Bagalkot – 587 201. PAN: DMVPS9886Q	Vs.	The Income Tax Officer, Ward – 1, Bagalkot.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vinay Kulkarni, CA
Revenue by	:	Shri Ganesh R. Ghale, Advocate – Standing Counsel for Revenue

Date of Hearing	:	24-01-2024
Date of Pronouncement	:	30-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 01/11/2023 passed by NFAC, Delhi for A.Y. 2017-18.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the addition of Rs. 12,26,000/- under section 69A r.w.s. 115BBE of the Act.

3. Brief facts of the case are as follows:

3.1 Assessee is an individual, deriving income from salary. For the Assessment Year 2017-18, return of income was filed on 15/07/2017 declaring total income of Rs. 3,48,370/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 24/09/2018 and duly served on the assessee. During the course of assessment proceedings, assessee was asked to show cause as to why cash deposited amounting to Rs. 12,26,000/- during the demonetization period ought not to be brought to tax. In response to the show cause notice, assessee filed reply. The Ld.AO did not accept the explanation given by the assessee and held that the assessee's explanation was unsatisfactory regarding the source of cash deposited and brought to tax Rs. 12,26,000/- under section 69A of the Act. The AO also applied the rate of tax as provided under section 115BBE of the Act.

3.2 Aggrieved, the assessee filed appeal before the Ld.CIT(A). The CIT(A) confirmed the addition of the AO and dismissed the appeal of the assessee.

3.3 Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the *Tribunal*.

4. Assessee has filed Paper Book comprising of 92 pages *inter alia* enclosing therein copies of the show cause notice, replies filed before the Ld.AO, copy of the written submissions filed before the

CIT(A), the bank statements reflecting cash withdrawals etc. However, the Ld.CIT(A) upheld the order of the Ld.AO.

5. The Ld.DR relied on the order of the Ld.AO and the Ld.CIT(A). We have heard the rival submissions and perused the material on record.

6. 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.

7. In one 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. Instruction 21/02/2017 issued by the CBDT suggests some indicators towards verifying the suspicion of backdating of cash. It also suggests indicators to identify abnormal jump in cash trials on identifiable persons as compared to earlier history in the previous year. Therefore in our opinion it is important to examine whether assessee falls into any of these categories and transfer of deposit of cash is not in line with history of transactions in the preceding assessment years.

9. The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions based on the facts in present case. 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.

Assessee is directed to furnish PAN and address details of the depositors from whom loan repayment has been accepted in 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 shall be granted physical hearing in order to justify its claim.

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

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

Order pronounced in the open court on 30th January, 2024.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th January, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore