

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

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.894/Bang/2023
Assessment Year: 2017-18

Nagaraja Kamath Kogganna Udayavara D 106, Maithree Apartments SSSIHMS QTRS. EPIP Area Whitefield Bangalore 560 066 Karnataka PAN NO : AHOPK7441E	Vs.	ITO Ward-3(3)(4) Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri Balachandran, A.R.
Revenue by	:	Sri Ganesh R. Ghale, Standing Counsel for Department

Date of Hearing	:	05.02.2024
Date of Pronouncement	:	05.02.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 14.9.2023 for the assessment year 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

“1. *The impugned assessment order made u/s 143(3) of the Act dated, 20-11-2019, is arbitrary and opposed to the facts of the case and the law and therefore, the same is liable to be set aside.*

Assessment Order - void ab initio.

2. *The Learned AO as well as the Learned CIT(A) erred in*

holding that the amount of Rs. 10,07,500/- deposited in cash during the demonetisation period is unexplained cash u/s 69A r.w.s 115BBE of the Act:

(i). Because, the previous withdrawals available for redepositing in the bank account during the demonetisation period has not been considered.

(ii). Because, the only source of income is from salary and the question of generating undisclosed income did not arise.

3. The Appellant craves leave to add or delete or modify or revise any ground at the time of hearing before the Hon'ble Tribunal.

2. Facts of the issue are that the assessee is a salaried employee working as Medical Engineer in M/s. Sathya Sai Institute of Higher Medical Sciences, Bengaluru. The assessee during the year has declared a gross salary income of Rs.7,66,434/-. During demonetization period, the assessee deposited cash of Rs.10,07,500/- in his bank account which was added by the Ld. AO as unexplained cash U/S.69A r.w.s 115BBE of the Act.

The Appellant deposited cash on the following dates:

13/11/2016	Rs.6,07,500/-
21/11/2016	Rs.3,00,000/-
30/12/2016	Rs.1,00,000/-

2.1 The demonetization started on 08/11/2016 and the assessee immediately on 13/11/2016 deposited Rs.6,07,500/- and subsequently on 21/11/2016, the assessee deposited Rs.3,00,000/- and on 30/12/2016, the assessee deposited Rs.1,00,000/-. The assessee had filed Statement of Affairs and Cash flow statement before the ld. CIT(A). The ld. CIT(A) after considering the same, in his order vide last **para of 4.3** has given the following finding;

"A close look at the above withdrawal pattern reveals that the withdrawals was made to meet to the day to day expenses: Since the appellatant has not furnished any documentary evidences to establish

the sources of cash deposits to the tune of Rs. 10,07,500/ the same remains unsubstantiated. Hence the ground No.1 to 5 are dismissed".

3. The ld. A.R. for the assessee submitted that the assessee and his wife Smt. Veena (NURSE) both are working in one of the best hospitals in the world M/s. Sathya Sai Institute of Higher Medical Sciences, Bengaluru and also the hospital treats all the patients free of cost. The ld. A.R. submitted that the cash was required by him for meeting the day-to-day expenses of the family and also for meeting the educational requirements of their daughter, including tuition fees. The assessee had filed Cash flow statement from 01/04/2015 to 31/03/2017 wherein it was demonstrated that there was enough cash balance to deposit in the bank during demonetization from out of the earlier withdrawals. As per cash statement filed, cash balance as on 31/10/2016 was Rs.9,33,016/- and cash of Rs.9,07,500/- was deposited before 21/11/2016. The assessee withdrew cash of Rs.48,000/ during November 2016 and Rs.72,000/- during the month of December 2016 but assessee deposited on 30/12/2016 a sum of Rs.1,00,000/-, hence the cash was available with assessee to deposit during demonetization period.

3.1 The ld. A.R. submitted that the ld. AO in the assessment order itself noticed that the assessee and his wife are salaried employees and they are not found to have any other sources of income other than salary income. These facts are undisputed. The ld. AO has however made addition u/s 69A of the Act as unexplained investment. He submitted that the law on this issue is fairly settled by the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax Vs P. K. Noorjehan*. Thus it is settled position that even if the AO is not satisfied with the explanations in regard to sources still the AO has to use his discretion in a fair and just manner. Thus, it is evident that any

man with common prudence if he uses discretion cannot overlook the fact that any income generated even if it cannot be explained can come from only one source that is Salaries. Thus, on the settled legal position/ the ld. AO should have desisted from making the said addition/ hence he prayed in the interest of equity and justice to allow the appeal.

4. The ld. D.R. relied on the order of ld. CIT(A) and submitted that the assessee has not reconciled the availability of opening balance and also cash available from the earlier withdrawals in the assessment year under consideration and the addition to be confirmed.

5. We have heard the rival submissions and perused the materials available on record. In this case, the main plea is that assessee is having earlier year opening balance and also current year withdrawals available to deposit into bank account. In our opinion, the assessee has to explain the availability of said cash balance by producing the corroborative materials. More so, this issue was considered by this Tribunal in the case of Bhoopalam Marketing Services Pvt. Ltd. In ITA No.375/Bang/2022 dated 15.9.2022, wherein held 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 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 wide 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.”

5.1 In view of the above order of the Tribunal, we inclined to remit the issue in dispute to the file of ld. AO for fresh consideration to examine in the light of above order of the Tribunal.

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

Order pronounced in the open court on 5th Feb, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 5th Feb, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
- 5 Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**