

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

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

ITA No.1037/Bang/2023
Assessment Year: 2017-18

Boraiah Sarala Ashwath Narayan No.375, I Road, Ideal Homes Rajarajeshwarinagar Bangalore 560 098 PAN NO: BKIPA9121M	Vs.	ITO Ward-3(2)(3) Bangalore
ASSESSEE		RESPONDENT

Assessee by	:	Shri Sripada M., A.R.
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue.

Date of Hearing	:	07.02.2024
Date of Pronouncement	:	07.02.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 12.10.2023 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

2. The only issue in this appeal is with regard to sustaining of addition of Rs.8.2 lakhs u/s 69A of the Act by charging tax at 60% u/s 115BBE of the Act.

3. Facts of the case are that as per ITS details, the assessee is maintaining bank accounts in Canara Bank, vide A/c.No.2529101021757 and cash deposit made during period year is Rs. 11,40,000/-. The cash deposits during the period are made out of previous cash withdrawals from the banks. The ld. AO has considered the cash withdrawals and worked out the withdrawals available for redeposit.

However, after considering the cash withdrawals available for redeposit, still there are deposits which cannot be considered as made out of previous cash withdrawals. The entire cash withdrawals from 8/04/2016 up to 20/10/2016 can be considered as available for redeposit during the period. The ld. AO has observed that cash withdrawals from 8/4/2016 to 20/10/2016 should be considered as available is Rs.3,20,000/-, the balance amount of Rs.8,20,000/- is taxable u/s.69A as unexplained cash deposits during the period. The total unexplained cash deposits during the period taxable U/S.69A are at Rs.8,20,000/-. The above unexplained money of Rs.8,20,000/- u/s.69A is to be taxed as per section 115BBE of the Act. Hence, ld. AO held that section 271AAC is attracted since total income determined included income referred to in section 69A of the Act and tax is payable as per section 115BBE. Against this assessee is in appeal before us.

4. On appeal, ld. CIT(A) has observed that the issue of cash deposit pertains to previous year 2016-17 (1.4.2016 to 31.3.2017). The cash withdrawals made from 1.4.2016 to till the date of demonetization had to be taken into account. Further, the cash in hand as shown by assessee as on 31.3.2016 can also contribute for cash deposit in previous year 2016-17. Any other sources of deposit other than the above two have to be admitted strictly on the basis of factual evidence. In the instant case, cash withdrawals from 8/4/2016 to 20/10/2016 was Rs.3,20,000/- only. There was no cash-in -hand as on 31/03/2016. The assessee argued before ld. CIT(A) that certain sums were withdrawn in November, 2015 (previous year 2015-16) for some purpose and it was not utilized, and was available for deposit in previous year 2016-17. However, if certain cash-in-hand were available on 31/03/2016, assessee could have reported the same in his/her income tax return for AY 2016-17. The assessee had failed to report the same in his/her Income Tax Return. Further, assessee argued before ld. CIT(A) that these amounts were withdrawn in previous year 2015-16 for new business which could not

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be materialized. However, assessee had failed to provide any documentary evidence in this regard. As a result, the appeal of the assessee was dismissed by the Id. CIT(A).

5. We have heard the rival submissions and perused the materials available on record. The claim of the assessee is that the said amount of Rs.8.2 lakhs has been deposited out of withdrawals made by assessee on 13.11.2015 at Rs.5 lakhs and on 17.11.2015 at Rs.5 lakhs and due benefit of these withdrawals to be given towards the cash deposit of Rs.8.2 lakhs. Accordingly, he drew our attention to the bank statement of Canara Bank bearing No.2529101021757. In our opinion, the assessee has to file necessary cash flow statement disclosing the source of fund and application of fund for the financial year ended on 31.3.2017 and has to demonstrate that sufficient cash available with the assessee, so as to deposit into this bank account and that is required to be examined at the end of Id. AO. Accordingly, the issue in dispute is remitted to the file of Id. AO for fresh consideration after giving an opportunity of hearing to the assessee.

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

Order pronounced in the open court on 7th Feb, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 7th Feb, 2024.
VG/SPS

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

By order

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