

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

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

<b>ITA No. 1050/Bang/2023</b>
<b>Assessment Year : 2017-18</b>

Shri Shivappa Thotad, NIL 1-69, Nagasamudra, Nagasamudra Gadag – 582 101. <b>PAN: AXWPT8151E</b>	<b>Vs.</b>	The Income Tax Officer, Ward II, Gadag.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri R. Chandrashekar, Advocate
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	31-01-2024
Date of Pronouncement	:	31-01-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 21.10.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

*“1. The Order passed by Learned CIT(Appeals) is illegal, baseless and opposed to facts of the case.*

*2. The learned CIT(Appeals) has erred in making an addition of Rs.17,73,000 to the income of the assessee as unexplained money. The assessee is purely an agriculturist and has deposited the said sum from out of past drawings and past savings.*

*3. The learned CIT(Appeals) has not given credit to the agricultural Income of the assessee.*

*4. The learned CIT(Appeals) has erred in charging higher rate of tax under section 115BBE. When the source of income is known and is also exempt. Higher rate of tax cannot be applied to the assessee.*

*5. Assessee prays leave to add any other grounds of appeal before or at the time of hearing.”*

## **2. Brief facts of the case are as under:**

**2.1** The assessee is an agriculturist. The assessee deposited a sum of Rs.17,73,000/- in the form of cash in his bank account with Vijaya Bank, Gadag. The said amount was deposited out of previous drawings from bank. The ITO issued notice u/s. 143(2) on 28.09.2018. The ITO has completed the assessment by adding entire sum of Rs.17,73,000/- deposit during demonetization period.

The Ld.AO after considering the submissions, added Rs. 17,73,000/- as unexplained money.

**2.2** Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A) wherein it was submitted that the amount was deposited into the bank was purely out of past drawings and past savings and that this money are often used for purpose of seeds and fertilizers. However, during the demonetisation period as these were old SBM notes, these had to be redeposited to the bank.

The above explanation by the assessee was rejected by the Ld.CIT(A) and the order of the Ld.AO was upheld.

**3.** Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

**4.** On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

**5.** In the present facts of the case, at the outset, we are of the view that the cash book and the confirmations from the depositors are to be filed by the assessee and should be verified by the Ld.AO.

**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 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 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.** 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 may 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 31<sup>st</sup> January, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 31<sup>st</sup> 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