

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

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

ITA No. 1085/Bang/2023
Assessment Year : 2017-18

Shri Yatish Kumar Kempanna, No. 41, Shanti Nivas, 8 th Cross, Agrahara, Dasarahalli, Bangalore – 560 079. PAN: BDZPK4431J	Vs.	The Income Tax Officer, Ward – 6(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vinod Chowdary, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Dept.

Date of Hearing	:	23-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal by assessee arises out of order dated 16/10/2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

	<i>Grounds of Appeal</i>	<i>Tax effect relating to each ground of appeal (see note below)</i>
1.	<i>The cash deposited into the assessee account is out of cash inherited from father on his death.</i>	1942553

	<i>The inherited income from relative is exempt u/s. 56. The Learned AO has consider it has unexplained income u/s. 69A.</i>	
	<i>Total Tax Effect</i>	<i>Rs. 19,42,553</i>

2. Brief facts of the case are as follows:

2.1 The assessee e-filed her return of income for the A.Y. 2017-18 on 01.08.2017 declaring the total income at Rs.3,25,930/-. The case of the assessee was selected for scrutiny through CASS. After the issue of statutory notices, the AO began scrutiny proceedings. The AO issued a notice u/s 143(2) by fixing the case for hearing on 24.09.2018. The Notices u/s 142(1) was issued by the AO from time to time. On perusal of the information obtained from Bank by issue of notice u/s 133(6), it was noticed by the AO that the assessee had made cash deposits of Rs. 18,85,000/-. The AO issued show cause notice on 15.11.2019. In response to the said notices, the assessee had furnished the details like copy of cash book, statement of income, copy of 26AS, details of cash deposits and copy of death certificate with denomination in ITBA e-filing portal but failed to furnish the documentary evidence in respect of cash withdrawn from his father's account to substantiate cash deposit of Rs. 18,85,000/-. Therefore, the AO treated the cash deposit of Rs.18,85,000/- as unexplained money u/s 69A of the Act and added to the total income of the assessee.

2.2 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) held as under:

“5.2 During the appellate proceedings, the submission of the assessee in nutshell is that the cash deposited represent cash inherited from his father who in turn had withdrawn that cash from his bank account. The assessee has also submitted that inheritance does not attract under the Act.

5.3 Having considered the factual matrix of the case, I find that on perusal of the information obtained from Bank by issue of notice u/s 133(6), it was noticed by the AO that the assessee had made cash deposits of Rs. 18,85,000/-. The AO issued show cause notice on 15.11.2019. In response to the said notices, the assessee had furnished the details like copy of cash book, statement of income, copy of 26AS. details of cash deposits and copy of death certificate with denomination in ITBA e-filing portal but failed to furnish the documentary evidence in respect of cash withdrawn from his father's account to substantiate cash deposit of Rs. 18.85,000/-Therefore, the AO treated the cash deposit of Rs.18,85.000/- as unexplained money u/s 69A of the Act and added to the total income of the assessee. During the appellate proceedings, the submission of the assessee in nutshell is that the cash deposited represent cash inherited from his father who in turn had withdrawn that cash from his bank account. The assessee has also submitted that inheritance does not attract under the Act. However, the assessee has not filed any evidence to show that-

i) The cash withdrawn by his father was available with him for depositing in his account.

ii) The assessee has not proved that he was the sole nominee of his father in the bank accounts etc.

iii) The assessee has not proved that he was the sole inheritor of the estate of his father. And that there are no other legal heirs to his father's estate.

iv) The assessee has not furnished the copy of the will of his father.

v) The assessee has not been able to establish that its case falls under one of the clauses of Rule 46A for the purpose of admission of additional evidence.

Therefore, the source of cash deposited of Rs.18,85,000/- the bank accounts of the assessee remains unsubstantiated. In the circumstances, I do not see any reason to interfere with the well reasoned and speaking order of the AO. Therefore the additions made by the AO are confirmed.

Hence, the ground of appeal is Dismissed.”

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

3. Before this *Tribunal*, the Ld.AR submitted that no sufficient time was given by the Ld.AO and the Ld.CIT(A) did not consider the submissions filed by the assessee. It is submitted that, the assessee filed cash book revealing the receipt of cash from the borrowers. He thus prayed for the issue to be remanded to the authorities by placing reliance on the following decisions.

- *Anantpur Kalpana Vs ITO Koppal-ITA No 541/Bang/2021 dated 13-12-2021 is enclosed as Annexure-XV to the paper book.*
- *M/S Bhavana Co-Operative Credit Society Niyamitha VS ITO Sirsi-ITA No 739/Bang/2021 dated 16-09-2022 is enclosed as Annexure-XVI to the paper book.*
- *Shri Nralakere Marulasiddappa Dayananada VS ITO Chikmagalur-ITA NO 261/Bang/2023 dated 22-06-2023 is enclosed as Annexure-XVII to the paper book.*
- *Smt Malapur Maunika VS ITO Chitradurga-ITA No: 599/Bang /2023 dated 30-10-2023 is enclosed as Annexure XVIII to the paper book.*

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. Admittedly the assessee deposited Rs. 18,85,000/- during the post-demonetization period. Therefore Ld.AO made addition of said amount as income of the assessee u/s. 69A of the Act, on the ground that the assessee ought not to have accepted SBN's which were no longer a legal tender. 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 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. 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 31st January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st 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