

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

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

ITA No. 20/Bang/2024
Assessment Year : 2017-18

Ms. Rukmini, #1878/4 M, 105, Sawday Road, Mandi Mohalla, Mysuru – 570 021. PAN: AJVPR2967F	Vs.	The Income Tax Officer, Ward – 1 [3], Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of Hearing	:	01-02-2024
Date of Pronouncement	:	22-03-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by the NFAC, Delhi dated 13.10.2023 for A.Y. 2017-18 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of

evidence, probabilities, facts and circumstances of the case.

2. The appellant denies herself liable to be assessed on a total income of Rs.13,98,838/- as against the returned income of Rs. 2.00,040/- under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in sustaining the addition of Rs. 11,98,798/- in respect of cash deposits made in the bank account and loan account of the appellant during the period of demonetization as unexplained money u/s.69A of the Act under the facts and in the circumstances of the appellant's case.

3.1. The learned CIT[A] ought to have appreciated that the cash deposits made are from known and explainable sources of funds under the facts and in the circumstances of the appellant's case.

3.2 The learned CIT[A] is not justified in upholding the invocation of the provisions of section 115BBE and taxing the aforesaid addition made at the rate of 60% under the facts and in the circumstances of the appellant's case.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. At the outset, the Ld.AR submitted that the order passed by the NFAC is without granting proper opportunity of being heard to the assessee. He submitted that two notices were issued on 25.01.2021 fixing the date of hearing on 09.02.2021. Thereafter due to covid, the appeal was never taken up for hearing and assessee had not received any notices. Assessee had filed reply to the notice dated 25.01.2021. Subsequently, another notice was issued on 26.09.2023 fixing the date of hearing as 03.10.2023. Since there was a gap of almost 2 years, assessee

had sought time to collect the details relevant for the appeal to be heard. However, the NFAC passed the impugned order on 13.10.2023 without considering the request of the assessee.

Aggrieved by this order of NFAC, assessee is in appeal before this *Tribunal*.

3. The Ld.AR further submitted that there is a delay of 22 days in filing the present appeal before this *Tribunal* as the representative who was handling the appeal fell ill and appeal could not be filed within the period of limitation. The Ld.AR relied on the affidavit filed by the assessee seeking condonation of the delay in filing the present appeal.

3.1 The Ld.DR could not controvert the reasoning and the circumstances that caused the delay as explained in the affidavit. We have perused the submissions advanced by both sides in the light of records placed before us.

On verification of the affidavit, we are satisfied that there is a sufficient and reasonable cause for the delay.

4. It is noted that there is no malafide intention on behalf of assessee in not filing the present appeal within time. It is noted that there is no malafide intention on behalf of assessee in not filing the present appeal within time. In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions, wherein, *Hon'ble Court* observed as under:-

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits “. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

5. Considering the above observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeal.

Respectfully following the above view by *Hon’ble Supreme Court*, the delay of 22 days in filing the present appeal before this *Tribunal* stands allowed.

6. On merits of the case, it is noted that assessee had made cash deposits in SBI to the tune of Rs.10,86,362/- during the demonetisation period. The authorities below has not verified

any documents that may be available in the possession of the assessee to explain the cash deposits and has made addition u/s. 69A of the act. In our considered opinion, this needs to be verified in the light of the circular issued by the CBDT.

7. 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 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 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.

9. 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.

10. 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 22nd March, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 22nd March, 2024.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore