

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

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

ITA No. 16/Bang/2024
Assessment Year : 2017-18

Shri Sandeep Mithalal Jain, Prop of Ambe Traders, Sankeshwar Residency, BLDE Road, Vijayapur – 586 103. Karnataka.	Vs.	The Income Tax Officer, Ward – 1 & TPS, Bijapur (Vijayapur).
APPELLANT		RESPONDENT

Assessee by	:	Smt. Prathibha R, 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 14.12.2023 for A.Y. 2017-18 on following grounds of appeal:

<i>GROUPS OF APPEAL</i>		<i>Tax Effect relating to each Ground of appeal</i>
1.	<i>On the facts and in the circumstances of the case, the ld.CIT(A) erred in upholding the order passed under sec 143(3) of the Act by the learned assessing authority is opposed to law and not valid and accordingly liable to be cancelled</i>	--8
2.	<i>The Ld CIT(A) ought to have appreciated that the cash deposits of Rs. 12,00,000/-made in bank was out of the accumulated cash balances which was withdrawn from bank and kept for making payment to agriculturist. Thus, the impugned additions confirmed by the CIT(A) was uncalled for.</i>	3,60,000/-
3.	<i>The learned CIT(A) ought to have appreciated the fact that there was no unexplained money at all and the credits in Bank Account are duly explainable since the deposits into the bank were in due course of business explainable sources. Therefore, the provisions of Section 69A of the Act will not applicable to the facts of the case and the addition confirmed ought to be deleted.</i>	Same as above

4.	<i>The CIT(A) grossly erred in confirming the addition of Rs.12,00,000/- without verifying the books of accounts, bank statements of earlier years of the appellant. Since, he has withdrawn Rs.3,45,000/- on 29.10.2015 and Rs.12,00,000/- from Canara Bank. He had kept cash on hand in April, 2016 for Rs. 12,47,865/- for payment to</i>	<i>Same as above</i>
5.	<i>The CIT(A) ought to have appreciated the fact that the appellant had not got any opportunity to appear before the Assessing Officer to substantiate, why the additions are not leviable.</i>	--
6.	<i>The ld.CIT(A) erred in confirming the interest levied u/s 234 of the Act.</i>	
7.	<i>Without prejudice, the disallowance as made in excessive and arbitrary and liable to be deleted.</i>	--
8.	<i>For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.</i>	--
	TOTAL TAX EFFECT	Rs. 12,97,800/-

2. Brief facts of the case are as under:

2.1. The assessee e-filed his return for A.Y. 2017-18 on 29.03.2018 declaring a loss of (-) Rs. 4,347/-. The case was selected for scrutiny under CASS for the reason to verify 'cash deposits during demonetization period'. Consequently, statutory notices u/s. 143(2) and 142(1) of the Act were issued and served

on the assessee. The AO completed the assessment in the case vide order u/s. 143(3) dated 30.11.2019 assessing the income at Rs. 12,00,000/-after making addition of Rs. 12,00,000/- u/s. 69A of the Act by treating the same as unexplained money.

2.2 Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A).

2.3 During the appellate proceedings, assessee submitted that he is the commission agent engaged in the business software sale of dry grapes under the name and style “Ambe Traders” on commission basis. It was further submitted that the goods are purchased from the agriculturists and sold to local customers on commission basis and that the entire sale receipts is in cash and payments to agriculturists are also paid in cash.

2.4 The assessee had thus submitted that the cash deposited of Rs. 12 Lakhs during the demonetisation period was out of sale receipts collected from customers. The assessee had filed VAT returns and cash book for necessary verification in support of his claim. The Ld.CIT(A) however upheld the observations of the Ld.AO and confirmed the addition made.

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

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

3. On merits of the case, it is noted that assessee had made cash deposits to the tune of Rs. 12,00,000/- 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.

4. 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.

5. 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 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.

6. 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.

7. 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 allowed for statistical purposes.

In the result, the appeal filed by the assessee stands 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:

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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