

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.17/Bang/2024
Assessment Year : 2017-18

Uppinakere Shivalingaiah Mangalesh, 30/1, Bhyramangala Cross, BM Road, Bidadi, Ramanagara-562 117. PAN : AHBPM 9983 C	Vs.	1)Asst. Commissioner of Income-tax, Circle-3(2)(1), Bangalore. 2)The National Faceless Appeal Centre (NFAC) Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Subramanian S, Addl. CIT (DR)

Date of hearing	:	07.03.2024
Date of Pronouncement	:	05.04.2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi on 03/11/2023 in DIN No.ITBA/NFAC/S/250/2023-24/1057669565(1) for the assessment year 2017-18.

2. The sole and substantive issue raised by the assessee that the addition made u/s 68 of the Act of Rs.53,10,500/- and taxed u/s 115BBE of the Act on the SBNs [Specified Bank Notes] collected by the assessee from 09.11.2016 to 30.12.2016

3. The brief facts of the case are that the assessee is earning income from business being a dealer in petroleum products of Essar Oil Ltd which is not a registered dealer of any public sector undertaking and is proprietor of Shiva Petrol Services and also through rental income. The assessee filed return on income on 28/10/2017 declaring a total income of Rs.8,36,470/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee in response to the notices, submitted reply on 05/11/2019, and 16/11/2019. From the submission made by the assessee on Bank Account No.35559866372 maintained with SBI, Bidadi Branch, it was noticed that there was deposit of sum of Rs. 1,15,76,300/- of SBNs, which were taken out of circulation. In this regard, a show cause notice was issued to the assessee and in response, the assessee submitted reply on 09/12/2019. The Id.AR of the assessee also submitted that as per the notification, the petrol pumps were allowed to accepted the SBNs. The assessee also submitted other the details as called for.

The AO has incorporated the entire submission in his order and after discussing the issue in detail and relying on the circulars/notifications issued regarding demonetization the AO made addition u/s 68 of the Act of Rs.53,10,500/- and completed the assessment on 20//12/2019.

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A). The CIT(A) issued notices on different dates but the assessee did not reply any of the notices, therefore, the CIT(A) upheld the order of the AO.

5. Aggrieved from the above order, the assessee fled appeal before the ITAT.

6. The ld.AR reiterated the submission made before the lower authorities and he also submitted that entire details were submitted during the assessment proceedings as per the requirement of AO. The assessee is a dealer in petroleum products and it was allowed to accept SBNs for selling of petroleum products as per the Government of India Gazette Notification. He also submitted the reasons for accepting in old currency notes. The assessee is running petrol bunk on the National Highway 275 which is

open for 24 hrs. The vehicles which come to the petrol bunk services include predominantly trucks, cabs, ambulances, police vehicles etc. The petrol bunk service comes under purview of Essential Services Act. The customers coming to petrol bunk are necessarily to be provided with Gasoline. The complete purchases and sales were submitted month wise and the entire cash deposits were out of the business receipts. The AO has not appreciated the submissions of the assessee properly. Therefore, the AO is not justified in making additions. He, further requested that if matter is sent back to the AO, assessee will be able to fulfill further requirement of the AO with the necessary documentary evidences.

7. On the other hand, the ld. DR relied on the orders of the lower authorities and strongly submitted that the CIT(A) has given ample opportunities to the assessee. However, the assessee did not comply with any of the notices. The AO passed reasoned order, hence, the CIT(A) confirmed the order of the AO.

8. Considering the rival submissions, we note that the assessee is earning income from sale of petroleum products, which is clear from the assessment order and

during the period of demonetization, the assessee deposited cash out of which, Rs.53,10,500/- has not been accepted by the AO. We note from the notices issued u/s 142(1) of the Act at Sl. No.5, the details of opening stock, quantity purchased, quantity sold and closing stock month wise along with the corresponding rates showing items separately for petrol, diesel and lubricants. In this regard, the ld.AR of the assessee was unable to furnish the documents before us and it is replied that it is also not emanating from the order of the lower authorities. We also note that the CIT(A) issued various notices but the assessee did not comply with the notices of the CIT(A) except one adjournment sought vide his letter dated 16.09.2023. Considering the request made by the ld.AR of the assessee and in the interest of justice, we are remitting the issue back to the file of the AO for fresh consideration following the judgement of the co-ordinate bench of the Tribunal in the case of in the case of Balaji Auto Enterprises Mysore Pvt. Ltd., in ITA No.546/Bang/2022 for the assessment year 2017-18 vide order dated 20/10/2022 to the extent of applicability of CBDT Circulars, the relevant portion of the order is as under:-

“9. After hearing both sides, perusing the entire materials on record and after examining the orders of the lower authorities, we observe that as per ground No.3 to 6, the assessee has challenged the addition made on cash deposit during demonetization period of Rs.8,30,000/-. We observe from the order of the

lower authorities that this issue should have been examined in the light of CBDT Circular dated 09.08.2019 in F.no.225/145/2019 ITA II but the AO has not done so. The similar issue has been decided by the coordinate bench of the Tribunal in the case M/s Bhoopalam Marketing Services Pvt. Ltd., in ITA No.375/Bang/2002, the relevant part of the order is as under:-

“7. We have carefully considered the rival contention and perused the orders of the lower authorities.

Admittedly the assessee has deposited Rs.298,08,080/- during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of INR 5,82,76,300/- as income of the assessee u/s. 68 of the income tax act, by passing assessment order u/s. 144 of the Act. The Ld.AO made such addition as the assessee could not file requisite details as the notice was issued to the email address that was not functional. In the interest of justice, we deem it proper to remand the issues back to the Ld.AO for a de novo verification.

7.1 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 give 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 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.

8.1 The instruction dated 21/02/2017 that the assessing officer basic relevant information e.g. monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or

fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

8.2 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. 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.

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.

In the result, the appeal filed by assessee as well as the appeal of revenue stands allowed for statistical purposes.”

9.1 Respectfully following the decision in the case of M/s Bhoopalam Marketing Services cited supra, the AO is directed make fresh examinations on the cash deposited during the demonetization period in accordance with law and as per the CBDT guidelines. The AO is directed to give reasonable opportunity of being heard to the assessee. The assessee is also directed to produce necessary documents/evidence for substantiating his case for early disposal of the appeal and not to seek unnecessary adjournments.

10. Respectfully following the above decision cited supra, the AO is directed to give reasonable opportunity of being heard to the assessee and decide the issue as per law. The assessee is directed to produce the necessary documents

for substantiating his case and to avoid unnecessary adjournments for early disposal of the case and update the email, mobile No. and address for communication.

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

Order pronounced in court on 5th day of April, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 05.04.2024.

Vms

Copyto:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.