

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.357/Bang/2024
Assessment Year : 2017-18

M/s Chandrappa Nalina, 1 Harshitha Enterprises, U.B Road, Opp. To Water Tank, Kadur-577 548. PAN - AXDPN 2315 F	Vs.	The Income Tax Officer, Ward-1, Chikmagalur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravish Rao, C.A
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department (DR)

Date of hearing	:	01.04.2024
Date of Pronouncement	:	15.04.2024

O R D E R

Per Laxmi Prasad Sahu, Accountant Member :-

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 02/01/2024 in DIN No. ITBA/NFAC/S/250/2023-24/105929838(1) for the assessment year 2017-18.

2. The assessee challenged the sole and substantive issue regarding cash deposited during the demonetization

period of Rs.19,24,000/-, which has been treated by the authorities as un-explained investments.

3. The brief facts of the case are that the assessee is an individual carrying on the proprietorship business of purchase and sale of biscuits and confectioneries in the name and style of M/s Harshitha Enterprises. The assessment order was passed on 26/09/2018. The assessee has filed his return of income on 25/09/2019 declaring total income of Rs.4,06,961/- and it was filed in pursuance of notice u/s 142(1) of the Act dated 09/02/2018 which was overlooked by the AO. During the course of assessment proceedings, the AO called for the bank statement from the bank and noted that the assessee has deposited cash on different dates i.e 08/12/2016 of Rs.4 lakhs, Rs. 4 lakhs on 14/12/2016, Rs.3,24,000/- on 16/12/2016, Rs.4 lakhs on 21/12/2016 and Rs. 4 lakhs on 29/12/2016, which as unexplained. The AO also noted that till the completion of the assessment, the assessee has not filed return of income, for want of proper explanation the entire cash deposit of Rs.19,24,000/- was treated as unexplained investment u/s 69A and taxed u/s 115BBE of the Act and completed the assessment u/s 144 of the Act.

4. Aggrieved, the assessee filed appeal before the CIT(A).

5. The CIT(A) issued various notices on different dates viz., 23/02/2021, 05/08/2022, 27/10/2023 and 29/11/2023. On 04/011/2023, the assessee sought for adjournment, which was granted and thereafter on 29/11/2023 final opportunity was given to the assessee but assessee did not respond to the same, therefore, the CIT(A) decided the issue on the basis of materials available before him and dismissed the appeal of the assessee.

6. Aggrieved, the assessee filed appeal before the Tribunal.

7. The ld.AR of the assessee submitted that the assessee is carrying on the business of biscuits and confectioneries and the cash deposits during the demonetization period was out of sales made by the assessee but the assessee could not explain and he submitted that the return was filed on 25/09/2019. However, the AO ignored the same and passed the order on 26/09/2019. The assessee has also filed VAT return and as per VAT return the turnover is Rs.1,88,15,594/-

and all these aspects have not been examined by the AO, therefore, he requested that the matter may be sent back to the AO for afresh verification.

8. The ld. DR strongly relied on the orders of lower authorities and submitted that the AO was justified in making addition and the CIT(A) has given ample opportunities to the assessee but assessee could not utilized the same and the CIT(A) also correctly dismissed the appeal of the assessee after examining thoroughly on the basis of the available materials with him.

9. After considering the rival submissions, we note from the order of the CIT(A) at para No.6.1 that the turnover shown as per VAT return is Rs.1,88,15,594/- and from the statement of facts that the assessee has filed return of income on 25/09/2019. It is also noted from the statement of facts that from April, 2016 to 08/11/2016, the gross sales is of Rs.1,34,95,325/- against which, Rs.1,12,16,200/- was collected in cash and deposited in bank account in regular course of business. It was disclosed to the VAT authorities. During the course of appellate proceedings, the assessee did not respond to any of the notices. The AO has also not considered the entire cash deposited in the bank account as unexplained

money but only the cash deposited on aforesaid dates noted above have been treated as unexplained cash deposits. Since the assessee is running business over the years and the same was not explained before the AO, therefore considering the request made by the Id.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 in the light of the instructions issued by the CBDT in this regard time to time and decide the issue as per law after giving reasonable opportunity of being heard to the assessee. The assessee is directed to produce the necessary documents for substantiating its case and to avoid unnecessary adjournments for early disposal of the case and update the email, mobile No. and address for communication.

10. In the result, this issue is partly allowed for statistical purpose.

Order pronounced in court on 15th day of April, 2024

Sd/-

(BEENA PILLAI)
Judicial Member
Bangalore,
Dated, 15th April, 2024
/ vms /

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Copy to:

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