

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

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

<b>ITA No. 277/Bang/2024</b>
<b>Assessment Year : 2017-18</b>

Mr. Sudarshan Purushothama, #89, C.V. Road, Bannimantap Extension, Mysuru – 570 015. <b>PAN: AHMPP8239K</b>	<b>Vs.</b>	The Income-tax Officer, Ward – 1[3], Mysuru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

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

Date of Hearing	:	01-04-2024
Date of Pronouncement	:	16-04-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

This appeal at the instance of the assessee is directed against the CIT(A) order vide DIN & Order No.: ITBA/NFAC/S/250/2023-24/1060087222(1) dated 24.01.2024. The assessee has raised the 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 himself liable to be assessed on a total income of Rs. 18,56,029/- as against the returned income of Rs. 5,17,030/- under the facts and in the circumstances of the appellant's case.*

*3. The learned CIT[A] is not justified in upholding the addition of Rs.11,79,000/- as unexplained money u/s.69A of the Act, in respect of the cash deposits made in the bank accounts of the appellant during the period of demonetization under the facts and in the circumstances of the appellant's case.*

*3.1 The learned CIT[A] failed to appreciate that the deposits made by the appellant in the bank account were from out of the opening cash balance and anterior withdrawals from bank and therefore, the same could not be regarded as unexplained money liable for tax u/s. 69A of the Act, under the facts and in the circumstances of the appellant's case.*

*4. The learned CIT[A] is not justified in upholding the taxation of the alleged unexplained money in terms of the provisions of section 115BBE at the rate of 60% under the facts and in the circumstances of the appellant's case.*

*5. Without prejudice to the right to seek waiver with the Honble CCIT/DG. the appellant denies himself liable to be charged to interest u/s. 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*

*6. 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. Brief facts of the case are as under:**

**2.1** Shri Sudarshan Purushothama is a partner in the firm M/s. SRK OFFICE-X and was getting interest on capital and remuneration from the said partnership firm and not having any

other business of his own filed his return of income for the A.Y. 2017-18 on 29.01.2018 declaring a total income of Rs. 5,17,030/-.

**2.2** The case was selected for limited scrutiny under CASS for the reason cash deposit during demonetisation period. During the course of assessment proceeding, the assessee was asked to produce nature of business, statement of income, financial statements, copy of bank account statement, cash book and details of cash deposit from 01.04.2016 to 31.03.2017 with sources and cash deposited during demonetisation period. The assessee produced the cash book and claimed that the cash was deposit to bank account during the period 01.04.2016 to 31.03.2017 is Rs.11,79,000/- and the source for this deposit are withdrawal from the bank which were redeposited into the bank.

**2.3** The Ld. Assessing Officer made addition of entire cash deposit of Rs.11,79,000/- made during the demonetisation period as unexplained money u/s. 69A of the IT Act even though the same is shown in the cash book summary drawn showing the flow of transaction.

Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee furnished the full details relating to the cash flow at the time of assessment. However, the Ld.CIT(A) upheld the view of Ld.AO that the assessee's submission are afterthought that the assessee withdrew cash before demonetisation which was deposited during

demonetisation period from 09.11.2016 to 13.12.2016. The CIT(A) did not accept such the explanation and the rationality to withdraw from the bank much before the demonetisation and deposited during the demonetisation period without any books of accounts or any documentary evidence to support that he noted money which was not utilised for reason beyond his control and hence said amount was cash in hand of the appellant as on 08.11.2016 and accordingly dismissed the appeal.

**2.4** Aggrieved by the order of the Ld.CIT(A), the assessee filed this appeal before this ITAT.

**3.** Before us, the Ld.AR argued that the addition of Rs.11,79,000/- as unexplained money u/s. 69A of the IT Act in respect of cash deposit made in the bank accounts of the appellant is not justified as it was from out of the opening cash balance and subsequent withdrawals from bank and therefore could not be regarded as unexplained money.

On the other hand, the Ld.DR vehemently supports the order of Ld.CIT(A).

We have heard the rival submissions and perused the material available on record.

**4.** Section 69A of the IT Act deal with unexplained money read as follows:

***Unexplained money, etc.***

**69A.** *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other*

*valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”*

**5.** Thus in order to be levied tax u/s. 69A, three conditions are need to be satisfied by assessing officer.

- 1) The assessee is found to be the owner of any money, bullion, jewellery or valuable article
- 2) Such money, bullion, jewellery or valuable article is not recorded in the books of accounts if any maintained by him for any source of income.
- 3) The assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery or valuable article or the explanation offered by him in the opinion of the AO satisfactorily.

**6.** In the present case, the assessee has deposited money amounting to Rs.11,79,000/- in his bank account during the demonetisation period. The assessee has submitted before the authorities below that the source of cash deposited are withdrawals from bank. In the paper book filed before us, the assessee has placed the bank statements of the accounts held with Kotak Mahindra Bank and HDFC Bank for the period 01.04.2016 to 31.03.2017. The said statements are placed at pages 5 to 12.

**7.** In para 8 of the assessment order the Ld.AO has taken note of the fact that the HDFC Bank statement shows that the assessee was getting salary of Rs.25,000/- from the firm of M/s. SRK OFFICE-X (PAN ABFFS 5713 E) and there are other credits also in his account. The Ld.AO also notices that the assessee is making EMI payments towards repayment of his housing loan. All these payments are not made in cash but through bank, by cheques etc. In respect of Kotak Mahindra Bank it is seen that the assessee has been making regular payments towards Timber, Hardware and Electricals etc., these payments are made through bank and not by cash payment as could be seen from the bank statements itself.

**8.** The details of bank account have also been filed before the assessing officer. It is further noted that total credits in the accounts held by the assessee has not been questioned by the Ld.AO, made by the assessee prior to the date of demonetisation. From the statement of Kotak Mahindra Bank, we note that the assessee had withdrawn cash prior to demonetisation date. It is but natural that the assessee would deposit the unused cash back to the account as the old notes were no longer legal tender. We also note that the Ld.AO has not produced any evidence against the explanation in order to disregard the cash availability being earlier withdrawals in the hands of the assessee. There has been no cash that has been otherwise unearthed during the assessment proceedings. Further the explanation of the assessee that the cash was time and again withdrawn prior to

demonetisation towards construction works for purchase of timber etc. has also not been dismantled by the Ld.AO.

**9.** On analysis of the bank statements with HDFC Bank and Kotak Mahindra Bank, assessee had total credits of Rs. 10,66,377/- and total debit of Rs.10,65,240/- during the year with HDFC Bank. With Kotak Mahindra Bank, the total credit were Rs. 38,80,092/-, the total withdrawals were Rs. 40,02,351/- with an opening balance of Rs.5,01,664/- and closing balance of Rs.3,79,405/-. In these circumstances, we are of the view that the assessing officer has not made out a case calling for an addition u/s. 69A of the IT Act.

**10.** Thus the addition u/s. 69A of the act cannot be made in respect of monies which are recorded in the assessee's bank statements. In this view, we are of the opinion that addition of Rs.11,79,000/- is bad in law and therefore deserves to be deleted.

**In the result, the appeal filed by the assessee is allowed.**

**Order pronounced in the open court on 16<sup>th</sup> April, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 16<sup>th</sup> April, 2024.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore