

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

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.173/Bang/2024
Assessment Year: 2017-18

Narayanappa Munikrishnappa 574 Opp Chamundeshwari Temple Ramanagara Town Ramanagara 562 159 Karnataka PAN NO.AFGPM4075E	Vs.	ITO Ward-1 Ramanagara
ASSESSEE		RESPONDENT

Assessee by	:	Shri Balasubramanyam, A.R
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue.

Date of Hearing	:	10.04.2024
Date of Pronouncement	:	10.04.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2017-18 dated 7.12.2023. The assessee has raised following grounds of appeal:

- 1. The impugned order is opposed to law and facts of the case insofar as it is prejudicial to the interest of the Appellant.*
- 2. The NFAC erred in confirming the additions made by the Ld. AO without considering that the Appellant had sufficient cash sales to substantiate the cash deposited inasmuch as only the net sales appearing in the Profit and Loss Account has been considered and the NFAC as well as Ld. AO have not considered the VAT element collected along with the sales.*

Page 2 of 5

3. *Without prejudice to Ground No. 2 above, the NFAC erred in not accepting the creditworthiness of the lenders on the untenable reasoning that ownership of sine qua non to earning agricultural income.*
4. *Without prejudice to Ground No. 2 above, the NFAC erred in confirming the order of the Ld. AO by holding that gift received by wife from her parents was not substantiated despite the Appellant having submitted the necessary evidences substantiating the agricultural income earned by them.*
5. *The appellant prays for leave to add, delete, modify and/or adduce additional ground at any time before the appeal is disposed off.*

1.1 The crux of above grounds is sustaining addition of Rs.18,61,774/- out of addition of Rs.20,11,774/- on account of unexplained cash deposit to assessee's bank account.

2. Facts of the issue are that the assessee had deposited cash in his bank account during the period under consideration. The onus was upon the assessee to furnish documentary evidence i.e. cash book, ledgers, sale & purchase details, opening & closing stock, cash in hand/debtors for verification of nature & source of cash generation in the hand of the assessee. The assessee was found to be owner of the money but has not offered any acceptable and cogent explanation regarding the source of such money found in its bank account. The Income earned during the year has not been offered and taxes due there upon has not been paid. Hence, genesis of cash in the hand of assessee remained unexplained & transactions hits all three limbs of section 69A of the Act as the assessee was found to be owner of the money which was not recorded in the books of account and nature & source of deposit money is not from identifiable source.

2.1 The NFAC in its order observed that the scheme of Section 69A of the Act would show that in cases when the nature and source of acquisition of money, bullion, etc., owned by the assessee is not explained at all, or not satisfactorily explained, then, the value of

such investments and money or value of articles not recorded in the books of accounts may be deemed to be the income of such assessee. The provisions of section 69A of the Act treat unexplained money, bullion, etc., as deemed income where the nature and source of investment, acquisition as the case may be, have not been explained or not satisfactorily explained. Therefore, in these cases, the source not being known, such deemed income covered under the provisions of Section 69A of the Act in view of the scheme of those provisions.

2.3 NFAC further observed that as per judgment of Hon'ble Supreme Court in the case of Chuharmal Vs CIT(1988) 172 ITR 250 & Smt Srilekha Banerjee and others Vs CIT, Bihar & Orissa reported in 1964 AIR 697, deposit of cash in such circumstances has been held Unexplained Money u/s 69A of the Act.

2.4 In view of the above discussion the addition of Rs.1,50,000/- was deleted and the balance addition of Rs. 18,61,774/- was confirmed by the NFAC.

3. We have heard the rival submissions and perused the materials available on record. Admittedly, the issue herein is with regard to deposit of cash during the demonetization period in the year 2016, which were not verified by the ld. AO in accordance with CBDT Circular wherein various instructions have been issued by CBDT dated 21.2.2017, 3.3.2017, 15.11.2017 & 9.8.2019. The ld. A.R. submitted that as the verification of cash deposit is not in accordance with instruction of CBDT, there is inadequate enquiry in respect of cash deposited during the demonetization period. These, CBDT instructions gives 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.

3.1 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 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.

3.2 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 sales or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash sales 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.

3.3 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 demonetization 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

Page 5 of 5

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. Accordingly, the issue in dispute is remitted to the file of Id. AO for fresh consideration.

4. In the result, the appeal filed by assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 10th Apr, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 10th Apr, 2024.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.