

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.1172/Bang/2024
Assessment Year: 2017-18

Devjibhai Patel #274/5, Mysore Main Road NTY Layout Bengaluru 560 026 PAN NO : ABAPP1456A	Vs.	ACIT Circle-5(2)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Sri V. Srinivasan, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	16.04.2024
Date of Pronouncement	:	16.04.2024

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 1.12.2023. The assessee has raised 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 learned CIT [Appeals] failed to appreciate that the order of assessment passed by the learned ACIT Circle 5(2)(1) is illegal for want of jurisdiction and that the said lack of jurisdiction is a pure legal issue which can be raised at any stage of the appellate proceedings under the facts and in the circumstances of the appellant’s case.*

3. *Without prejudice to the above, the order of assessment passed without issuance of the statutory notice u/s 129 of the Act by the learned A.O. is bad in law and void ab initio and requires to be cancelled.*
 4. *The learned CIT[A] is not justified in upholding the addition of Rs.65,12,000/- as unexplained cash deposit u/s.69 of the Act, under the facts and in the circumstances of the appellant's case.*
 - 4.1 *The learned CIT [Appeals] failed to appreciate that the aforesaid addition made by the learned A.O. u/s.69 of the Act is opposed to law and facts of the appellant's case in as much as the cash deposits made by the appellant are from known and explainable sources of funds and hence, the addition made deserves to be deleted.*
 - 4.2 *Without prejudice to the above, the extent of addition made is excessive and requires to be reduced substantially.*
 5. *The learned CIT[A] is not justified in upholding the invocation of the provisions of section 115BBE and taxing the aforesaid addition made at the rate of 60% under the facts and in the circumstances of the appellant's case.*
 6. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*
 7. *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. Ground No.1 is general in nature which do not require any adjudication. Ground Nos.2 & 3 are not pressed and hence these grounds are dismissed as not pressed.
3. The assessee confined to the argument to the issue raised on merit with regard to sustaining addition of Rs.65.12 lakhs as unexplained cash deposit u/s 69 of the Act and bring into tax u/s 115BBE of the Act. Thereafter levying penalty u/s 234A, 234B & 234C of the Act.

4. We have heard the rival submissions and perused the materials available on record. In this case, the assessee has deposited Rs.65.12 lakhs to assessee's bank account with Canara Bank bearing No.1146101024183 with Vijayanagar Branch, Bengaluru during the demonetization period. The assessee has not furnished the source of this deposit and same has been treated as income u/s 69 of the Act. Before us, ld. A.R. submitted that assessee is having opening cash balance at Rs.73,76,918/-, which is available as on 1.4.2016 and same has been deposited into assessee's account with Canara Bank. Further, it was submitted that the availability of opening cash balance is denied by the department on the reason that assessee has not filled the column regarding "cash in hand" in the ITR filed by the assessee for the assessment year 2016-17 and 2017-18. According to the ld. A.R., the assessee has filed the relevant financial statement in these assessment years, which is reflected in its balance sheet, which fact is not denied by the department and only on the technical reason of not filling the relevant column in the ITR regarding "cash in hand" the benefit of availability of opening balance has not been given to the assessee. In our opinion, when the assessee has pleaded that earlier opening balance of cash has been available to the assessee to explain the source of deposit into assessee's bank account and the due credit of the same to be given and same cannot be rejected on the reason that the relevant column in ITR regarding "cash in hand" is not filled up, if the said cash balance has been shown in the balance sheet of the assessee in the relevant assessment years. In the present case, nothing is brought on record by the department to substantiate that opening cash balance available with the assessee had been utilized elsewhere by the assessee and it is not deposited into assessee's bank account during demonetization period. Therefore, merely for the reason that relevant column in ITR regarding "cash in hand" has not been filled up cannot be reason to deny the benefit of availability of opening cash

balance with assessee to deposit into assessee's bank account. Therefore, the addition on this reason cannot be sustained. Particularly, when deposit made in the bank account where less than amount which was available with the assessee as an opening balance. Considering the totality of the facts of the case and applying the principles of proportionality and parity with the decision of the Tribunal in the case of Arihant Associates in ITA No.75/RPR/2023 dated 20.9.2023 where the assessee deposited cash in bank account during demonetization period and claimed that cash deposited was out of opening cash balance since the ld. AO has not established that opening cash in hand available with the assessee was utilized somewhere else by assessee firm, the impugned addition made u/s 69 of the Act was to be deleted, accordingly, the addition is deleted to the tune of Rs.65.12 lakhs.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 16th Apr, 2024

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th 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.