

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

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

ITA No. 430/Bang/2024
Assessment Year : 2017-18

Shri Mallanagouda Ninganagouda Patil, Vivekanand School, Killa Galli, Tal: Bilagi, Dist: Bagalkot. Karnataka – 587 116 PAN: ARGPP5828G	Vs.	The Income-tax Officer, Ward – 1, Bagalkot.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ashok Mudnur, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Department

Date of Hearing	:	08-04-2024
Date of Pronouncement	:	23-04-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order passed by NFAC dated 08.01.2024 for A.Y. 2017-18 on following grounds of appeal:

“1. The Ld. CIT(A) has erred in upholding the AO order u/s 143(3) which is opposed to the law and facts of the case.

2. The Ld. CIT(A) erred in not considering the crucial evidence submitted in response to hearing notice like Agricultural holding, Cash Flow statement, Bank statements etc., in violation of principle of natural justice. In ITAT Mumbai case of Avan Gidwani Vs. ACIT — ITA No. 5138/Mum/2015 Dt. 6-4-2016, wherein it is held that "Rule 46A cannot override the principles of natural justice'.

3. The Ld. CIT(A) erred in invoking the provisions of rule 46A even when the assessment completed was u/s 144 though stated as 143(3) thereby ignoring evidence and explanation submitted.

In Karnataka High Court case of Sri Shankar Khandasari Sugar Mills vs. CIT (1992) 193 ITR 669 wherein it is held that "The appellate authority should have accepted the material produced by the assessee as clarificatory in nature and considered the same to test the fairness and propriety of the estimate of income made by the Income-tax Officer. Though it was belated production of very relevant material, no prejudice (in its legal sense) would have resulted to the Revenue by considering the material produced by the assessee"

4. The Ld. CIT(A) has erred in upholding the additions made by AO of Rs. 20,81,000/- u/s 69A, ignoring facts and documentary evidence in respect of cash deposits available on record.

5. We take leave to add/alter any grounds of appeal on or before the date of hearing.”

2. Brief facts of the case are as under:

2.1 The assessee has filed his return of income on 21/8/2017 by declaring an income of Rs.619730/-. The case was selected for limited scrutiny under CASS and the reasons being cash deposit during demonetisation period. Hence, a notice u/s.143(2) dt:24/9/2018 was issued to the assessee. Subsequently, another notice u/s 142(1) dated 12/07/2019 calling for details along with a letter under the provisions of Sec.129, was issued to the

assessee. As there was no response to any of the notices, a reminder letter dt: 19/10/2019 was issued to the assessee. Further a show cause notice was issued to the assessee on 11.11.2019. Again there was no compliance on the part of the assessee. Accordingly, the Ld.AO treated cash deposited in the bank account in the SBN of Rs 20,81,000/- as unexplained money u/s 69A of the Act.

2.2 On an appeal before the Ld.CIT(A), the Ld.CIT(A) dismissed the appeal of assessee by observing that no details were filed and no explanations were provided before the Ld.AO by the assessee. It is noted from the impugned order that assessee had filed application for admission of additional evidence under Rule 46A which has also been rejected as the same were not submitted before the Ld.AO.

2.3 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that assessee may be granted an opportunity to explain the issue that led to the addition based on the evidences in the interest of justice.

3.1 The Ld.DR though objected to the argument of the Ld.AR could not controvert the fact that the Ld.AO has not carried out the verification in respect of the cash deposited during demonetisation period based on the circulars issued by CBDT.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. On merits of the case, it is noted that assessee had made cash deposits in Bank account in SBN to the tune of Rs. 20,81,000/- during the demonetisation period. The authorities below did not verify any documents that was in possession of the assessee to explain the cash deposits and has made addition u/s. 69A of the act. The Ld.CIT(A) also did not consider the application for additional evidences. In our considered opinion, the evidences are for verification in the light of the circular issued by the CBDT.

5. It is noted that various standard operating procedures has been 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 gives 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.

6. 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.

7. Instruction 21/02/2017 issued by the CBDT suggests some indicators towards verifying the suspicion of backdating of cash. It also suggests indicators to identify abnormal jump in cash trials on identifiable persons as compared to earlier history in the previous year. Therefore in our opinion it is important to examine whether assessee falls into any of these categories and transfer of deposit of cash is not in line with history of transactions in the preceding assessment years.

8. The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions, to the facts in present case. 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.

9. Assessee is directed also to furnish PAN and address details of the depositors from whom loan repayment if any has been accepted in 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 grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 23rd April, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 23rd April, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore