

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

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

ITA No. 628/Bang/2024
Assessment Year : 2017-18

Shri Kudlur Nirvanappa Rajashekarappa, No. 3/299, 1 st Cross, Ravindranagar, Shimogga – 577 201. PAN: AEQPR7823C	Vs.	The Income Tax Officer, Ward – 4, Shimogga.
APPELLANT		RESPONDENT

Assessee by	:	Shri A.R. Vivek, Advocate
Revenue by	:	Shri Ganesh R. Gale, Standing Counsel for Department

Date of Hearing	:	06-05-2024
Date of Pronouncement	:	09-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order passed by NFAC dated 09.11.2023 for A.Y. 2017-18 on following grounds of appeal:

- “1. The assessing officer and the first appellate authority was not justified in confirming the addition of Rs. 12,46,500/- on the facts and circumstances of the case.*

- 2. He assessing officer and the first appellate authority was not justified in not considering the land holding of the HUF in which the appellant was the Karta on the facts and circumstances of the case.*

3. *The assessing officer and the first appellate authority was not justified in holding that, there was no HUF of the appellant on the facts and circumstance of the case.*

4. *The assessing officer and the first appellate authority was not justified in invoking the provision of section 68 of the Income Tax act on the facts and circumstance of the case.*

5. *The assessing officer and the first appellate were not justified in taxing the income arising from agriculture as the nature of income is not disputed by the assessing officer.*

6. *The learned Authorities have not disputed the ownership of lands held by the appellant as kartha of HUF and declaration of agricultural income in earlier years by means of foot note in the statement of total Income.*

7. *The authorities are not justified not considering the agricultural Income, when the appellant has produced the proof of ownership of land.*

8. *The learned Authorities are not justified in disbelieving the agricultural Income just because sale Invoice are not produced and for the reason the that it is Income of HUF is also doubtful.*

9. *The learned AO is erred in invoking section 115BBE of the Act without appreciating explanation of the Appellant.”*

2. Brief facts of the case are as under:

2.1 The assessee has filed his return of income on 30/03/2018 by declaring an income of Rs.3,64,520/-. 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) was issued to the assessee. Subsequently, another notice u/s 142(1) was issued calling for details. The Ld.AO noted that the assessee had cash deposits during demonitisation period of Rs.12,46,500/-. The details in respect of the same was called for and the assessee was asked to explain the source of such

deposits. The assessee submitted that these out of sale of agricultural proceeds. As the assessee had not declared agricultural income in the return filed , the Ld.AO rejected the submissions by assessee.

Accordingly, the Ld.AO treated cash deposited in the bank account in the SBN of Rs 12,46,500/- 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.

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. It is noted that, the assessee made cash deposits in Bank account in SBN of Rs.12,46,500/- 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 09th May, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 09th May, 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