

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

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

ITA No. 622/Bang/2024
Assessment Year : 2017-18

Shri Pratapsingh Bankatsingh Rajput, Plot No. 41, Chalukya Nagar, Siddivinayak Colony, Lingad Road, Vijayapur – 586 104. PAN: AEBPR2014L	Vs.	The Income Tax Officer, Ward – 1 & TPS, Bijapur.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sunaina Bhatia, Advocate
Revenue by	:	Shri Ganesh R. Gale, Standing Counsel for Department

Date of Hearing	:	02-05-2024
Date of Pronouncement	:	15-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order passed by NFAC dated 06.03.2024 for A.Y. 2017-18 on 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[A] is not justified in refusing to admit the additional evidence tendered in course of appellate proceedings without appreciating that the appellant was a senior citizen retired employee of Indian Railways aged about 66 years at the time of assessment and was also suffering from various health problems, which prevented him from making submissions before the learned A.O. and thus, there was sufficient cause to admit the additional evidence tendered under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs.5,02,040/- as unexplained cash deposit u/s.69Arws 115BBE of the Act, without appreciating that the said cash deposits were made from out of the amount drawn from the loan account on 04/11/2016 and re-deposited in the same loan account due to the demonetisation announced by the Government and thus, the source of the cash deposits made stands explained under the facts and in the circumstances of the appellant's case.

4. 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 The assessee has filed his return of income on 24.04.2018 by declaring an income of Rs. 5,03,060/-. 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, notice u/s 142(1) was also issued, calling for details. The assessee did not comply with the

notice and therefore the Ld.AO passed assessment order u/s. 144 on 15.12.2019.

2.2 On an appeal before the Ld.CIT(A), the assessee filed details to prove the genuineness of the cash deposits. It was submitted that the assessee is a Govt. employee and was a salaried person. The additional evidence filed was remanded to the Ld.AO, who did not consider the same and rejected the documents filed. The Ld.CIT(A) thus dismissed the appeal of the assessee by observing as under:

“5.3 Now after considering fact of the present case, none of the above circumstances/conditions are applicable to the appellant. During the assessment proceedings, ample opportunities were provided by the AO to appellant to show correctness of income. Nevertheless, the appellant has also not put forth any sufficient cause that restricted him for producing evidence before the AO.

5.4 Further, the appellant has relied on couple of pronouncements and decision of courts regarding ignorance of law maxim. However, the instant case is not about ignorance of law, it is rather a thoughtful non-compliance of statutory notices. It is well settled dictum of law "VIGILENTIBUS, NO DORMENTIBUS, JURA SUBVENIUNT which means law will help only those who are vigilant, Law will not assist those who are careless of his/her right. Only those persons, who are watchful and careful of using his/her rights, are eligible to the benefits of law confers rights on persons who are vigilant of their rights. Therefore, the appellant totally and intentionally failed to use his right to present his case before the AO by using the opportunity given by the AO of being heard. The Hon'ble Delhi High Court, in the case of CIT us Gold Leaf Capital Corporation Ltd on 02.09.2011 in ITA No.798 of 2009 held that a negligent appellant should not be given many opportunities just because the quantum of amount involved is high, Necessary course of action is to draw adverse inference, otherwise it would amount to giving premium to the appellant for his negligence. When the appellant is noncooperative, it can safely be concluded

that the appellant did not want to adduce evidence as it would expose falsity and non-genuineness of his claim.

6. In view of the discussions made above, after perusal of submission of the appellant, remand report submitted by the AO, claim of the appellant regarding submission of additional documents are not accepted and therefore the order of the AO is sustained.”

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

3. The Ld.AR reiterated the submission in respect of the cash deposits that made before the Ld.CIT(A). He submitted the cash deposited during demonetisation is out of cash withdrawn from the bank which is verifiable.

3.1 The Ld.DR objected to the argument of the Ld.AR and submitted that the Ld.AO may be directed to verify 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 assessee had made cash deposits in Bank account in SBN to the tune of Rs. 5,03,060/- during the demonetisation period. The authorities below did not verify any documents that was in possession of the assessee which was submitted to the Ld.CIT(A) to explain the cash deposits. The Ld.CIT(A) also did not consider the application for additional

evidences. In our considered opinion, the submission and evidences relied by the assessee are clinching that deserved consideration.

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 vide 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. Before us the Ld.AR has filed bank statement of Shree Siddeshwar Co-op Bank where Rs. 5,00,000/- was deposited in cash. The statement is incomplete. The assessee is directed to establish all relevant details to substantiate its claim in line with 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.

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 15th May, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 15th 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