

**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. 637/Bang/2024
Assessment Year : 2017-18

Smt. Kasargod Rajashree, 14-3-296 Shenoy Compound, Kudumbi Garden, Near Don Bosco Hall, Mangalore – 575 001. PAN: ADJPR6811Q	Vs.	The Income Tax Officer, Ward – 2(1), Mangaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sriram V Rao, CA
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 09.02.2024 for A.Y. 2017-18 on following grounds of appeal:

“1.0 The impugned order has been passed without appreciating the factual and the legal position in the proper perspective and also without looking into the provisions of the Act and hence the same is liable to be set aside in limine.

2.0 The appellant denies herself liable to be assessed over and above the total income reported of 5,99,970 /- in the return of Income filed for the relevant AY 2017-18 under the facts and circumstances of the case.

3.0 In respect of sustained addition amounting to t 15,84,500/- the appellant would like raise the following grounds,

3.1 Under the facts and circumstances of the case, The lower authorities have erred in law in considering the cash deposits of 15,84,500/- as unexplained money u/s 69A by ignoring the appellant's submissions which were supported by documentary evidences.

3.2 Without prejudice to the above ground, under the facts and circumstances of this particular case, the lower authorities are not justified in law, while considering the cash deposit to bank account/s which are not of the appellant as income in the form of unexplained money u/s 69A in the hands of the appellant.

3.3 Without prejudice to the above ground, under the facts and circumstances of this particular case, the lower authorities are not justified in law in ignoring the appellant's submission regarding the amount withdrawn previously by the appellant, as a part of the source for the cash deposits of 15,84,500/-, & thereby concluding that entire cash deposit is unexplained money u/s 69A.

4.0 Without prejudice to the above grounds, in respect of the limited Scrutiny under CASS stating the reason for scrutiny to be "Cash deposit during demonetization period", the appellant would like to raise the following grounds,

4.1 Under the facts and circumstances of the case, the learned assessing officer, has exceeded his jurisdiction while making addition in the impugned assessment order, as the only reason under selection of limited scrutiny of the appellant u/s 143(2), was to verify the "Cash deposit during demonetisation period". However, the assessing officer went on to verify the cash deposits other than cash deposited during the demonetization period and went on to make the additions to the total income of the appellant. Hence, the impugned assessment order is bad in law and is liable to be set aside in limine.

4.2 Under the facts and circumstances of the case, the learned assessing officer, has exceeded his jurisdiction while passing the impugned order by making an addition to total income of the appellant as he has completely failed to convert the "limited scrutiny proceedings" to "complete scrutiny proceedings" as laid down under law for the said conversion. Hence, the impugned assessment order is bad in law and is liable to be set aside in limine.

5.0 Without prejudice to the above, the learned assessing officer erred in determining tax liability as per Section 115BBE at the amended tax rates instead of the prevailing rates u/s 115BBE of the Income Tax Act, 1961, by applying the amended provisions of the Act retrospectively in the case of the appellant without appreciating that the amendment which was brought into effect by The Taxation Laws (Second Amendment) Act, 2016 is prospectively with effect from 15th December 2016.

6.0 The Appellant crave to add, amend and/or rescind any of the above submissions before or at the time of hearing. The Appellant also crave leave to rely upon any judgment/case law as and when produced.

7.0 In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."

2. Brief facts of the case are as under:

2.1 The assessee has filed his return of income on 02.08.2017 by declaring an income of Rs. 5,99,970/-. 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 deposited cash of Rs.15,84,500/- during demonetisation period in SBN.

Accordingly, the Ld.AO treated cash deposited in the bank account in the SBN of Rs 15,84,500/- 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 assessee had made cash deposits in Bank account in SBN to the tune of Rs. 15,84,500/- 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 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. 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 /

Copy to:

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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