

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

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

ITA No. 847/Bang/2024
Assessment Year : 2017-18

Shri Shivanna HUF, No. 47, 5 th B Block, Bhavani HCS Ltd., Banashankari 3 rd Stage, Bangalore – 560 085. PAN: AAUHS8368B	Vs.	The Assistant Commissioner of Income Tax, Ward – 7(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Shreehari Kutsa, Advocate
Revenue by	:	Shri Subramanian .S, JCIT – DR

Date of Hearing	:	06-06-2024
Date of Pronouncement	:	12-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order passed by NFAC dated 24/04/2024 for A.Y. 2017-18 on following grounds of appeal:

“1. The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs.

1,40,48,211/- as against the total income reported by the Appellant of Rs.28,23,210/- on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax (Appeals) erred in rejecting the evidences submitted by the Appellant and ought to have subjected the same to verification in accordance with law and therefore the action of the CIT(A) is contrary to law and established procedure in the facts and circumstances of the case.

4. The learned Commissioner of Income-tax (Appeals) erred in holding that the bonafide attempts of the Appellant in substantiating the source of cash deposits is a colourable devise and consequently passed a perverse order in the facts and circumstances of the case.

5. The learned Commissioner of Income-tax (Appeals) erred in upholding the invocation of the provisions of section 69 of the Act as unexplained investment despite the source of income is proved to be business income as acknowledged by the learned AO in the assessment order and consequently passed a perverse order in the facts and circumstances of the case.

6. The learned Commissioner of Income-tax (Appeals) erred in upholding the addition u/s 69 of the Act as unexplained investment despite the Appellant produced all evidences as required by Instruction No.3/2017 [F.NO.225/100/2017-ITAJI], dated 21-02-2017 issued by the CBDT for Source Specific General Verification Guidelines for cash deposited during demonetization and consequently passed a perverse order in the facts and circumstances of the case.

7. The learned Commissioner of Income-tax (Appeals) erred in upholding the addition u/s 69 of the Act as unexplained investment without appreciating the fact that once the source of income is proved beyond doubt just because there was cash in hand and the same was deposited during demonetisation does not make the addition sustainable in the eyes of law and consequently passed a perverse order in the facts and circumstances of the case.

8. The learned Commissioner of Income-tax (Appeals) erred in law by not accepting the additional evidences produced under Rule 46A by holding that the evidences produced

are colourable device and against the human preponderance and consequently passed a perverse order in the facts and circumstances of the case.

9. The learned Commissioner of Income-tax (Appeals) erred in law by not accepting the additional evidences and verify the same or obtain a remand report from the AO on verification of the evidences and consequently passed a perverse order in the facts and circumstances of the case.

10. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

11. In the 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 is a HUF and filed its return of income on 30/07/2017 by declaring total income of Rs. 28,23,210/-, being income from other sources. Subsequently, the case was selected for limited scrutiny under CASS as the assessee deposited substantial cash during demonetization period as compared to returned income". The assessee found to have deposited huge cash of Rs.1,60,15,000/- during the demonetization period in its bank accounts.

2.2 The Ld.AO after hearing the assessee, completed the assessment proceedings by adding the above cash deposits by construing the same as unexplained investments. While doing so, the Ld.AO gave benefit of cash withdrawals of Rs.48,00,000/- out of the deposits, and added the remaining amount of Rs.1,12,15,000/- as unexplained investments u/s. 69 of the Act.

Aggrieved by the order of Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

2.3 Before the Ld.CIT(A), on various dates, appeal was fixed for hearing wherein the assessee sought video conference which was denied by observing as under:

“5.2 On perusal of the case details, it is observed that the appellant found to have filed all evidences in support of its contentions and also submitted the written submission on different dates, wherein the facts of the case had been further elaborated before the appeal proceedings. The facts of the instant case were already been brought in before me vide "facts of case" in Form-35, while filing the appeal and as well as in the form of written submission. I have no suspicion/doubt as far as the facts of case are concerned and I opined that there is nothing more to explain by the appellant, since the appellant vide response dated 23.02.2024, has asked to considerer the submissions already been filed previously on 03.12.2023 and 10.12.2023 by the appellant. If the appellant wished to file any other submission with regard to any untold facts of the case, it would have availed the opportunity at the time of hearing by filing a written submission thereof. Hence, it is construed that the appellant has nothing more to say. Further, the request for hearing through Video Conference will be considered only in such cases, wherein the complicated issues are involved and not feasible for the appellant to put all the facts in writing. In this instant case, I found no valid reason to allow the appellant to appear in person through Video Conferencing as per the para-13(xi) of the Faceless Appeal Scheme, 2020 and therefore, the appellant's request for VC hearing is hereby rejected.”

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

3. The Ld.AR submitted that proper opportunity of being heard was not granted to the assessee. He also submitted the cash

deposited during demonetisation is out of receipts from known people whom assessee had provided financial assistance.

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. 1,12,15,000/- 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 money. 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.

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 12th June, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 12th June, 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