

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.943/Bang/2024
Assessment Year: 2017-18

Lingaraj Deevatagi 1934/2, Ward No.4 Sangameshwara Street Hungund Karnataka 587 118 PAN NO : AKNPD6775C	Vs.	ITO Ward-1 Bagalkot
APPELLANT		RESPONDENT

Appellant by	:	Sri Deepak Gunashekar, A.R.
Respondent by	:	Sri Ganesh R. Gale, Standing counsel for department

Date of Hearing	:	19.06.2024
Date of Pronouncement	:	19.06.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of NFAC dated 19.3.2024 for the assessment year 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. The impugned order is opposed to law and facts of the case insofar as it is prejudicial to the interest of the Appellant.*
- 2. The NFAC erred in confirming the additions made by the Ld. AO on cash deposited during demonetization period without considering the Instruction No. 03/2017 dated 21/02/2017 issued by the CBDT.*
- 3. The NFAC erred in confirming the additions made by the Ld. AO treating the cash deposited by the Appellant in his bank account as deposited from unknown sources and in doing so he failed to appreciate that the Appellant had sufficient source to explain the cash deposits.*

3. *The appellant prays for leave to add, delete, modify and/or adduce additional ground at any time before the appeals disposed off.
Total Tax effect Rs.7,80,000/-*

2. Facts of the issue are that the assessee has deposited a sum of Rs.2,50,760/- & Rs.8,00,000/- to SBI and Shri Vijaymahantesh Co-operative Bank respectively during demonetization period. The same has been considered at Rs.10,00,000/- as unexplained income u/s 69 r.w.s. 115BBE of the Act. Against this assessee is in appeal before us.

3. After hearing both the parties, we are of the opinion that with regard to deposit during demonetization period, it is required to be examined in the light of various circulars issued by CBDT. Admittedly, the issue herein is with regard to deposit of cash during the demonetization period in the year 2016, which were not verified by the Id. AO in accordance with CBDT Circular wherein various instructions have been issued by CBDT dated 21.2.2017, 3.3.2017, 15.11.2017 & 9.8.2019. The Id. A.R. submitted that as the verification of cash deposit is not in accordance with instruction of CBDT, there is inadequate enquiry in respect of cash deposited during the demonetization period. These, CBDT instructions gives 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.

3.1 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.

3.2 The instruction dated 21/02/2017 that the assessing officer basic relevant information *e.g.* monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash sales or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash sales or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

3.3 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetization 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 issue in dispute is remitted to the file of ld. AO for fresh consideration.

4. In the result, the appeal filed by assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 19th June, 2024

Sd/-
(Prakash Chand Yadav)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 19th June, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.