

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA No. 156/Bang/2024 |
| Assessment Year : 2017-18 |

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| Smt. Jayamma, Prop. M/s. A.P.J. Enterprises, 33/1, 17 th Cross, CHM Road, Indira Nagar, Bangalore – 560 008. PAN: AGAPJ2812R | Vs. | The Income Tax Officer, Ward – 1(2)(3), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri Surya Tejas, Advocate |
| Revenue by | : | Shri Ganesh R Ghale, Standing Counsel for Revenue |

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| Date of Hearing | : | 19-03-2024 |
| Date of Pronouncement | : | 19-03-2024 |

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This appeal at the instance of the assessee is directed against the Ld.CIT(A),NFAC order dated 28.11.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058285793(1) passed u/s. 250 of the IT Act, 1961 for the A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal:

| | <i>Grounds of Appeal</i> | <i>Tax Effect relating to each Ground of appeal</i> |
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| 1. | <i>On the facts and in the circumstances of the case, the ex-parte order passed under Section 144 of the Act was opposed to law and against the principles of natural justice and accordingly liable to be set aside.</i> | - |
| 2. | <i>The Learned CIT(A) ought to have appreciated that the Appellant had responded to the notices and filed submissions before the Assessing Authority which were not considered and in the circumstances, the ex-parte order was unjustified and accordingly, the CIT(A) ought to have set aside the Assessment.</i> | - |
| 3. | <i>The Learned CIT(A) ought to have considered the various submissions made by the Appellant with supporting evidence before him in the course of Appellate proceedings and ought to have refrained from partially upholding the impugned additions made by the Assessing Authority.</i> | - |
| 4. | <i>The Learned CIT(A) ought to have refrained from upholding the additions under Section 69(A) of the Act.</i> | <i>Rs.9,17,684/-</i> |
| 5. | <i>The Learned CIT(A) ought to have appreciated that the cash deposits in the Bank Accounts have been fully explained and there was no deficit cash balance in respect of deposits made to justify the additions made under Section 69(A) of the Act.</i> | <i>Same as above</i> |
| 6. | <i>The Learned CIT(A) having failed to consider the submissions of the Appellant, the impugned additions as sustained was opposed to law and the impugned additions is liable to be deleted.</i> | <i>Same as above</i> |
| 7. | <i>The Learned CIT(A) ought to have appreciated the withdrawal from Bank Account by Sri. Anand was required to be considered while the determination of alleged deficit balance since Sri. Anand is the son of the Appellant who actually managing the business of the Appellant on her behalf.</i> | - |

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| 8. | <i>The Learned CIT(A) ought to have refrained from confirming the addition made towards business income by the Assessing Authority.</i> | Rs.9,17,684/- |
| 9. | <i>The Learned CIT(A) ought to have appreciated that the profit as declared by the Appellant in her submission was correct and reasonable and accordingly he ought to have deleted the impugned additions as made by the Assessing Authority.</i> | Rs.9,17,684/- |
| 10. | <i>Without prejudice, the impugned additions as sustained by the CIT(A) are excessive and ought to be reduced substantially.</i> | - |
| 11. | <i>For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.</i> | - |
| | TOTAL TAX EFFECT | |

3. The brief facts of the case are that the assessee is a proprietor of A.P.J. Enterprises and deals in retail sales of cement. The assessee maintains only purchase and sales purchase register & bills for purchase and sales. For the impugned AY did not file his regular return of income either u/s. 139(1) of the IT Act or in compliance with notice u/s. 142(1) of the IT Act for the A.Y. 2017-18. During the course of assessment proceedings, as the assessee failed to submit documentary evidence in spite of ample opportunities given to the assessee. The assessing officer completed the assessment as best judgment assessment u/s. 144 of the IT Act, 1961 and made additions as under:-

- a) Unexplained money u/s. 69A being cash deposit into bank account – Rs.21,85,195/-.
- b) Income from business or profession of Rs.8,61,485/-.

4. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(Appeals) and the CIT(Appeals) partly allowed the appeal of the assessee.

5. The Id. AR reiterated the submissions made before the lower authorities and further submitted that the assessee is not maintaining regular books of accounts, the assessee has only maintained purchase and sales register with sales and purchase bills. A reconciliation statement for cash deposits and withdrawals was filed and submitted that the cash withdrawals from bank on 3 instances on 27.06.2016 of Rs.5,00,000, 05.11.2016 of Rs.9,85,000 and on 01.7.2016 of Rs.12,50,000 totalling to Rs.27,35,000 was not considered by the AO in his cash statement. The assessee submitted copy of cheque leaves and certificate from Canara Bank for Rs.14,85,000 (5,00,000 + 9,85,000) as proof for cash withdrawals. He submitted that the assessee filed return of income for preceding years i.e., AYs 2014-15-, 2015-16 & 2016-17. A paperbook containing pages 1 to 20 was filed containing cash flow statement between and reconciliation as per assessee and the AO, copy of Syndicate Bank (now Canara Bank) statement and Bank of Baroda statement for the period 1.4.2016 to 31.3.2017 & proof of copy of cash withdrawal by the assessee's son.

6. The Id. DR relied on the order of lower authorities. He further submitted that the documents submitted by the assessee before the Tribunal were not filed before the lower authorities, therefore it requires verification. He further submitted that the assessee could have prepared stock statement on the basis of purchase and sale transaction and the cash balance as on 08.11.2016 is not explained properly.

7. Considering the rival submissions, we note that the AO has observed that there is deficiency in cash flow statement of assessee of Rs.21,85,195 which has been added u/s. 69A as unexplained cash deposit into bank account. The assessee has not filed return of income for the year i.e., AY 2017-18. We also note that the assessee has filed copy of cheque leafs for Rs.27,35,000 for cash withdrawal as noted above, which has not been accepted by the AO. We also note that opening cash balance is also not verified. The assessee has filed return of income u/s. 44AD for the preceding assessment years and the turnover of the assessee is abnormal compared to the corresponding previous years. We note that cash payments for expenses and purchases made have not been considered while preparing cash flow statement. We also agree with the argument of the ld. DR that stock statement can be prepared on the basis of purchase and sale bills and register maintained by the assessee. This is a case regarding cash deposit during the demonetisation period of Rs.21,65,000 as per the submission of the assessee. We noted from para 6.5 of the assessment order there is cash deficiency of Rs.21,85,195 and cash deposited in bank is Rs.29,55,000 which is abnormal cash deposit from April to October 2016 compared to the corresponding previous years. During the course of assessment proceedings before the AO the assessee was unable to explain the negative cash balance of Rs.21,85,195 as calculated by the AO considering the sales of the assessee. Since this is a case of deposit of high cash during the demonetisation period compared to other months and the corresponding previous year's turnover for the same period, it requires verification by the AO in the light of CBDT Notifications/ INSTRUCTION NO.3/2017 [F.NO.225/100/2017/ITA-II] dated 21.02.2017 and subsequent instructions regarding cash deposited during demonetization period. Therefore this issue is remitted back to the AO for *de-novo* assessment after giving reasonable opportunity of hearing to the assessee. The assessee is directed to produce all the documents in support of its case

before the AO and not seek unnecessary adjournment for early disposal of the case.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 19th day of March, 2024 as per Rule 34 of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 14th May, 2024.

/MS / DSM

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore

By order

Assistant Registrar,
ITAT, Bangalore