

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

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

ITA No.1073/Bang/2024
Assessment Year: 2017-18

Nagaraj Angadi Prop of Guru Raghavendra Bakery Raichur Road Sindhanur 584 128 PAN NO : AJXPN7222K	Vs.	ITO Ward-1 Raichur
APPELLANT		RESPONDENT

SP No.27/Bang/2024 (Arising out of ITA No.1073/Bang/2024)
Assessment Year: 2017-18

Nagaraj Angadi Prop of Guru Raghavendra Bakery Raichur Road Sindhanur 584 128 PAN NO : AJXPN7222K	Vs.	ITO Ward-1 Raichur
APPELLANT		RESPONDENT

Appellant by	:	Ms. Lakshmi, A.R.
Respondent by	:	Sri Tamil Selvan S., D.R.

Date of Hearing	:	01.07.2024
Date of Pronouncement	:	01.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal and stay petition by assessee are directed against order of NFAC dated 24.4.2024 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 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 learned Commissioner of Income-tax (Appeals) ought to have held that the learned Assessing officer erred in considering the cash deposits as total taxable income and the CIT(A) order is therefore illegal and against the provisions of the law and in the facts and circumstances of the case.*
3. *The learned Commissioner of Income-tax (Appeals) ought to have held that the amount deposited by the Appellant in the bank accounts is out of cash received in routine course of business out of sale proceeds and hence cannot be treated as unexplained deposits in the facts and circumstances of the case.*
4. *The learned Commissioner of Income-tax (Appeals) ought to have held that the learned Assessing Officer is not justified in holding that the amount deposited in the accounts is unexplained money u/s 69A of the Income Tax Act, 1961 in the facts and circumstances of the case.*
5. *The learned Commissioner of Income-tax (Appeals) failed to appreciate the detailed written submissions made by the appellant along with documents in the facts and circumstances of the case.*
6. *The learned Commissioner of Income-tax (Appeals) grossly erred in upholding the addition made by the learned Assessing Officer amounting to Rs. 89,47,665/- as unexplained and undisclosed source of income u/s 69A of the Income Tax Act, 1961 for the Assessment year 2017-18.*
7. *The learned Commissioner of Income-tax (Appeals) grossly erred in holding that appellant has not explained the nature of cash credits and the cash deposits made by the appellant in the facts and circumstances of the case.*
8. *The learned Commissioner of Income-tax (Appeals) failed to appreciate the contention of the appellant that the Cash deposits are business proceeds in the facts and circumstances of the case.*
9. *The learned Commissioner of Income Tax (Appeals) ought to have held that it is only the peak credit after taking into consideration the cash withdrawals from the same account, that must be considered and therefore the deposits arising out of cash withdrawals stand explained in itself in the facts and circumstances of the case.*
10. *The learned Commissioner of Income Tax (Appeals) ought to have called for remand report from the AO and is not justified in summarily*

rejecting the submissions of the Appellant in the facts and circumstances of the case;

11. The learned Commissioner of Income-tax (Appeals) ought to have held that the learned Assessing Officer erred in invoking section 115BBE of the act is unsustainable in law and in the facts and circumstances of the case;

12. The learned Commissioner of Income-tax (Appeals) ought to have held that levying interest under section 234A and 234B of the act is bad in law and facts and circumstances of the case.

13. The learned Commissioner of Income-tax (Appeals) ought to have held that the penalty proceedings initiated u/s 271AAC, 272A(1)(d), 27 IA and 271B of the Act is contrary to law on the facts and circumstances of the case.

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

15. 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. Facts of the case are that assessee is an individual who is running a bakery under name and style Sri Guru Raghavendra Bakery at Sindhanur. In the assessment year under consideration, assessee has deposited a sum of Rs.87,18,910/- to its bank account. The ld. AO called for filing return of income which the assessee failed to do so. Later, the ld. AO issued notice u/s 142(1) of the Act on 12.3.2018, 9.9.2019, 13.9.2019 and 21.9.2019 but no compliance from the assessee. Hence, the ld. AO passed order u/s 144 of the Act making addition of Rs.87,18,910/- u/s 169A r.w.s. 115BBE of the Act. Further, he made an addition of Rs.2,28,755/-, which is estimated income at 8% on Rs.28,59,440/- works out at Rs.2,28,755/-. Against this assessee carried appeal before NFAC. Assessee was not able to substantiate the source of deposit of Rs.87,18,910/-. The same was confirmed by the NFAC. Similarly, the estimated addition of Rs.2,28,755/- as business income is also confirmed by the NFAC. Against this assessee is in appeal before us. Before us, assessee pleaded that a proper hearing has not been given

to the assessee and NFAC has confirmed the addition made by ld. AO without calling for the remand report from the ld. AO, though the order of the ld. AO was ex-parte.

3. The ld. D.R. submitted that there was no proper cooperation from the assessee's side before ld. AO and even before NFAC, assessee has not filed requisite details to support the claim o the assessee.

4. We have heard the rival submissions and perused the materials available on record. In our opinion the order of ld. AO is ex-parte u/s 144 of the Act. Before NFAC also, the assessee has not filed necessary details to support the source of deposit made to the assessee's bank account at Rs.87,18,910/-. In our opinion, the assessee has to substantiate the source of deposit during the period of demonetization and the same is required to be verified at the end of ld. CIT(A) adhering to the various circulars issued by CBDT on this issue after calling the remand report from the ld. AO.

4.1 With regard to estimation of income of the assessee and business income at 8% on turnover of Rs.28,59,440/-, the assessee was not able to show any material on this count to say that income of the assessee is lower than this. Hence, in our opinion, applying the provisions of section 44AD of the Act, i.e. presumptive taxation is justified. This issue is decided against the assessee. However, the main issue with regard to deposit of cash during demonetization to assessee's bank account at Rs.87,18,910/- is remitted to the file of NFAC for fresh consideration, after giving an opportunity of hearing to the assessee.

5. Since the main disputed issue in this appeal is remitted to the file of NFAC for fresh consideration, the stay petition filed by the assessee becomes infructuous and dismissed.

6. In the result, appeal of the assessee is partly allowed for statistical purposes and the stay petition filed by the assessee is dismissed.

Order pronounced in the open court on 1st July, 2024

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 1st July, 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.