

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1058/Bang/2024</b>
<b>Assessment Year : 2017-18</b>

Shri Hajishahbaz Abdulgani Sipai, 1 Hajishahbaz Abdulgani Sipai, Ameer Krishi Kendra at Post, Kalakeri Tq., Sindagi, Kalakeri – 586 118. <b>PAN: DJKPS0879H</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 3, Bijapur.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Smt. Pratibha .R, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Department

Date of Hearing	:	26-06-2024
Date of Pronouncement	:	26-06-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 22.03.2024 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

	Grounds of Appeal	Tax Effect relating to each Ground of appeal
1	<i>On the facts and in the circumstances of the case, the ex-parte order passed by the learned Commissioner of Income-tax (Appeals) is opposed to law and against the principles of natural justice and accordingly the impugned appellate order is liable to be set aside.</i>	--
2	<i>The learned CIT(A) even while passing the order did not considered the facts of the case and grounds of appeal raised by the appellant.</i>	--
3	<i>Without prejudice, even if the order has to be passed under sec 144 of the Act the assessing authority ought to have assessed the sundry creditors was brought to tax u/s 69A of the Act as unexplained Source for cash deposits. The impugned addition as made to the income declared was opposed to law and thus, liable to be deleted.</i>	
4	<i>The learned CIT(A) ought to have appreciated that the claim of the Appellant was in accordance with law and was also supported by the jurisdictional precedence and accordingly disallowance was liable to be deleted.</i>	--
5	<i>The learned CIT(A) failed to appreciate that even in the ex-parte the merits of the case have to be considered on every ground raised by the appellant and dispose on merits and having failed do so, the appellate order is unsustainable and liable to be set aside.</i>	--
6	<i>The learned CIT(A) ought to have appreciated that the Appellant has taken loan of Rs. 10,00,000/- in Bank on 09.04.2015 that amount utilised for development of agriculture and business purposes, the Appellant has purchased the fertilizer and sold in cash, the cash was remitted in bank all the cash transaction are genuine, therefore, that is not coming under operation clean money. If the Appellant would have got one more opportunity to explained the</i>	

	<i>same. Thus, the addition made has to be deleted.</i>	
7	<i>The ld.CIT(A) ought to have appreciated that the AO cannot make addition or disallowance without affording as opportunity to the Appellant. Accordingly a fresh opportunity has to be given to the Appellant.</i>	
8	<i>The ld. CIT(A) ought to have given one more opportunity to the Appellant by sending notice through mail or registered post since all the notices were issued by the CIT(A) was in the portal. Therefore, the Appellant unable to respond or made the submission before the CIT(A). Accordingly, impugned addition confirmed by the CIT(A) is bad in law.</i>	
9	<i>The learned CIT(A) ought to have given fair opportunity to the appellant to submit the evidence and to furnish written submission before the appellate order is made and having failed do so the impugned order is liable to be set aside.</i>	
10	<i>Without prejudice, the learned assessing authority erred in applying the provisions of Sec.115BBE of the Act to levy the additional tax when the entire transaction has been fully explained and the sources have been established and accordingly the additional tax levied under sec 115BBE of the Act is liable to be deleted.</i>	
5	<i>Without prejudice, the disallowance as made in excessive and arbitrary and liable to be deleted.</i>	<i>Same as above</i>
6	<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>	
	<b>TOTAL TAX EFFECT</b>	<i>Rs.12,28,471/-</i>

**2.** At the outset, the Ld.AR submitted that, there was delay of 17 days in filing the appeal before the Ld.CIT(A). He submitted that the assessment order was passed u/s. 144 of the act on

31.10.2019 which was received by the assessee on 05.11.2019 and due date to file the appeal before the Ld.CIT(A) was on or before 04.12.2019. However, the present appeal was filed on 23.12.2019 which stood condoned by the Ld.CIT(A). It is submitted that, various notices were issued to the assessee to an address which was not accessible at the relevant period of time and therefore assessee could not make representation before the Ld.CIT(A).

**2.1** The Ld.CIT(A) confirmed the additions made by the Ld.AO pertaining to unexplained cash deposits during the demonetization period.

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

**3.** It is submitted that there is delay of 3 days in filing appeal before this *Tribunal* and she humbly submitted that the same may be condoned as the documents were in transit from assessee due to which the appeal could not be filed in the period of limitation.

**3.1** On the contrary, the Ld.DR though objected for the delay, submitted that as the addition pertains to the demonetized cash deposited during the relevant period, this issue needs proper verification.

**3.2** Considering the prayer of the Ld.DR and the fact that the Ld.AO /Ld.CIT(A) has not considered the instructions to carry out necessary verification issued by the CBDT.

We have perused the submissions advanced by both sides in the light of records placed before us.

Admittedly, necessary verification in respect of the demonetized cash deposited by the assessee made during the demonetisation period has not been verified by the authorities below. Undoubtedly, the CBDT Circular to understand the cash deposited during the demonetisation period has to be considered before making addition in the hands of the assessee.

**4.1** The assessee is directed to furnish all relevant documents establishing the agricultural income earned during the relevant year and the cash deposited into the bank accounts during the demonetisation period. The Ld.AO is directed to verify all the details having regards to the evidences furnished by the assessee in the light of the following CBDT Circular/ instructions.

- a) The 1<sup>st</sup> instruction was issued on 21/02/2017 by instruction number 03/2017.
- b) The 2<sup>nd</sup> instruction was issued on 03/03/2017 instruction number 4/2017.
- c) The 3<sup>rd</sup> 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.

**4.2** 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.

**4.3** 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 of appeal raised by the assessee stands partly allowed for statistical purposes.**

**In the result, appeal filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 26<sup>th</sup> June, 2024.**

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 26<sup>th</sup> June, 2024.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore