

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.794/Bang/2024
Assessment Years : 2017-18

Giriappa Thimmaraja, MSPR & Co., CAs, #2768E, E Block, 1 st Main, Sahakar Nagar, Bengaluru. PAN – AZLPT 4578 J	Vs.	The Commissioner of Income Tax (Appeals), Bengaluru-7.
APPELLANT		RESPONDENT

Assessee by	:	Shri Madhusudhan V, C.A
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel

Date of hearing	:	30.05.2024
Date of Pronouncement	:	16.07.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 28/02/2024 in DIN No.ITBA/NFAC/S/250/2023-24/1061692148(1) for the assessment year 2017-18.

2. In the present case, the assessee has deposited cash in his bank account namely, M/s Kavary, Grameen Bank amounting to ₹ 10,06,560.00 during the demonetization period. The assessee was served a notice under section 142(1) of the Act to file the return of

income in support of such cash deposit by the AO but there was no compliance by the assessee. Therefore, the AO treated the entire cash deposit amounting to ₹ 10,06,560.00 as unexplained cash credit under section 68 of the Act. On appeal, the learned CIT-A also upheld the finding of the AO by observing that the assessee failed to justify the source of cash deposits in the bank account despite affording many opportunities.

3. However, on perusal of the order of the Id. CIT-A, it was noticed that the Id. CIT-A in his order has reproduced the statement of facts filed by the assessee along with appeal memo in form No. 35 wherein it was submitted by the assessee that the assessee has filed the return of income dated 9.9.2019 which was also brought to the notice of the AO vide letter dated 11 September 2019 before the completion of the assessment under section 144 of the Act. But the assessment has been framed without considering the same. The relevant extract as reproduced in the order of Id. CIT-A is given here in below:

“The assessee immediately took steps to see that return was filed in response to the notice on 09.09.2019 and a copy of acknowledgment of the return along with covering letter was filed before ITO ward-I Tiptur on 11.09.2019 well before the date of passing the Assessment Order u/s 144. The assessing officer without taking into consideration the return filed by the assessee has proceeded to pass an ex-parte assessment order u/s 144 dated 24.09.20 19 wherein she has added all the cash deposits in the bank account made by the assessee from 09.11.2016 to 30.12.2016 demonetization period. The nature of assessee's business involves receipts in cash from the retailers and payment of the cash collected to M/s Airtel through bank account of the assessee.”

4. From the above, it is transpired that the assessment has been framed by the AO without considering the return of income filed by the assessee and by confirming the addition of the cash deposits to the total

income of the assessee. Likewise, the learned CIT-A also upheld the addition made by the AO without taking into account the return of income filed by the assessee. As such, we find mismatch in the facts of the case as observed by the authorities below viz a viz the facts as arising from the records available on before us. Accordingly, we, in the interest of justice and fair play, are of the view that the assessee should be afforded one more opportunity to setup his case before the AO. Accordingly, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

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

Order pronounced in court on 16th day of July, 2024

Sd/-
(GEORGE GEORGE K)
Vice President

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 16th July, 2024

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore