

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.754/Bang/2024
Assessment year : 2017-18

Kempapura Srinivasareddy Uday, 328, B Block Aces Layout, Kundalahali, Bangalore – 560 037. PAN : ACTPU 3804H	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(2), Bangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Siddesh N. Gaddi, CA
Respondent by	:	Shri Satish M., CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.06.2024
Date of Pronouncement	:	21.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These appeal is filed by the assessee against the order dated 28.02.2024 of the CIT(Appeals)-15, Bangalore, for the AY 2017-18 on the following grounds:-

“1. The impugned order passed by the Learned Officers (the Deputy Commissioner of Income Tax Central Circle 2(2), Blr and the Commissioner of Income Tax (Appeals)-15, Bangalore), to the extent prejudicial to the Appellant, is not justified in law and on facts and circumstances of the case.

2. The CIT(A) has erred in law and on facts in upholding the order of the AO, to the extent it is prejudicial to the interest of the Assessee.

3. The Learned Officer has erred in law and on facts in passing the impugned order without jurisdiction;

4. The Learned CIT(A)/AO have erred in law and on facts in not appreciating that in the absence of incriminating materials, there is no question of making an assessment in the case of concluded/unabated assessments.

5. The Learned AO has erred in making an addition u/s 69A of the Act to the extent of Rs. 11,41,543/-.

6. The Learned CIT(A)/AO have erred in rejecting the explanation of the appellant on the source of cash deposits by passing a vague order.

7. The Learned Officers have erred in law and on facts in not appreciating that the Appellant has discharged the primary onus cast upon him under section 69A of the Act. However, the secondary onus has not been discharged in accordance with the law.

8. Based on the above, the Learned AO has erred in law and on facts in invoking the provisions of section 115BBE of the Act;

9. Based on the above, the Learned AO has erred in law and in fact in raising demand by levying interest u/s 234A/234B of the Act.”

2. The Briefly stated the facts of the case are that assessee is an individual deriving income from other sources. The assessee has not filed return of income u/s. 139(1)/139(4) of the Act for AY 2017-18. A search u/s. 132 was conducted in the case of assessee at No.328, B Block, ACES Layout, near Ganesha Temple, Kundalahalli, Bengaluru – 560 037 on 05.02.2020 in connection with search proceedings in group cases of M/s. Ectasy Projects Pvt. Ltd. and NBR Group. Notice

u/s. 153A was issued on 18.11.2020. In response to the notice, the assessee filed return of income on 18.12.2020 admitting income of Rs.70. Thereafter notice u/s. 143(2) was issued to the assessee. The Id. AR appeared and filed documents as called for. It was noticed that assessee has deposited Rs.11,41,500 in his SB A/c No. 14721000012070. In this regard there was no explanation from assessee's side. Thereafter show cause notice was issued and assessee stated the cash deposit should not be disallowed u/s. 69A of the Act and shall not be taxed as per section 115BBE of the Act. There was no explanation submitted by the assessee, accordingly for want of proper explanation Rs.11,41,500 was treated as income u/s. 69A and tax was calculated as per section 115BBE of the Act. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

3. During the appellate proceedings before the FAA the assessee filed additional evidence and it was remanded to the AO for remand report which was submitted by the AO and it was provided to the assessee for rejoinder, which was also submitted by the assessee. The Id. FAA noted that assessee filed one page bank account statement and assessee has not demonstrated any linkage or reconciliation between cash withdrawals from other two accounts and deposit into assessee's accounts and assessee failed to explain the source of money deposited and confirmed the order of the AO. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR reiterated the submissions made before the lower authorities and submitted that this is unabated assessment year and there was no any case pending on the date of search at the assessee's premises and AO has also not referred incriminating material in his assessment order, therefore, without any incriminating material, no addition can be made u/s. 153A of the Act. In support of his argument, he relied on the judgment in the case of PCIT v Abhisar Builders P. Ltd. (2023) 454 ITR 212 (SC) dated 24.4.2023. He also submitted that cash withdrawal and cash deposit statement was filed during the appellate proceedings which is placed at page 101 to 104 of PB and in page 105 the detail of year wise cash withdrawal totaling to Rs,3,71,08,700 from FY 2010-11 to FY 2016-17 was filed. The Id. FAA has dismissed the appeal on wrong premise and he has not ejected details of cash deposits and withdrawal statement furnished during the appellate proceedings. Therefore he requested that appeal of assessee should be allowed.

5. The Id. DR vehemently relied on the order of lower authorities and submitted that assessee has not filed return of income u/s. 139(1)/139(4) and he filed for first time return after receiving notice u/s. 153A after the search. Therefore there was no any assessment or reassessment concluded in the case of assessee before the search undertaken. Therefore the argument of the Id. AR cannot be accepted that the case is covered under unabated assessment. This is the first income tax proceedings before the AO and therefore the judgment relied on by the Id. AR of Hon'ble Apex Court (supra) is not applicable

in the present facts of the case of the assessee and assessee was unable to linkage the source of cash deposits and cash withdrawals from two bank accounts. He further submitted that it is unbelievable that the huge cash withdrawal were kept by the assessee as cash -in-hand. Therefore he requested that the order of lower authorities should be upheld.

6. Considering the rival submissions, we note that pursuant to the search conducted at the assessee's premises on 05.02.2020, the assessee filed return first time for the impugned assessment year after issue of notice u/s. 153A and assessee had not filed any return u/s 139(1)/139(4) of the Act which is clear from the order of lower authorities. Therefore the legal issue raised by the assessee that case is covered under unabated assessment as held by Hon'ble Apex Court in the case of Abhisar Builders P. Ltd. (supra) is not applicable in the present facts of the case. The assessee was unable to explain the source of cash deposits in his bank accounts as held by the lower authorities during the demonetisation period. We note that both the authorities have not examined the issue in the light of CBDT Instruction/Notification regarding examination/investigation of cash deposits during the demonetisation period. The coordinate Bench of the Tribunal has decided similar issue in the case of Bhoopalam Marketing Services P. Ltd. Vs ACIT in ITA NO. 375 & 564 /Bang/ 2022 for the AY 2017-18 in which it has been directed to AO for examination/investigation of cash deposits during the demonetisation

period as per CBDT instructions. The relevant part of the judgment is as under:-

7. “We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has deposited Rs.298,08,080/- during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of INR 5,82,76,300/- as income of the assessee u/s. 68 of the income tax act, by passing assessment order u/s. 144 of the Act. The Ld.AO made such addition as the assessee could not file requisite details as the notice was issued to the email address that was not functional. In the interest of justice, we deem it proper to remand the issues back to the Ld.AO for a de novo verification.

7.1 We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd 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. These instructions gives a 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.

8. In 1 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.

8.1 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 and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else 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.

8.2 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 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. 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.”

7. Respectfully following the above judgment, we remit this issue back to the AO for fresh examination of cash deposit during the demonetisation period in the light of CBDT instructions to the extent of applicability of the case. The assessee is directed to file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings for early disposal of the case.

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

Pronounced in the open court on this 21st day of August, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st August, 2024.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.