

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

**Before Shri Laxmi Prasad Sahu, Accountant Member
and
Shri Keshav Dubey, Judicial Member**

ITA No. 523/Bang/2024 (Assessment Year: 2017-18)		
Sreedhar Sagar Basappa Shetty Videotronix, Market Road Sagar 577401 Shivamogga District PAN – AYHPS3949P	vs.	The Income Tax Officer Ward - 1 & TPS Shivamogga
(Appellant)		(Respondent)
Assessee by:	Shri Sandeep Chalapathy, CA	
Revenue by:	Shri Ganesh R. Ghale, Standing Counsel	
Date of hearing:	20.06.2024	
Date of pronouncement:	21.08.2024	

ORDER

Per: Keshav Dubey, J.M.

This appeal at the instance of the assessee is directed against the Id. CIT(A), National Faceless Appeal Centre, Delhi Order vide DIN & order No. ITBA/NFAC/S/250/2003-24/1060051360(1) dated 24.01.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) for the Assessment Year (AY) 2017-18.

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

- “1. That the order of the learned Commissioner of Income-tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income-tax (Appeals) erred on facts in holding that the Partnership Firm was not in existence

during the relevant assessment year which is perverse and contrary to the materials available on record.

3. *That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in making an addition of Rs. 38,48,381 /- as unexplained cash credits u/s.68 of the Act.*
4. *That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in invoking the provisions of section 115BBE and taxing Rs. 38,48,381/- at the rate of 60% under the facts and in the circumstances of the 's case.*
5. *That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in has grossly erred by treating the monies deposited during demonetization as unexplained even though the same does not belong to the appellant.*
6. *That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not considering the submissions made by the appellant during the assessment proceedings and not conducting the preliminary enquiry through the assessing officer to verify the submissions of the appellant.*
7. *That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not providing the communication sent to the Bank and certificate received from the Bank to the appellant before disposing of the appeal.*
8. *That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not providing in not providing an opportunity of being heard before disposing of the appeal.*
9. *The learned Commissioner of Income Tax (Appeals) erred in law and on facts in invoking amended rate providing u/s 115BBE of the Act for the transaction made before 15.12.2016.*

Each of the above grounds is without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or modify otherwise each or any of the grounds of appeal either before or at the time of hearing this appeal.”

3. The brief facts of the case are that the assessee is a partner in the firm M/s. Videotronix, Nehru Road, Shimoga. The assessee e-filed his return of income for AY 2017-18 on 26.11.2017 by declaring remuneration and interest on capital from the Partnership firm and reported a total income of Rs.2,93,590/- after deducting Rs. 1,50,000/- U/s 80C of the Act. The case was

then selected for complete scrutiny under CASS and accordingly the notice u/s. 143(2) of the Act dated 21.09.2018 was issued & served through the Email of the assessee. Subsequently notices u/s. 142(1) of the Act dated 18/01/2019, 10/05/2019 calling for details as per the Annexure were also issued. However, the assessee did not respond to the above notices. Therefore, another notice u/s. 142(1) of the Act was issued on 20.11.2019 asking the assessee to furnish certain details as below:

1. Brief note on business/financial activities carried out by you during FY 2016-17 relevant to the AY 2017-18.
2. Copy of return filed along with computation of income for AY 2016-17 and 2017- 18
3. Statement of income along with schedules/Statement of affairs for AY 2016-17 and 2017-18.
4. Furnish all the bank accounts extract held in your name.
5. Furnish reconciled statement with reference to cash deposited during the period 01.04.2016 to 31.03.2016.

As the assessee did not respond to this notice also, a final show cause notice dated 05.12.2019 was issued by the AO as under: -

"Please refer to this office notice u/s 143(2) dated 21.09.2018 and notice u/s 142(1) dated 18.01.2019, 10/05/2019 and a letter dated 10.07.2019 was issued and duly served for necessary compliance. In response to the above cited notice/letters, you have not furnished the details as per the notice/letter issued till date. In this connection you are hereby offered an final opportunity of being heard to the assessee in the interest of Principal of Natural Justice to submit the details called for as per the notice/letter issued electronically through e-filing portal to the undersigned on or before 11.12.2019. Failing which, in the absence of any details furnished, the assessment will be completed u/s 144 of the Income tax act, 1961 based on the information available/collected on record."

Since the assessee had not complied with any of the notices, the AO has no option but to complete the assessment u/s. 144 of the Act. In the absence of any explanation regarding the cash deposits of Rs. 38,48,381/- in different banks during the period between 08.11.2016 to 31.12.2017, the AO added the same to the income of the assessee as unexplained cash credits U/s 68 of the Act and completed and assessment U/s 144 of the Act accordingly. Aggrieved

by the assessment order passed u/s. 144 of the Act the assessee preferred an appeal before the Id. CIT(A).

4. The Id. CIT(A) dismissed the appeal of the assessee on the ground that since the assessee has failed to explain the sources of cash deposits made into his bank accounts during the demonetisation period which takes a character of unexplained cash within the meaning of section 68 of the Act. Therefore, the provisions of s. 68 of the Act are clearly applicable in the present facts and circumstances of the case. Aggrieved by the order of the Id. CIT(A) the assessee filed the present appeal before the Tribunal.

5. It is the submission of the Ld. AR that the assessee being an individual had accepted cash deposits during the demonetisation period into its bank accounts in specified bank notes which were not verified by the Ld. AO in accordance with the CBDT Circular wherein an instruction has been issued on 21/02/2017, 03/03/2017, 15/11/2017 and 09/08/2019. He submitted that as the AO passed an Assessment Order U/s 144 of the Act, the verification of the cash deposits was not made by him in accordance with the directions of the CBDT and as such there is inadequate enquiry in respect of the cash deposited during demonetisation.

6. The learned D.R., on the other hand, vehemently supported the orders of the authorities below.

7. We have heard the rival contentions and perused the material on record. At this juncture we can not brush aside the fact that the Assessment Order is passed U/s 144 of the Act. The Assessee's main contention is that the Notice U/s 143(2) as well as 142(1) of the Act were issued & served through email which is not being frequently used by the assessee. Due to this unfortunate situation the assessee was complete unaware of the above notices in

connection with the scrutiny proceedings which lead to order being passed u/s 144 of the Act.

8. We are of the opinion that the AO had not examined the issues in hand as per the instructions of the CBDT which is binding on the AO. The instructions of the CBDT quoted above 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. One 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 analysis. 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 accounted money. The instruction dated 21/02/2017 speaks that the assessing officer should gather 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 also suggested some indicators for suspicion of back dating of cash Sales or fictitious sales where there is an abnormal jump in the cases during the demonetization period as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to unidentifiable 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.

9. 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. Needless to say that the opportunity of being heard must be granted to the assessee. Accordingly the appeal filed by assessee stands allowed for statistical purposes.

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

Order pronounced in the open Court on 21st August, 2024.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bengaluru, Dated: 21st August, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bangalore

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	.08.2024		Sr. PS/PS
2	Draft placed before author	.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			