

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 316/Ind/2023
Assessment Year: 2015-16

Lovekesh Patil, House No. 204/1, Village - Turak Gurada, District - Burhanpur (Assessee/Appellant)	<u>बनाम/</u> Vs.	ITO, Burhanpur (Revenue/Respondent)
PAN: DHNPP1752B		
Assessee by	Assessee in person	
Revenue by	Shri K.Bala Murli Krishna, Sr. DR	
Date of Hearing	14.08.2024	
Date of Pronouncement	29.08.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 20.06.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 26.12.2017 passed by learned ITO, Burhanpur ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on following grounds:

1. *The Id. ITO erred in making addition in assessment year 2015-16 while the cash deposit under demonetization was in assessment year 2017-18.*
2. *That the Id. ITO Burhanpur has erred in considering returned income as cover up for cash deposit during demonetization. Cash deposit during demonetization is explained by assessee from agriculture income and cash withdrawals from bank. It has no connection with the returned income of assessment year 2015-16.*
3. *That application of section 115BBE by Ld. ITO Burhanpur, is wrong, as section 115BBE applies when total income of assessee includes any income referred to in section 68,69, 69A, 69B, 69C or 69D and assessee total income does not include any such income.*
4. *The addition of Rs. 2,40,920/- made by the AO on protective basis, which is not sustainable in the eyes of law, because in this case the AO himself stated in the assessment order that the assessee has explained cash deposit during demonetization from agricultural activities. Hence, there was no need of protective assessment during the relevant assessment year.*
5. *That the Ld. ITO Burhanpur has erred in making addition of agricultural income of Rs. 3,39,966/- as non agriculture income is below taxable limit, addition on account of agriculture income is wrong.*
6. *That the Id. CIA(A) has erred in not considering the assessment order of ITO, for assessment year 2017-18 dated 07.12.2019 in which AO has made addition of Rs. 1,00,000/- disallowing cash withdrawal of assessment year 2016-17.*
7. *That the Ld. CIA(A) has erred in not considering that in assessment order for assessment year 2017-18 dated 07.12.2019 there was not a single reference of assessment year 2015-16. Hence addition in assessment year 2015-16 for demonetization is wrong.*
8. *That assessment order for assessment year 2017-18 (demonetization assessment) was passed on 07.12.2019 and just thereafter there was strike of corona pandemic in India and due to medical condition in family and losses in agriculture, he failed to communicate with his authorized representative nor his authorize representative informed him of any notices from I.T. department resulting in incomppliance of hearing notices. Please condone the delay in the interest of the justice.*

2. The precise facts of the case are such that the assessee-individual filed return of income of relevant AY 2015-16 declaring a total income of Rs. 2,40,920/- consisting of business income of Rs. 85,549/- from retail trade, salary income of Rs. 60,000/- and other sources income of Rs. 95,369/-. The return of assessee was selected for scrutiny-assessment and the AO issued notices u/s 143(2)/142(1) which were complied with by assessee. Ultimately, the AO passed assessment-order with the finding that the income declared by assessee in return was not substantiated. The AO observed that the assessee has declared incomes in return filed to department to cover up the cash deposits made in bank a/c in subsequent year during demonetization period (09.11.2016 to 31.12.2016) relevant to AY 2017-18. The AO, therefore, assessed the total income of Rs. 2,40,920/- declared by assessee on protective basis u/s 115BBE with following observation in Para 4 of assessment-order:

"Since the assessee has failed to substantiate the income during the assessment-year under consideration, the credit for the same for explaining the same in the AY 2017-18, relevant to demonetization period cannot be allowed. Accordingly, the claim of past year saving to that extent made by the assessee shall be assessed on substantive basis in AY 2017-18 and taxed at the rates prescribed u/s 115BBE of the IT Act as applicable for the said Asst. Year."

The AO also noted that although the assessee had not offered agricultural income in return of income yet received a sum of Rs. 5,66,610/- as sale proceeds from agriculture. The AO accepted 40% of gross sale-proceeds computed at Rs. 3,39,966/- as net agricultural income. This way, the AO finalized assessment.

3. So far as AY 2017-18 is concerned, the assessee has filed a copy of scrutiny assessment-order dated. 07.12.2019 of that year wherein the AO has noted that a total deposit of Rs. 5,87,000/- in three bank a/cs in specified currency notes was made during demonetization period and when the AO asked assessee to explain sources thereof, one of the sources explained by assessee was that he was having an opening cash of Rs. 2,58,773/- as on 01.04.2016. However, the AO accepted availability of opening cash balance at Rs. 1,58,773/- and treated excess amount of Rs. 1,00,000/- as unexplained and accordingly made an addition of Rs. 1,00,000/- u/s 68 r.w.s. 115BBE in AY 2017-18. This way, the AO allowed part credit of opening cash balance as on 01.04.2016.

4. Thus, it emerges from above that for AY 2015-16, the AO assessed income of Rs. 2,40,920/- on protective basis u/s 115BBE alongwith agricultural income of Rs. 3,39,966/-. Further, in AY 2017-18, the AO has allowed part credit of opening balance as on 01.04.2016. Presently, we are concerned with AY 2015-16, for which the assessee contested AO's action in first-appeal before CIT(A). Ld. AR drew us to the impugned order of first-appeal passed by CIT(A) *ex-parte* qua assessee for the reason that the assessee did not make any submission before him despite opportunities given. The CIT(A) has simply confirmed the order passed by AO and thereby upheld the additions but the grounds/issues raised by assessee in first-appeal requires an apt adjudication by CIT(A) on merit more particularly because findings given by AO in AY 2015-16 under consideration have also

bearing to AY 2017-18. Therefore, the bench proposed to remand this matter back to the file of CIT(A) for an apt adjudication to which both sides agreed. Accordingly, we remand this matter back to the file of CIT(A) for a proper adjudication on merit after giving opportunity of hearing to the assessee, uninfluenced by his earlier order in any manner. The assessee is also directed to ensure participation in the hearings as may be fixed by CIT(A) and do not seek unnecessary adjournments failing which the CIT(A) shall be at liberty to pass appropriate order in accordance with law.

5. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 29.08.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 29.08.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore