

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1343/Bang/2024
Assessment year : 2017-18

Venkataiah Narendra, No.17, 3 rd Main, Yadavagiri, Paramahansa Road, Mysore – 570 002. PAN : ACPN 1014J	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1) & TPS, Mysore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sanketh S. Nayak, CA
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.08.2024
Date of Pronouncement	:	03.09.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the ex parte order dated 17.05.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee filed return of income on 27.10.2017 declaring total income of Rs.29,70,830. The assessee is proprietor of Balaji Service Station engaged in the retail business of diesel, petrol and lubricants. The case

was selected for scrutiny and statutory notices were issued to the assessee. On verification of the cash book, it was found that there is closing cash in hand as on 08.11.2016. The AO noted that assessee is running business of petrol and diesel authorized by Bharat Petroleum. During demonetisation period this kind of business was allowed to accept cash in old SBNs of Rs.500 & 1,000 and to be deposited in bank account. The AO observed that assessee has admitted to inflated sales in order to show sufficient cash balance before demonetisation. Accordingly considering the nature of business, turnover of assessee, pattern of cash deposits and notifications issued, the AO estimated 15% of closing cash in hand as on 08.11.2016 as unexplained cash credit in the books of assessee u/s. 68 and applied tax rate u/s. 115BBE of the Act. Aggrieved from the above addition, the assessee filed appeal before the First Appellate Authority (FAA).

3. The Id. FAA issued various notices on different but there was no response from the assessee's side. Accordingly he decided the issue on the basis of informational available before him and confirmed the order of the AO. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR submitted that notices issued by the Id. FAA were not served to the assessee and it might have gone to the spam folder of email. Therefore assessee was unable to see the notices. He requested for another opportunity to the assessee to substantiate the case of the assessee with evidence before the lower authorities.

5. The Id. DR relied on the order of lower authorities.

6. Considering the rival submissions, we note that the AO observed that there was huge closing cash balance as on 08.11.2016 before the demonetisation period and he estimated the income of assessee u/s. 68 to the extent of 15% of closing cash in hand shown in the books of accounts. During the appellate proceedings, the assessee did not reply to the notices issued. Since the addition u/s. 68 is solely based on estimation made by the AO towards cash deposits during the demonetisation period, we note that both the authorities have not examined the issue in the light of Circulars / Notifications issued by Govt. of India / RBI and CBDT instructions. Similar has been decided by the coordinate Bench of the Tribunal in the case of M/s. Bhoopalam Marketing Services Pvt. Ltd. vs ACIT in ITA NO. 375/Bang/2022 dated 15.09.2022 for the AY 2017-18 in which the CBDT Instructions/ other notifications have been considered for examining the cash deposits during the demonetization period which 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.

8. Respectfully following the above judgment we direct the AO to verify the cash deposits into bank account during the demonetization

period in above terms to the extent of applicability in this case and decide the issue as per law.

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

Pronounced in the open court on this 03rd day of September, 2024.

Sd/-
(SOUNДАРARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 03rd September, 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.