

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-'A' BENCH : BANGALORE**

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

<b>ITA No. 1698/Bang/2024</b>
<b>Assessment Year : 2016-17</b>

Kalegowda Krishnegowda, Beemegowda Street, Aralakuppe Post, Pandavapura – 571 427. <b>PAN: BLHPK4518C</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2, Mandya.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ravi Shankar .S.V, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Department

Date of Hearing	:	03-10-2024
Date of Pronouncement	:	18-10-2024

**ORDER**

**PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

This is an appeal filed by the assessee against the order passed by the CIT(A) vide DIN & Order No: ITBA/APL/S/250/2024-25/1067154272(1) dated 30/07/2024 for A.Y. 2016-17 on following grounds of appeal:

*“1. The order of the authorities below in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*

*2. The appellant denies himself liable to be assessed to a total income of Rs.10,07,808/- as against the returned income of Rs.4,51,844/- for the impugned assessment year 2016-17 on the facts and circumstances of the case.*

*3. The learned CIT(A) ought to have provided another opportunity of hearing in the interest of natural justice and*

*equity before dismissing the appeal, on the facts and circumstances of the case.*

*4. The authorities below are not justified in treating the cash deposits to the extent of Rs.46,33,035/- as business receipts and estimating the income at 12%, on the facts and circumstances of the case.*

*5. The cash deposits made out of the cash withdrawals represents the capital of the business which cannot be treated as business turnover on the facts and circumstances of the case.*

*6. The authorities below have failed to appreciate that the cash deposits to the extent of Rs.46,33,035/- is out of the previous withdrawals made and no addition could have been on the facts and circumstances of the case.*

*7. The authorities below ought to have telescoped the cash withdrawals with the cash deposits made and no addition is warranted on the facts and circumstances of the case.*

*8. Without prejudice to the above grounds, the estimation of income at 12% is highly excessive and deserves to be substantially reduced, on the facts and circumstances of the case.*

*9. The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned Assessing Officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernible from the order and hence deserves to be cancelled on the facts and circumstances of the case.*

*10. The appellant craves leave to add, alter or substitute any of the grounds urged above.*

*11. In the view of the above and other grounds that maybe urged at the time of the hearing of the appeal, the appellant prays that the appeal be allowed and appropriate relief be granted in the interest on justice and equity.”*

**2.** The brief facts of the case are that assessee filed return of income on 10/12/2016 declaring an income of Rs.4,51,844/-. The assessee is running a business in silk sarees in the name and style of “M/s. Sachin

Silk & Sarees” at Aralakuppe Village, Pandavapura Taluk, Mandya Dist. The case was selected for limited scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings, the assessee furnished documents. It was noticed that the total turnover declared by the assessee is at Rs.37,65,365/- and offered income at 12% on the turnover out of the gross receipts of Rs. 4,51,844/-.

**3.** On perusal of the bank account and as per information available on record, the gross receipts is shown Rs. 83,98,400/-. In this regard, there was no any information from the assessee side. The assessing officer noted .that there is difference between the information available with the department and the turnover declared was considered as turnover and it was worked out at Rs.46,33,035/- (Rs. 83,98,400 – 37,65,365) and applied 12% of the net profit rate. Further, in this regard, the assessee was issued notice . In this regard, the assessee submitted reply stating that “I am retail a trader and for OD purpose cash were withdrawn and same withdrawn amounts were deposited again and again and not any other money.” The reply was not accepted by the AO and computed the income of Rs. 5,55,964/- and it was treated as business income.

**4.** Aggrieved from the above order, the assessee filed appeal before the Ld.CIT(A) raising grounds and in the grounds of appeal, specifically it was mentioned that the maturity of fixed deposits of Rs. 26.64 lakhs is included and assessee has withdrawn money further is also included and the total cash withdrawn is Rs. 57.10 lakhs and the assessing officer has to treat as cash deposits out of cash withdrawn from banks of Rs. 19.68 lakhs. The Ld.CIT(A) issued four notices which were served to the assessee but there was no reply from the assessee side. Accordingly, the Ld.CIT(A) decided the issue on the basis of materials available on record and dismissed the appeal of assessee for non-compliance.

**5.** Aggrieved from the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal.

**6.** The Ld.AR of the assessee reiterated the submissions made before the AO and further submitted that the assessee deposited the cash which were really withdrawal and the frequent transactions were made in the bank only for the purposes of taking Over Draft loan from the bank. The assessee had Fixed Deposit which got matured and it is also included in the gross receipts computed by the AO. He has not given the telescoping benefits for frequent withdrawals and he has not considered the actual turnover of the assessee and considered the entire bank deposit of the assessee for the turnover.

**7.** He further submitted that the first notice was issued to the assessee on 29/12/2020. Thereafter within a short span of time from 25/06/2024 to 19/07/2024, the Ld.CIT(A) issued three notices and passed order on 30/07/2024. Therefore the assessee could not get adequate opportunity for pressing his case. Therefore he requested that the matter may be sent back to the assessing officer for fresh consideration.

**8.** On the other hand, the Ld.DR relied on the orders of the lower authorities and submitted that the assessee did not file any documents except the submissions which is incorporated by the assessing officer. It was the duty of the assessee to prove the transactions with credible evidences of the turnover declared in its return of income. During the appellate proceedings, four notices issued to the assessee which were served however, there was no reply. Therefore he objected for giving another chance for the assessee.

**9.** In the rejoinder the Ld.AR of the assessee submitted that the assessee is residing in the remote area and he is not much aware about the income tax proceedings regarding email information, notices etc. Therefore the assessee was unable to represent his case.

**10.** Considering the rival submissions, we note that the case of the assessee was selected for scrutiny as per the information available with

the department on the two counts i.e. cash deposits in savings bank account and whether cash deposit has been made from .disclosed sources.”

**10.1.** During the course of assessment proceedings, there is no proper representation / explanation by the assessee and only there is a vague submission and the assessing officer has treated the difference amount noted (supra) as turnover, calculated profit at 12% and the Ld.CIT(A) issued first notice for hearing on 29.12.2020. Thereafter, approximately more than 3 ½ years the another notices were issued and only three opportunities were granted within a very short span of time and passed the order on 30/07/2024. The assessee has not represented his case before the Ld.CIT(A), considering the prayer of the Ld.Counsel and in the interest of justice, we are remitting back this issue to the file of AO for fresh consideration and decide the issue on merits as per law. Needless to say that proper opportunity of being heard must be granted to assessee. The assessee is directed to produce the necessary documents for substantiating its case and to avoid unnecessary adjournments for early disposal of the case and update the email, mobile No. and address for communication and further directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

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

Order pronounced in the open court on 18<sup>th</sup> October, 2024.

Sd/-  
(KESHAV DUBEY)  
Judicial Member

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Bangalore,  
Dated, the 18<sup>th</sup> October, 2024.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore