

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT**

ITA No.1247/Bang/2024
Assessment Year : 2017-18

Shri. Nandaleke Harindra Shetty, 950 3 <sup>rd</sup> A Cross, 9 <sup>th</sup> HRBR Layout, 1 <sup>st</sup> Block, Kalyanangar, Bangalore – 560 043. <b>PAN : AFQPS 8668 K</b>	Vs.	ITO, Ward – 1(2)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. Ganesh R Gale, Standing Counsel for Department.

Date of hearing	:	24.10.2024
Date of Pronouncement	:	30.10.2024

**ORDER**

*Per George George K, Vice President:*

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 01.05.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The solitary issue that is raised is whether CIT(A) is justified in confirming the addition of Rs.35,13,000/- as unexplained money by invoking the provisions of section 69A of the Act.

3. Brief facts of the case are as follows:

Assessee is an individual. For the Assessment Year 2017-18, the return of income was filed on 13.08.2017 declaring total income of Rs.11,67,510/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 09.08.2018. In response to the notice issued under section 142(1) of the Act, assessee had furnished a letter dated 04.11.2019 stating that out of the total cash deposit, a sum of Rs.19,25,000/- was on account of sale of vehicles. Since assessee had not furnished any details in respect of sale of vehicles, the AO held that he cannot consider the above mentioned cash deposit as out of sale of vehicles in the absence of any documentary proof to prove the sale, etc. The AO concluded that assessee was asked to substantiate the source of cash deposit, however, assessee did not produce any evidence in spite of providing multiple opportunities. Accordingly, the entire cash deposited during the year totaling to Rs.35,13,100/- was added to the total income as unexplained money under section 69A of the Act. The AO also invoked the special rate of taxation under section 115BBE of the Act.

4. Aggrieved by the Assessment Order, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, along with the statement of facts, assessee had produced the delivery note for sale of vehicles. It was stated by the assessee that he was the proprietor of Century Car Rentals which was engaged in the business of providing car rental services and during the year, assessee had sold about 8 vehicles and the total cash received on the sale of these vehicles was Rs.19,25,000/-. Further, it was submitted in the statement of facts that the balance sum of Rs.13,53,100/- is from agricultural income and from previous withdrawals from the bank account of the proprietary concern. The CIT(A), however, rejected the contentions raised by the assessee. The CIT(A) pointed out certain defects in

the delivery note and rejected the contentions of the assessee that Rs.19,25,000/- cash deposited are out of sale of vehicles. Further, CIT(A) did not give credit for agricultural income disclosed in the return of income and also for cash withdrawn which was redeposited. The relevant finding of the CIT(A) reads as follows:

*“5.3 On going through the delivery note submitted by the assessee, it is clear that the assessee has signed the delivery note and there is witness. However, there is no mention of the person taking the delivery. The vehicle how it was purchased is also not there. In this background of fact that delivery challan is incomplete, infact all delivery challans are incomplete, the evidence submitted in this regard is rejected. Further, the assessee has submitted some RTC's in support of agricultural income. Without going into the merits of whether assessee owned land or not, the assessee has not submitted the details of agricultural operations like basic and subsequent operations. No evidences of sale of agricultural produce or evidences of purchase of inputs, irrigation etc. are not been submitted. The assessee has also not submitted the cash flow or the fund flow between various entities, in support of which he claims to have taken credit of deposits.*

*6. On going through the submission of the assessee and the assessment order it is clear that the assessee has not submitted the said details to the AO or this office. No documentary proof that such submissions were made are submitted to this office. In the above background it is very clear that what AO has done is as per law and I do not find any infirmity on part of the AO. In the above background the appeal filed by the assessee is dismissed.”*

5. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal raising the following grounds:

*1. The appellate order passed by the learned Commissioner of Income-tax [Appeals], NFAC, Delhi, passed under Section 250 of the Act dated 01/05/2024, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case, may be quashed.*

2. *The appellant denies himself liable to be assessed on total income of Rs. 46,80,611/- determined by the learned assessing officer and upheld by the learned Commissioner of Income-tax [Appeals], as against the income returned and reported by the appellant of Rs. 11,67,511/-, on the facts and circumstances of the case.*

3. *The learned Commissioner of Income-tax [Appeals] and the learned assessing officer were not justified in treating the cash deposits made in the bank accounts of the appellant totaling to Rs. 35,13,100/- as unexplained money by invoking the provisions of section 69A of the Act, on the facts and circumstances of the case.*

4. *The learned Commissioner of Income-tax [Appeals] as well as the learned assessing officer were not justified in not properly appreciating the fact that the deposits in the bank accounts of the appellant are from the proceeds received by the appellant from sale of vehicles, previous withdrawals, drawings from the business and agricultural income, which were all available as source for making deposits into the bank accounts of the appellant and based on certain irrelevant observations which is arbitrary, based on suspicion, surmise and conjecture without any proper basis and treated the said amounts deposited in the bank accounts as unexplained money under section 69A of the Act, on the facts and circumstances of the case.*

5. *The addition made by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals], under section 69A of the Act is bad in law as the required conditions and the parameters to invoke the provision of section 69A of the Act have not been complied with and consequently no addition could have been made invoking the provisions of section 69A of the Act, on the facts and circumstances of the case.*

6. *The learned Commissioner of Income-tax [Appeals] is not justified in not considering the detailed written submissions filed along with relevant details and documents in support of the additions made, which were all filed during the appellate proceedings were not properly considered and passed appellate order which is against the principles of natural justice and consequently requires to be cancelled, on the facts and circumstances of the case.*

7. *Without prejudice, the learned Commissioner of Income-tax [Appeals] and the learned Assessing Officer were not justified in taxing the appellant as per special rates of taxes as per the provisions of section 115BBE of the Act for the amounts deposited by the appellant during the year from the known, available and explainable sources, on the facts and circumstances of the case.*

8. *Without prejudice, to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies himself liable to be charged to interest under section 234 B of the Income Tax Act on the facts and circumstances of the case. The appellant contends that the levy of interest under section 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.*

9. *The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*

10. *For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.*

6. Assessee has filed two sets of Paper Books serially numbered to 87 pages. Assessee has enclosed therein statement of total income along with audited financials for the year ending 31.03.2017, the audit report, delivery note issued by the purchaser of the vehicle from the assessee, copy of the bank account statement with the Canara Bank (one SB account and another current account), the RTC issued by the competent authority as regards the agricultural land holding, etc. The learned AR reiterated the submissions made before the Income Tax authorities.

7. The learned Standing Counsel supported the Orders of the AO and CIT(A).

8. I have heard the rival submissions and perused the material on record. Assessee for the relevant Assessment Year viz., 2017-18 had made cash deposit in his two bank accounts detailed below:

Canara Bank A/c No.2456201000884 - Rs. 21 60,000/-

Canara Bank A/c No.2456101501851 - Rs. 13,53100/-

9. The AO added the entire cash deposit as unexplained money under section 69A r.w.s. 115BBE of the Act. The AO held that assessee had failed to explain the source of cash deposit in spite of several opportunities. It is to be noted that the cash deposit in the above said two bank accounts were not made during the demonetization period. Assessee owns a proprietary concern by the name M/s. Century Car Rentals which is engaged in the business of providing car rental services. The assessee's books of accounts are subjected to audit under section 44AB of the Act. As regards cash deposits in the current account with Canara Bank account No.2456201000884 to the tune of Rs.21,60,000/- is concerned, the contention of the assessee is that receipts from sale of vehicles which the assessee was using for the purpose of his proprietary concern. In this context, the delivery note / challan are placed on record. The CIT(A), however, found fault with certain entries in the delivery note by observing that there are no details / mention of the person who is taking delivery of the vehicle. In this context, before the Tribunal, the learned AR by referring to the delivery notes which are placed on record from pages 40 to 46 submitted that the broker who has taken the delivery of the vehicles had signed in the witness column and the assessee has been selling vehicles to the broker who in turn sells it to the ultimate purchaser, hence, the purchaser's name and details may not be mentioned in the delivery note. As regards cash deposits

apart from a sum of Rs.19,25,000/-, it was the claim of the assessee that these are redeposits of the amounts withdrawn earlier.

10. I find that the delivery notes / challans were first produced along with the statement of facts before the First Appellate Authority (FAA). It is not clear whether assessee had filed a petition for admission of additional evidence before the FAA. If assessee has filed petition for admission of additional evidence, CIT(A) ought to have called for a remand report from AO. The CIT(A) has disbelieved the explanation of the assessee as regards receipt on account of sale of vehicles by pointing out certain defects in the delivery note. From the facts on record, it is clear that assessee was running a proprietary concern which was engaged in the business of providing car rental services. It is also a fact that the books of accounts of the proprietary concern were subjected to audit under section 44AB of the Act and the vehicle sold was removed from the block of assets of the proprietary concern of the assessee. Since there has been no proper examination of the issue (as no details were furnished by the assessee before the AO), I deem it appropriate to restore the issue of the source of cash deposit to the tune of Rs.19,25,000/- as regards the sale of vehicles to the files of the AO.

11. As regards the deposits with Canara Bank account No.2456101501851 to the tune of Rs.13,53,100/-, I find that net debit and credits in the particular bank account is only to the extent of Rs.10,88,000/-. The assessee is deriving agricultural income from agricultural land to the extent of 11 acres wherein he is growing coffee which is a commercial crop. For the impugned Assessment Year, assessee in the return of income had declared Rs.3,50,000/- from growing of coffee which has been accepted by the AO. In light of the aforesaid factual matrix, I am of the view that a credit of Rs.3,50,000/- should be given as a source with regard to the cash deposits made (net agricultural income of Rs.3,50,000/-). As

regards other cash deposits, I find that there is enough cash withdrawals for redeposits. Therefore, a sum of Rs.12,38,000/- also needs to be given credit as source for the cash deposits made [i.e., Rs.35,30,100 - Rs.19,25,000/- (receipts on account of sale of vehicles) - Rs.3,50,000 (agricultural income)]. Therefore, out of a sum of Rs.35,13,100/- which is added under section 69A r.w.s. 115BBE of the Act, assessee gets a relief of Rs.15,88,000/-. Balance Rs.19,25,000/- pertaining to the receipts on account of sale of vehicles is restored to the files of AO. The AO, in light of the above directions, shall take a decision as regards the aforesaid sum of Rs.19,25,000/- whether it can be given as a credit for the cash deposits made in assessee's bank account. It is ordered accordingly.

12. In the result, appeal filed by the assessee is partly allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(GEORGE GEORGE K)**  
**Vice President**

Bangalore.

Dated: 30.10.2024.

/NS/\*

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent           |
| 3. DRP        | 4. CIT                  |
| 5. CIT(A)     | 6. DR, ITAT, Bangalore. |
| 7. Guard file |                         |

By order

Assistant Registrar,  
ITAT, Bangalore.