

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

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| ITA No.1782/Bang/2024 |
| Assessment Year: 2017-18 |

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| Ichettira Mandappa Machaiah PH No.1 Kushl Nagar Somwarpet Kodagu 571 234 Karnataka PAN NO : AOMPM2495K | Vs. | ITO Ward-1 Madikeri |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Sri Sandeep Chalapathy, A.R. |
| Respondent by | : | Sri Ganesh R Gale, Standing counsel for department |

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| Date of Hearing | : | 19.11.2024 |
| Date of Pronouncement | : | 25.11.2024 |

**ORDER
PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against CIT(A)/NFAC order dated 7.8.2024 vide DIN & order No.ITBA/NFAC/S/250/2024-25/1067404452(1) passed U/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the AY 2017-18.

The assessee has raised the following grounds of Appeal :

1. That the order of the Commissioner of Income Tax (Appeals) in so far is prejudicial to the interests of the appellant is bad and erroneous on the facts and circumstances of the case.
2. The Appellant denies being assessed on a total income of Rs. 12,00,000/- as determined by learned Assessing Officer and confirmed by learned Commissioner of Income tax (Appeals) as against the correct return of income of Rs. Nil/- on the facts and circumstances of the case.
3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition of Rs. 12,00,000/- u/s 69A of the Act without taking into consideration the submissions made by the appellant that the deposits made are out of agricultural proceeds.

4. That the learned Revenue Authorities erred in making additions u/s 69A of the Act without appreciating the documents and the explanations placed on records with respect to cash deposits made during the financial year 2016-17 relevant to Assessment year 2017-18 and erroneously confirming the additions of Section 69A of the Act.
5. That the learned Revenue Authorities grossly failed to appreciate the fact that the provision of Section 69A of the Act is not applicable due to non-applicability of the said provision in the present case.

6. That the learned Commissioner of Income Tax (Appeal) erred in law and on facts in stating that the appellant failed to adduce the basic evidence supporting his claim even though the appellant had submitted the necessary documents in support of grounds of appeal.
7. That the learned Revenue Authorities failed to recognize that the communications from the income department (Assessing Officer) did not reach the appellant, resulting in no submissions being made before the Assessing Officer.
8. That the learned Commissioner of Income Tax (Appeals) erred both in law and on fact by not considering the fresh evidence submitted by the appellant, despite the appellant providing valid reasons for its latterly submission.
9. That the learned Commissioner of Income Tax (Appeals) erred both in law and on fact by not considering the fresh evidence, incorrectly asserting that the appellant had provided vague reasons for failing to make submissions before the Assessing Officer.

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, modify or otherwise amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.

2. The brief facts of the case are that assessee is a Senior Citizen and predominantly an agriculturist having 28.64 acres of land. The assessee claimed to have growing coffee and do peasant activity for livelihood. The assessee lives in a very remote part of

the village where any mode of communication and transportation is cumbersome and due to this the postal department has allotted post box number for the villagers in their office.

3. The assessee claims that one of his staff had collected the notices on his behalf from the post box and he had misplaced during the flood hit period as all were in havoc & trauma. This led the AO to pass an ex-parte order u/s 144 of the Income Tax Act, 1961 (in short "The Act") to his best of the judgment. The ld. A.R. of the assessee claimed that the amount of Rs. 12,00,000/- cash deposited in Corporation Bank, Kushalnagar was his hard earned money over the period of time from agriculture and peasant activity which is not taxable u/s 10(1) of the Act and accordingly no return of income was required to be filed before the AO.

3.1 During the course of the assessment proceedings, the assessee again failed to furnish return of income u/s 142(1) of the Act in response to notice u/s 142 of the Act dated 9.3.2018. The AO has further observed that assessee has deposited cash of Rs.12 lakhs in the Corporation bank account during the demonetization period. Accordingly, bank statement for the period from 1.4.2016 to 31.3.2017 pertaining to the assessee was collected from the bank. As the assessee fails to comply with the terms of notice issued u/s 142(1) of the Act as well as 2 nos of show cause notices, the assessment proceedings were completed under the best judgement assessment. The AO observed that the assessee even failed to furnish any details relating to business activity undertaken, details of income earned, details of cash deposit made into the bank accounts, source of cash deposits and details of cash deposit made in the bank accounts during the demonetization period and accordingly held that as the assessee has not offered any explanation for the source of cash deposit made, and therefore, the entire cash deposit amounting to Rs.12 lakhs was treated as

unexplained money of the assessee and added to the total income of the assessee u/s 69A of the Act and taxed u/s 115BB of the Act.

3.2 Aggrieved by the assessment completed u/s 144 of the Act dated 18.11.2019, the assessee preferred an appeal before CIT(A)/NFAC. The ld. CIT(A) dismissed the appeal of the assessee by not accepting the fresh evidences uploaded under Rule 46A in the form of agricultural land holdings. Further, ld. CIT(A) has observed that the assessee has failed to substantiate the claim of filing fresh evidence before him with valid reasons and also failed to explain as to why the same were not filed before the AO and accordingly dismissed the appeal of the assessee by citing various decisions relied upon by him. Aggrieved by the order of ld. CIT(A), the assessee filed the present appeal before the Tribunal.

3.3 Before us, ld. A.R. of the assessee submitted that the assessee could neither appear before the AO nor submit any documents/records as the assessee is a senior citizen and living in a very remote area where any mode of communication and transportation is cumbersome. Further, ld. A.R. of the assessee submitted that even ld. CIT(A) has not considered the details produced before him stating that the same cannot be accepted as the assessee has failed to substantiate the claim of filing fresh evidence and also has failed to explain as to why the same were not filed before the AO.

4. The ld. D.R. on the other hand vehemently submitted that the assessee could not produce any supporting documents/records before the assessing authority to substantiate the cash deposit of Rs.12 lakhs made in the bank account. Further, the assessee is a non-filer of Return and accordingly the ld. D.R. supported orders of authorities below.

5. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that the assessee could not produce any documents/records to substantiate his claim before the AO. We also take a note of the fact that the case has been selected on the basis of the data analytic information gathered during the phase of online verification under Operation Clean Money. The assessee has deposited substantial cash in bank accounts during the demonetization period but have not filed the return of income for the assessment year 2017-18.

5.1 We find that in this case, admittedly, the order has been passed by the authorities below without giving reasonable opportunity of being heard. Further we also take a note of the fact that the Id. CIT(A) had also not considered the additional evidences uploaded as the conditions provided under rule 46A was not satisfied. Further we also take a note of the fact that the AO has not passed the Order in terms of various circulars issued dealing with the demonetization. Being So, we are of the opinion that in the interest of justice and fair play, one more opportunity may be granted to the assessee to substantiate his claim and accordingly we set-a-side the issue in dispute to the file of AO for fresh consideration in accordance with Law. The AO is directed to give reasonable opportunity of being heard to the assessee and decide the issue in the light of various CBDT instructions issued for dealing with the demonetization. The assessee is directed to submit all the documents/records within 90 days from the date of service of the notice and cooperate with the proceedings before the revenue authorities for proper adjudication of the case. We clarify that in case of further default, the assessee shall not be entitled for any leniency.

6. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25th Nov, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 25th Nov, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.