

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

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1956/Bang/2024
Assessment Year : 2017-18

Mr. Waseem Ulla Khan Prop: A.S. Mobile Zone Shop No.5, Beside Krishna Bakery KSRTC Bus Stand Road MG Road Tumkur 572 101 PAN NO : BRKPK0951L	Vs.	ITO Ward-1 & TPS Tumkur
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia, A.R.
Respondent by	:	Sri Ganesh R. Gale, Standing Counsel for Department

Date of Hearing	:	11.11.2024
Date of Pronouncement	:	12.12.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the Addl./JCIT(A)-1, Pune dated 2.9.2024 vide DIN & Order No. ITBA/APL/S/250/2024-25/1068244436(1) passed under section 250 of the Income Tax Act, 1961 (in short “the Act”) for the Assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

- 1. “The Orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned CIT[A] is not justified in sustaining a sum of Rs.1,40,000/- from out of the original addition of Rs.7,96,700/-*

made as unexplained cash credits u/s.68 of the Act in respect of the cash deposits made in the bank accounts of the appellant without appreciating that the appellant had explained that said sum was given by his mother Smt. Tajunnissa during the period of demonetization under the facts and in the circumstances of the appellant's case.

3. *The learned CIT[A] is not justified in sustaining a sum of Rs. 3,06,700/- from out of the original addition made of Rs.7,96,700/- made as unexplained cash credits u/s.68 of the Act in respect of the cash deposits made in the bank accounts of the appellant in specified bank notes during the period of demonetization under the facts and in the circumstances of the appellant's case.*

3.1 *The CIT [A] failed to appreciate that the sum of Rs. 3,06,700/- were received from the customers and deposited into the bank in the usual course of business and it could not be treated as unexplained cash credit u/s.68 of the Act on the ground of any tainted illegality under the facts and in the circumstances of the appellant's case.*

4. *The learned CIT [A] is not justified in upholding the tax imposed under the provisions of section 115BBE under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*

6. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

3. The brief facts of the case are that the assessee being an individual carries on the business as dealer in mobiles, mobile accessories and currency under the name and style of M/S A.S. MOBILE ZONE at M.G. Road Cross, Tumkur. The assessee claimed to have been maintaining books of account for the business carried on and the same is also subjected to Tax audit u/s. 44AB of the Act.

3.1 For the year under appeal, the assessee e-filed his return of income on 02/11/2017 declaring a total income of Rs.3,86,800/- from the aforesaid sources of income and declared agricultural income of Rs.1,00,000/- for the rate purposes. The assessee had also filed the audited financials and the report of the Accountant in Form 3CB and 3CD dated 30/10/2017 along with the return of income.

3.2 Thereafter the case of the assessee was selected for scrutiny under CASS to verify "Cash deposit during the year" and accordingly, statutory notice u/s. 143[2] of the Act dated 09/08/2018 was issued and served on the assessee.

3.3 Further, notices u/s. 142[1] dated 03/07/2019, 14/08/2019, 01/10/2019, 25/10/2019 and 20/11/2019 were also issued calling for details. The copies of the aforesaid notices are placed at pages 35 to 44 of the Paper book. In response to the same the assessee vide letter dated 04/12/2019 furnished copies of the VAT & GST returns, Statement of Sales, Sales Register, Copy of the Income Tax Return along with the audited financial statements & Report in support of the extent of sales made during the year under appeal and claimed that the cash deposited during the demonetization period was out of the cash sales proceeds. Further the assessee also submitted the copy of the agriculture property in support of the claim that cash transaction in the SB A/c of Andhra Bank bearing A/c No. 156110100031557 is towards receipts from agriculture income & also declared in the return of income.

3.4 Thereafter, the A.O. issued another Show cause notice which was annexed to notice u/s. 142[1] of the Act dated 05/12/2019 [copy is placed at pages 100 & 101 calling upon the assessee to show cause as to why the deposit of Rs.16,95,500/- in the old

demonetized notes should not be treated as undisclosed sources and unexplained money u/s.68 of the Act.

3.5 In response to the above notice / show cause, the assessee vide letter dated 12/12/2019 filed the copy of the cash book as on 08/11/2016 and further submitted that he had deposited Rs. 1,40,000/- as past savings of his mother and also deposited Rs. 3,50,000/- received from his father who is an agriculturist and in support of the same, the assessee also filed the copy of the RTC extract [placed at Pages 106 to 109 of paper book along with English Translation] and requested the A.O. to consider the above while passing the assessment order.

3.6 However, the A.O. concluded the assessment by passing the order u/s.143[3] dated 17/12/2019 by treating a sum of Rs.7,96,700/- as unaccounted income from unaccounted sources and assessed to tax as unexplained credits u/s.68 of the Act by observing that cash book closing balance as on 08/11/2016 was only Rs.9,71,746/-. The assessee has deposited cash in demonetized notes on various dates from 10/11/2016 to 09/12/2016 aggregating to Rs.17,68,500/-. Hence the AO treated the balance money deposited to the extent of Rs.7,96,700/- [17,68,500 (-) 9,71,746] as unaccounted income from unaccounted sources /-

4. Aggrieved by the assessment completed U/s 143(3) of the Act, the assessee preferred an appeal before the Id. ADDL/JCIT(A).

4.1 During the course of First appellate proceedings, as the assessee has submitted the additional evidences in support of his grounds of appeal for which the Id. ADDL/JCIT(A) has called for the remand report. Considering the facts of the case, Grounds of

Appeal, Remand report of the AO as well as submissions of the assessee, the ld. ADDL/JCIT(A)-1 Pune **partly allowed** the appeal. While doing so the ld. ADDL/JCIT(A)-1 Pune taking into consideration the confirmation from the father submitted to the AO, genuineness of the transaction & creditworthiness of father accepted the source of cash deposits of Rs.3,50,000/- as gift from father to his son & deleted the addition of Rs. 3,50,000/- u/s 68 of the Act.

4.2 Further, with regard to the claim of the assessee that the assessee has deposited a sum of Rs.1,40,000/- from the past savings of his mother, the ld. ADDL/JCIT(A)-1 Pune is of view that as the assessee failed to submit the return of income of his mother, the creditworthiness of the donor is not proved beyond doubts. Hence ld. ADDL/JCIT(A)-1 Pune did not accept the contention of the assessee with regard to the source of cash deposit amounting to Rs. 1,40,000/- and accordingly confirm this addition.

4.3 Lastly, with regard to the remaining cash deposit of Rs.3,06,700/-, the explanation of the assessee that the same is from the cash sales effected during the period of demonetization period was also not accepted by the ld. ADDL/JCIT(A)-1 Pune by holding that it was indicative of the coloring device adopted by the assessee to give legitimacy to its unaccounted and undisclosed cash deposited during demonetization period. The ld. ADDL/JCIT(A)-1 Pune was of view that the assessee was not permitted to exchange this currency after the demonetization was announced on 08/11/2016. Further the assessee business is also not covered by the circular or notification issued by the Government which allowed the assessee to carry business in old currency.

5. Aggrieved by the order of the Id. ADDL/JCIT(A)-1 Pune, the assessee has filed the present appeal before the Tribunal. The assessee has also filed the paper book containing 168 pages.

6. Before us, the Id. AR of the assessee submitted that the assessee maintains books of accounts on day-to-day basis and the books of accounts are also audited u/s 44AB of the Act by a Chartered Accountant. During the course of assessment proceedings, the assessee has produced copy of VAT and GST returns, statement of sales, sales register, cash books in support of the claim that the cash sale proceeds were only deposited in the bank account during the demonetization period. Further, Id. A.R. of the assessee vehemently submitted that the AO accepted the sale figure and also accepted the books of accounts of the assessee and without rejecting the trading result has based on conjecture and surmises added the difference of total cash deposited in demonetized notes amounting to Rs.17,68,500/- and the opening cash balance available as per the cash book on 8.11.2016 amounting to Rs.9,71,746/-. Further, with regard to the claim of Rs.1,40,000/-, the Id. A.R. of the assessee submitted that the assessee has produced the confirmation letter from his mother before the authorities below and submitted that the said amount of Rs.1,40,000/- are the past savings of his mother.

7. The Id. D.R. on the other hand vehemently submitted that the assessee has deposited the old demonetized notes during the period when they are not permitted to do so and also could not prove with supporting evidence that the old demonetized notes were received from the business and the same were deposited in bank accounts. Further, the assessee was not permitted to exchange the currency after the demonetization announced on 8.11.2016. The Id. D.R. vehemently submitted that the assessee business is also not an

exempted category as per the Circular/Notification. Further, with regard to the addition of Rs.1,40,000/-, the ld. D.R. submitted that the assessee could not produce the copy of return of income of his mother, therefore, the creditworthiness of her mother could not be established by the assessee beyond doubt.

8. We have heard the rival submissions and perused the materials available on record. It is undisputed fact that assessee maintains books of accounts on day-to-day basis, which were audited by a Chartered Accountant u/s 44AB of the Act. Further, during the course of assessment proceedings, we find that assessee has furnished copy of VAT and GST returns, statement of sales, sales register, copy of income tax return along with audited financial statement as well as cash book to substantiate his claim that the money deposited during the demonetization period were out of the cash sales proceeds from the business. We also take a note of the fact that the authorities below have also not rejected the books of accounts of the assessee and accepted the trading result as well as cash book produced before them. We also take a note of the fact that the AO by accepting the cash book balance as on 8.11.2016, amounting to Rs.9,71,746/- had added the balance amount of Rs.7,96,700/- only u/s 68 of the Act. We are of the considered opinion that if the books of accounts are not rejected by the authorities below and the cash sales recorded in the books are held as genuine business receipts, then addition of cash deposited in the bank account once again results in double taxation. Mere because the cash were deposited during the demonetization period does not make it tainted. The assessee has duly explained the source of the cash deposits. The revenue has not brought on record any contrary evidence to suggest that the cash deposited were from unaccounted sources. We are of the opinion that the merely based on the conjecture & surmises the ld. ADDL/JCIT(A)-1, Pune came

to the conclusion that it was indicative of the colouring device adopted by the assessee to give legitimacy to its unaccounted and undisclosed cash deposits. The Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation (P) Ltd 159 ITR 78 has held that "It is the duty of the AO to substantiate his finding with appropriate evidence and not to rely on conjecture". In view of the above, we find no merit to sustain the addition made u/s 68 of the Act as the conditions i.e. nature, source and creditworthiness has been fully established by the assessee and the assessee has offered satisfactory explanation before the authorities below and also the authorities below could not brought any material on record to disprove the claim made by the assessee. Accordingly, we allow this ground of appeal.

8.1 Further, with regard to the addition of Rs.1,40,000/-, claimed to have deposited from the past saving of his mother, we take a note of the fact that Id. First appellate authority although taking into consideration remand report of AO, submissions of the assessee, as well as confirmation from his father submitted to AO has accepted the source of cash deposit of Rs.3,50,000/- as gift from father to his son and deleted the addition of Rs.3,50,000/- u/s 68 of the Act, however, in case of assessee's mother, even if the confirmation from the mother has been submitted before the first appellate authority, (placed in page 126 of the paper book), did not accept the contention of the assessee as in the opinion of Id. Addl/JCIT(A)-1, Pune, the creditworthiness of assessee's mother was not proved beyond doubt. We are of the opinion that this petty amount of Rs.1,40,000/-, which the assessee claimed to have deposited from the past savings of his mother cannot be disbelieved since as per the Indian custom and practice, the ladies homemaker used to save petty amounts of money in every household. Further the return of Income is required to be filed only if the Income exceeds the

maximum amount which is not chargeable to income tax i.e. Rs.2,50,000. Further, the assessee's mother has also submitted the confirmation stating that she had given his son a sum of Rs.1,40,000/- to deposit the same in his bank account during the period of demonetization and the said amount was her past savings and from agricultural income. Further, considering the amount involved which is much less than the maximum amount, which is not chargeable to income tax, we accept the contention of the assessee. Therefore, this ground of appeal is also allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12th Dec, 2024

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 12th Dec, 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.