IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER

ITA No.275/Bang/2024
Assessment Years : 2017-18

Sri Kandaswamy Mohan, P-5, Eshwar Supari Traders, Sagara Road, APMC Yard, Shivamogga – 577 204. **PAN – ATMPM 5639 C**	Vs.	The Asst. Commissioner of Income Tax, Circle – 1, Shivamogga.
APPELLANT		RESPONDENT

Assessee by	:	Shri Tatakrishna, Advocate
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	08.10.2024
Date of Pronouncement	:	16.12.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the Final Assessment order passed by the NFAC, Delhi dated 22/12/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1058986675(1) for the assessment year 2017-

2. The interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 35 Lakhs made by the AO on account of cash deposited during the demonetisation period.

3. The necessary facts are that the assessee is an individual and engaged in the business of trading of areca nuts through proprietary concern namely M/s Eswar Supari and also claimed to be in the business of processing of areca nuts through another proprietary concern namely M/s Eshwar Areca Processing Unit.

3.1 During the demonetization period, the assessee has made cash deposits amounting to ₹ 37,00,000/- in two bank accounts on specific dates in November 2016. In the books of proprietary concern M/s Eswar Supari the assessee shows receipt of cash amounting to Rs. ₹35,00,000/- on 28th October 2016 from another proprietary concern namely M/s Eshwar Areca Processing Unit owned by him. Accordingly, the cash in hand in the books of M/s Eswar Supari as on 28th October 2016 shown at ₹38,62,630/- out of which cash deposit of ₹ 37,00,000/- during demonetization claimed to be made.

3.2 The assessee explained that he began areca processing business since June 2016 only hence the year under consideration was the first year of the business of processing unit. It was decided to deposit the cash generated from processing business only after performing Laxmi pooja on the date of Diwali as it was very first year of processing business. Accordingly, after Diwali the cash was remitted to main business account. But the cash was not immediately deposited to the bank after Diwali for the reason that the business was closed for few days after Diwali and the staff was on Diwali vacation and he (assessee) himself was occupied in some other work. Thereafter, the demonetisation was announced on evening of 8th November 2016 and

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accordingly the available cash was deposited in accordance with prescribed law.

4. The AO raised several concerns regarding the explanations provided by the assessee about cash deposits during the demonetization period. The AO observed that the existence of this processing unit from where it was claimed having generated cash was itself doubtful, as there was no evidence of machineries, equipment, or investments made for processing activities. Despite the claim of processing raw areca and earning income, the balance sheet showed no related transactions or capital expenses.

4.1 The AO found, the claim of ₹48,93,880/- gross receipts within five months of starting operations from June to October 2016 from areca processing is suspicious. According to the AO the areca harvesting only start by the end of October. Furthermore, the processing of areca required sun drying of areca nut which was not possible during rainy season of June to October. Accordingly, the AO held story of the assessee for generation of cash from areca processing unit is afterthought.

4.2 The AO also highlighted that the assessee failed to substantiate the functioning of the processing unit with material evidence, such as GST or service tax registration, electricity bills, or any other undeniable proof of business operations. While letters and affidavits from third parties were filed, these were considered insufficient and circumstantial, especially as they were submitted after three years, suggesting an

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afterthought. Thus, the AO concluded that the unit might have been created on paper to justify cash deposits made during demonetization.

4.3 Moreover, the AO noted that the timing of cash deposits and the failure to explain non-deposit of cash receipts before the demonetization period further supported the suspicion of fabricated sources. As a result, the explanation for the cash deposit of ₹35,00,000 was rejected, and the amount was taxed as unexplained cash under Section 68 of the Act, subject to higher tax rates as per Section 115BBE of the Act.

5. The aggrieved assessee preferred an appeal before the learned CIT(A).

6. The assessee before the learned CIT(A) reiterated that the cash was accumulated out of earnings from his new business venture, M/s Eshwar Areca Processing Unit, starting from June 2, 2016, and was retained for performing Laxmi Pooja during Deepavali on October 28, 2016. The assessee maintained that this act was driven by religious faith and traditions, which should be respected under constitutional rights.

6.1 The assessee further contended that the cash deposits during the demonetization period were from genuine business operations of areca nut processing, starting from June 2016. It was argued that areca harvesting in the Shivamogga and Bhadravathi regions begins as early as June due to favorable weather conditions and less rainfall in these areas compared to other regions. The assessee submitted affidavits from farmers and customers to support their claim of providing areca processing services during this period. Additionally, local newspaper

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reports were provided as evidence of the areca processing and harvesting timeline.

6.2 The assessee criticized the AO for arbitrarily rejecting their affidavits and supporting documents without further verification or cross-examination. The assessee argued that the AO incorrectly relied on generalized data about areca harvesting timelines, ignoring specific local conditions and evidence. The assessee emphasized that the rejection of the affidavits from the farmers and evidence was arbitrary and in violation of legal principles. Furthermore, the assessee highlighted that the AO's conclusions were based on assumptions and not on concrete evidence, rendering the AO’s assessment unjustified.

6.3 The assessee argued that the AO incorrectly rejected the claim regarding the establishment and operations of M/s Eshwar Areca Processing Unit. The AO's observation that there was no bank account, machinery, or investment in the balance sheet of the unit was challenged by the appellant. The appellant clarified that the processing unit was established on leased premises, which included all required machinery such as areca dehusking and boiling units. Therefore, there was no need for separate investments in machinery and equipment to be reflected in the balance sheet. To substantiate the claim, the appellant provided a lease agreement and rent payment receipts for the premises, submitted through email on November 22, 2019, just before the conclusion of the assessment proceedings. These documents demonstrated that the equipment and machinery for processing were part of the leased premises.

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6.4 The assessee further argued that the areca processing business was exempted under the Service Tax Act, making it unnecessary to obtain service tax registration. The assessee claimed that this requirement imposed by the AO was irrelevant and not applicable to his case. The appellant also emphasized that the AO's insistence on documents such as service tax registration was unjustified, as farmers involved in areca processing are specifically exempt under the law. The appellant provided a copy of the notification exempting farmers from service tax.

6.5 However, the learned CIT(A) concurred with the finding of the AO and confirmed the addition made. The learned CIT(A) rejected the assessee contention in regarding accumulation of cash from processing unit for long period due to religious view and processing of areca during the June to October by holding that the AO has given detailed finding which has not controverted. Regarding the factory premises for processing of areca, the learned CIT(A) held that the AO rightly concluded that existences of processing was not proved as the assessee failed to provide necessary evidence including the electricity bill.

7. The learned CIT(A) regarding the contention areca processing was exempted under the service tax found that the processed areca nut is taxable under the provision of GST at 5%. Therefore, there was no force in the argument of the assessee. Likewise, the learned CIT(A) rejected the assessee's submission regarding confirmation from third party certifying processing activity carried out by the assessee for them by holding that the confirmation letters were signed dated 13-11-2019 which is almost after a gap of 3 years. Hence, the evidence provided in

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the form of confirmation letters are manufactured documents. So, these cannot be relied upon.

8. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us. The ld. AR on behalf of the assessee before us has challenged addition made on merit as well as on law. In the legal grounds, the assessee challenged the validity of the assessment by contending that the notice under section 143(2) of the Act was issued by the non-jurisdictional AO.

9. However, we note that at the time of hearing the learned AR for the assessee submitted that he has been instructed by the assessee not to press the ground of appeal in relation to jurisdiction issue. Hence the same is hereby dismissed as not pressed.

10. The learned AR in relation to other grounds of appeal on merit filed a paper book running from pages 1 to 418 and inter alia submitted the existence of the business of the assessee areca processing unit was accepted by the revenue in the later years. Therefore, the same cannot be doubted in the year under consideration. It was also pointed out by the Ld. AR that the rent paid to the landlord was inclusive of the electricity charges which can be verified from the rent agreement. Similarly, the activity of processing areca was exempted under service tax and GST and therefore there was no need for having the registration under the relevant Act.

11. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

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12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has made a cash deposit of Rs. 37 Lakh during the demonetization period. Source of such deposit was explained that an amount of Rs. 35 Lakh was out of the revenue generated from the newly established areca processing unit. The explanation furnished by the assessee was rejected by the lower authorities on different reasons. Now, we proceed to adjudicate the issue accordingly.

12.1 The lower authorities while rejecting the explanation of the assessee doubted the existence of processing unit on account of lack of necessary plant and machinery. In this regard, we note that the assessee has explained that the areca proceeding was carried by him on leased property. The leased property included all the necessary equipment such as dehusking and boiling units. The assessee in support of claim had also provided the lease agreement and rent payment receipts on November 22, 2019. The inclusion of machinery and equipment, such as areca dehusking and boiling units, as part of the leased premises eliminates the necessity of recording such investments in the balance sheet. However, the said lease agreement was not considered by the AO being the same was furnished at the fag end of the assessment. The assessee furnished the same during the appellate proceeding but the learned CIT(A) without highlighting any defect and without considering the lease agreement rejected the assessee explanation. In our considered view, the approach of the learned CIT(A) was not justified. It is also important to note that the assessee in the subsequent assessment year has declared income from areca processing

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unit which has been accepted by the revenue. Therefore, considering the facts in totality, we accept the assessee's contention that the areca processing unit, M/s Eshwar Areca Processing Unit, was established and operational during the relevant financial year.

12.2 Proceeding further, the lower authorities have raised doubted processing of areca nuts during the period June to October as claimed by the assessee. In this regard we note that the assessee has provided affidavits from farmers and customers, along with local newspaper articles, to substantiate that areca harvesting and processing activities in the Shivamogga and Bhadravathi regions commence as early as June. The lower authorities without assigning valid reason and without bringing cogent material rejected the same. We accept these affidavits as valid evidence, rejecting the Assessing Officer's generalized assumption that areca harvesting starts only in October. Regional variations in climate and rainfall, as detailed by the assessee, demonstrate that drying and processing of areca nuts are feasible during this period in the Non-Malnad regions of Shivamogga and Bhadravathi, where rainfall is comparatively low.

12.3 While the affidavits and confirmation letters from third-party farmers and customers were submitted late (dated November 2019), we hold that their timing alone does not render them invalid. These affidavits contain specific details about the services provided by the assessee's processing unit, corroborating the claims of operational activity. In our considered opinion the AO should have verified the contents of the affidavits through cross-examination rather than rejecting them summarily.

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12.4 We further recognize the assessee's explanation that the delay in depositing cash until after Laxmi Pooja during Deepavali was driven by religious faith and traditions. Such practices are common in Indian businesses and are protected under constitutional rights. We emphasize that religious customs cannot be disregarded outright as a basis for financial decisions, provided they do not violate any laws. We also acknowledge that business operations were temporarily closed for a few days after Deepavali due to staff vacations, contributing to the delay in cash deposits.

12.5 We also find the accumulation of ₹ 35,00,000/- from the processing business over five months (June to October 2016) is plausible, given the gross receipts of ₹ 48,93,880/- reported by the assessee. In view of the preceding discussion, we acknowledge that the processing unit was in its first year of operation, and the gross receipts align with the services provided. The delay in cash deposits, in light of the demonetization announcement on November 8, 2016, was due to unforeseen circumstances and does not imply fabricated income or an afterthought explanation.

12.6 We further accept the assessee's contention that processing of areca nuts is exempted under the Service Tax Act. The assessee provided a copy of the relevant notification exempting farmers engaged in areca processing from service tax obligations. It also pertinent to note that the GST law was not in force for the year under dispute. Hence, we find no merit in the AO's insistence on GST or service tax registration as a precondition for establishing the processing unit's existence, given the nature of the activity and its exemption under law.

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12.7 We also note that the cash deposits of ₹37,00,000/- were made in compliance with the prescribed timelines under the demonetization guidelines. There is no evidence suggesting that the cash deposits were unexplained or sourced from activities outside the assessee's business operations.

12.8 In view of the above detailed discussion, we conclude that the AO and the learned CIT(A) erred in rejecting the assessee's explanations and evidence without proper verification. The evidence provided by the assessee, including lease agreements, affidavits, and local weather data, local newspaper reporting sufficiently substantiates the claims regarding the operational status of the processing unit and the source of cash deposits. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal raised by the assessee is hereby allowed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in court on 16th day of December, 2024

Sd/-	Sd/-
(SOUNDARARAJAN K)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 16th December, 2024
/ vms /

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Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore

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