

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BAN`GALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.2006/Bang/2024
Assessment year : 2017-18

Shri Raju Rajesh, Prop. Malnad Info Systems, Aralikatte Circle, Northern Extn., Hassan – 573 201. PAN: AFIPR 4459P	Vs.	The Income Tax Officer, Ward 1 & TPS, Hassan.
APPELLANT		RESPONDENT

Appellant by	:	Shri Mahesh R. Uppin, Advocate
Respondent by	:	Shri Ganesh R. Gale, Standing Counsel.

Date of hearing	:	03.12.2024
Date of Pronouncement	:	19.12.2024

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Mr. Raju Rajesh (the assessee/appellant) for the assessment year 2017-18 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 14.06.2024 wherein appeal filed by assessee against the assessment order passed u/s. 143(3) of the Income-tax Act, 1961 (the Act) dated 16.12.2019 by the ACIT, Circle 1, Hassan (Id. AO) making the addition of Rs.12 lakhs as unexplained cash

credit u/s. 68 of the Act was dismissed. Assessee is aggrieved and has filed this appeal raising the following grounds of appeal:-

“ 1. Was C.I.T. (A) justified was justified in sustaining the addition made by Respondent for SBNs of Rs. 12,00,000/- deposited by the appellant to his Bank A/c during the period of demonetization as Unexplained Cash Credits u/s. 68 of the Act.

2 Could the accumulation cash sales proceeds of appellant's business prior to the date of announcement of Demonetization by the Govt. of India, viz; 08.11.2016 and which stood accounted for and reflected in the books of account of appellant as closing cash balance on 08-11-2016 and deposited by the appellant to his designated Bank as per RBI guidelines be termed as SBNs collected.

3 The impugned order run contrary to the principle of law laid down in the decision dated 01.06.2022 of ITAT, Bengaluru in ITA No. 593/Bang/2021 – Prathamika Krishi Pattina Sahakara Sangha Ltd. Itagi v. ITO, Davangere covering identical issue.

4 Both the authorities below passed the impugned Orders contrary to established principles laid down by the Hon'ble Supreme Court and jurisdictional High Court.”

2. The above appeal filed by assessee is late by 62 days. Assessee has submitted an application for condonation of delay along with the affidavit. Assessee has explained that assessee has received the appellate order on 18.6.2024 and appeal should have been filed by 17.8.2024, which caused to be filed on 18.10.2024 thereby causing delay of 62 days. The counsel of the assessee has submitted an affidavit that assessee is a resident of Hassan, who sent the appeal duly signed along with small condonation of delay by courier to the office of Advocate on 30.8.2024. This cover was misplaced by the Advocate and subsequently it was found and located on 18.10.2024

and on the same date, the appeal was filed. Therefore, Mr. Mahesh R. Uppin, Advocate, has submitted that delay has been caused on account of above facts and lying on his side and not on the side of assessee. The ld. Advocate appearing before us also reiterated the same. Thus, a request was made that delay is on account of sufficient cause which may be condoned.

3. The ld. DR objected to the same.
4. On careful consideration of the fact and where the ld. Advocate appearing before us has categorically stated that delay is not on account of assessee, but on account of counsel of assessee, who unfortunately misplaced the document from the client, who was residing at a remote place. As soon as the same was located, an appeal was filed. There is no malafide intention in filing late appeal by assessee. In fact, assessee carries the risk of non-admission of appeal if filed belatedly. Therefore, we find that assessee does not get anything in filing appeal late. Accordingly, we find that in this case there is sufficient cause in filing appeal late by 62 days and accordingly same is condoned and appeal is admitted.
5. The brief facts of the case show that assessee is in the business of sale and service of computer, computer peripherals in the name of Malnad Info Systems. For AY 2017-18, assessee filed return of income on 07.12.2017 at a total income of Rs.17,58,870. Return was picked up for scrutiny and a notice u/s. 143(2) was issued on

05.01.2018 at the registered e-mail address of assessee. Further, notices were also issued u/s. 142(1) of the Act on 01.2.2019 calling for specific information. The counsel of assessee appeared, produced the cash book and sales ledger for verification. The AO found that assessee has deposited a sum of Rs.12 lakhs during the demonetisation period in his bank account and therefore assessee was asked to explain the same. Before the AO, the assessee submitted that all the cash remittances deposited into bank account are recorded in the regular books of account and are out of accounted sale receipts from normal course of business. The Id. AO rejected the explanation of assessee. However, he noted that as on 08.11.2016, the cash balance of assessee is NIL and assessee has deposited Rs.12 lakhs subsequently where the assessee was not authorised to accept the same. Accordingly a sum of Rs.12 lakhs was added to returned income of assessee u/s. 68 of the Act applying provisions of section 115BBE of the Act determining total income of assessee at Rs.29,58,870 as per assessment order dated 16.12.2019 passed u/s. 143(3) of the Act.

6. Assessee aggrieved with the same, preferred appeal before the Id. CIT(A). Explanation of assessee is that source of cash deposit is sales by assessee and from the regular business. The Id. CIT(A) confirmed the order of AO stating that source of cash deposit made in the bank account during the demonetisation period remains unexplained and assessee was not authorised to accept the cash.

He confirmed the addition. Assessee, aggrieved with the same, is in appeal before us.

7. The Id. AR has reiterated the submissions made before the Id. Lower authorities stating the amount of cash deposit in the bank account is out of sale proceeds of assessee and has produced books of account as well as cash book and ledger and sale sales register before the Id. AO and there is no infirmity found therein, the addition made by the AO deserves to be deleted. The Id. CIT(A) did not consider this aspect and therefore his order is not sustainable.
8. The Id. DR vehemently supported the orders of Id. lower authorities. We have considered the rival contentions and perused the orders of lower authorities. It is found that assessee is engaged in the business of computer peripherals who has deposited a sum of Rs.12 lakhs during 09.11.2016 to 31.12.2016 in Specified Bank Notes (SBNs) post-demonetisation. To substantiate the same, assessee during the course of assessment proceedings has produced cash book and sales register for verification of AO. The only reason given by the AO for making the addition is that assessee was not authorised to receive SBNs post-demonetisation. However, it is also an undisputed fact that assessee has shown the books of account including cash book and sales ledger for verification of Id. AO. Source of cash deposit is the sales accounted for by the assessee in his books of account. Neither the

ld. AO nor the ld. CIT(A) made any enquiry with respect to sales shown by assessee out of which cash is deposited. No doubt, the assessee was not authorised to received SBNs after demonetisation, but when assessee has received and deposited the same and also offered the same as his income, no further addition could have been made in the hands of assessee. Here assessee has also shown the nexus of sales and amount of cash deposited. In the decision of *Sreelekha Banerjee 1963 2 ITJ 78*, the Hon'ble Supreme Court has also held that when the assessee has shown sales of SBNs and same remains undisputed, no addition can be made in the hands of assessee. In view of this, we reverse the order of the ld. CIT(A) and direct the AO to delete the addition of Rs.12 lakhs on account of SBNs deposited by the assessee in his bank account. Ground nos. 1 & 2 of the appeal are allowed.

9. Ground No.3 is not argued before us, hence dismissed.

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

Pronounced in the open court on this 19th day of December, 2024.

Sd/-

(SUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 19th December, 2024.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.