

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

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

ITA No.2010/Bang/2024
Assessment Year: 2017-18

Sri Vittalappa Ganesha Plot No.5, Auto Complex Sagar Road Shivamogga 577 204 Karnataka  <b>PAN NO : AMZPG0918Q</b>	<b>Vs.</b>	ITO Ward-2 Shimoga
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Narendra Sharma, A.R.
<b>Respondent by</b>	:	Shri Ganesh R Gale, Standing counsel for department

<b>Date of Hearing</b>	:	18.12.2024
<b>Date of Pronouncement</b>	:	20.12.2024

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of Addl/JCIT (A)-2, Jaipur dated 28.8.2024 vide DIN & Order No.ITBA/APL/S/250/2024-25/1068083539(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2017-18.

**2.** The assessee has raised 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 appellant denies himself liable to be assessed on a total income of Rs. 22,39,240/- as against the returned income of Rs. 7,39,240/- for the year under appeal, under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A]/NFAC is not justified in upholding the addition of Rs. 15,00,000/- as unexplained cash deposited in the bank account u/s.69A of the Act under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A]/ NFAC failed to appreciate that the source of the cash deposited in the appellant's bank account was from out of anterior cash withdrawals from the bank account of the appellant in which the appellant had received funds from the firm M/s Maruthi Motors, where he is a partner and therefore, the addition made u/s 69 of the Act is unjustified under the facts and in the circumstances of the appellant's case.

3.2 The learned CIT[A]/NFAC is not justified in upholding the tax imposed under the provisions of section 115BBE at the rate of 60% under the facts and in the circumstances of the appellant's case.

4. 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-A, 234-B and 234-C of the Act, under the facts and in the circumstances of the appellant's case.

5. 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.** Brief facts of the case are that the assessee is a working partner in the partnership firm namely M/s. Maruthi Motors, Shivmogga and during the financial year under appeal, he has no other income except interest on capital and remuneration received from the above partnership firm. For the financial year 2016-17, relevant for the assessment year 2017-18, the assessee has filed return of income on 22.2.2018 declaring total income of Rs.7,39,240/-. Thereafter, the case was selected for limited scrutiny under CASS for verification of cash deposit made during the demonetization period. Accordingly, notices u/s 143(2) of the Act as well as 142(1) of the Act were issued and served on the assessee calling for details required to complete the assessment. The assessee has also filed the cash transaction 2016 statement with the department and has stated that deposited amount of Rs.15 lakhs made during the demonetization period is out of cash cheque withdrawals made amounting to Rs.5 lakhs on 19.10.2016 and Rs.10 lakhs on 27.10.2016. The ld. AO also observed in the body of the assessment order that the assessee has furnished proper explanation regarding the sources for the cash deposit made into his bank account held at State Bank of India on 16.11.2016 amounting to Rs.15 lakhs. Further, on verification of bank account, the AO observed that assessee is getting the amount transferred into his account from M/s. Maruthi Motors, wherein the assessee is a partner. On getting the amount transferred from the firm, M/s. Maruthi Motors, the assessee has withdrawn the same in cash on various dates. In the opinion of the AO, the withdrawal of amounts transferred from the firm clearly demonstrate that the assessee has withdrawn either to meet his expenses or to make investment. The AO concluded the assessment and held that assessee's explanation that the cash deposit of Rs.15 lakhs is made out of the withdrawals made on 19.10.2016 and 27.10.2016 is not acceptable on the ground that assessee has not revealed the purpose of transfer of cash from the firm and the purpose for which the same

was withdrawn. Further, AO held that the cash withdrawals are abnormal during the specified period i.e. 19.10.2016 to 3.11.2016 as compared with the earlier pattern of withdrawals which shows that withdrawals are being made for the purpose of investment/expenditure. Further, the Id. AO held that assessee has transferred an amount of Rs.20 lakhs to M/s. Neptune Auto Works on 29.9.2016 and again on 18.11.2016 and the reason for transferring the amount is not provided by the assessee. Therefore, considering the totality of the facts and by applying test of human probability, the AO held that there should be a consistency and logic to the action of any person and normal human logic shows that for the purpose of safety and earning of interest any normal person would allow the money to be in the bank itself and accordingly, the cash deposit made on 16.11.2016 amounting to Rs.15 lakhs was treated as unexplained money as per the provisions contained in section 69A of the Act.

**3.1** Aggrieved by the assessment order completed u/s 143(3) of the Act, the assessee preferred an appeal before the Id. CIT(A)/NFAC.

**3.2** The Id. CIT(A) dismissed the appeal of the assessee by observing that assessee has simply stated that he has deposited the same money which he had withdrawn from his bank account 20 to 25 days earlier. Further, the Id. CIT(A) held that assessee has claimed that it had deposited an amount of Rs.15 lakhs withdrawn by him on 19.10.2016 and 27.10.2016 but had failed to explain the requirement of other withdrawals when he already had surplus of Rs.15 lakhs which he claimed to have deposited during demonetization and accordingly uphold the order of AO in making addition of Rs.15 lakhs u/s 69A of the Act as unexplained money.

**3.3** Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising 56 pages enclosing therein copies of following documents:

1	Copy of the acknowledgement for having filed the submission on 01/02/2024 before the learned CIT[A].
2	Copy of the Notice U/s 143[2] of the Act dated 22/09/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA.
3	Copy of the Notice U/s 142[1] of the Act dated 05/03/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA.
4	Copy of the Notice U/s 142[1] of the Act dated 14/05/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA.
5	Copy of the letter dated 05/07/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA along with the annexure regarding the details called for.
6	Copy of the letter dated 19/08/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA along with the annexure regarding the details called for.
7	Copy of the letter dated 20/08/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA.
8	Copy of the acknowledgement for having filed the reply along with the following annexures on 26/08/2019 in response to the above letter dated 20/08/2019.
8[a]	Copy of the Bank Statement.
8[b]	Copy of the acknowledgement for having filed the return of income on 22/02/2018 along with the computation of total income for the assessment year 2017-18 in the case of the above appellant.
8[c]	Copy of the details of cash transactions 2016.
9	Copy of the letter dated 16/09/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA.
10	Copy of the Show Cause Notice dated 13/10/2019 issued by the learned Income-tax Officer, Ward - 2, SHIMOGA.
11	Copy of the reply dated 25/11/2019 filed before the learned Income-tax Officer, Ward - 2, Shimoga.
12	Copy of the decision of the Hon'ble High Court of Karnataka in the case of S R VENKATA RATNAM reported in 127 ITR 807.
13	Copy of the decision of the Hon'ble High Court of Karnataka Circuit Bench at Gulbarga in the case of SMT. P PADMAVATHI in Income-tax Appeal No.414 of 2009 dated 06/10/2010.
14	Copy of the decision of the Hon'ble ITAT, "SMC""A" Bench, Bangalore in ITA NO.1451/Bang/20189 dated 03/10/2018 in the case of SRI SAMPATHRAJ RAKESH KUMAR.

**4.** Before us, ld. A.R. of the assessee vehemently submitted that the AO has accepted the source of deposit but merely on the ground that assessee has not revealed the purpose of transfer of cash from the firm and the purpose for which the same was withdrawn has rejected the claim of the assessee on pure guess and surmises. Further, ld. A.R. of the assessee submitted that it is none of the business of the AO to step into the activity of the assessee and ask the reason for transferring the amount as well as purpose of cash withdrawal during the specific period. Further, ld. A.R. of the assessee submitted that it is completely non-application of mind on the part of the AO to compare withdrawal prior to demonetization period i.e. from 19.10.2016 to 3.11.2016 with that of earlier years pattern of withdrawal, which has no logic and application considering the present fact of the case.

**5.** Ld. D.R. on the other hand supported the order of the authorities below and vehemently submitted that the assessee has not explained why so much of the cash were withdrawn and kept with the assessee.

**6.** We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that assessee has withdrawn through cash cheque on 19.10.2016 amounting to Rs.5,00,000/- and by another cash cheque of Rs.10,00,000/- on 27.10.2016. The assessee claims that the same amount were redeposited during the demonetization period on 16.11.2016 amounting to Rs.15,00,000/- (placed in page 23 & 24 of the PB). Further, we take a note of the fact that ld. AO has observed that the assessee has furnished proper explanation regarding the source for cash deposit made into bank account held at State Bank of India with Account No.30237981343 at Rs.15,00,000/- on 16.11.2016. We also take a note of the fact that the AO by applying the test of human probability had doubted the explanation made by the assessee on the ground that assessee has not revealed the purpose of transfer of cash

from the firm and the purpose for which the same was withdrawn. Before proceeding further, it is appropriate to take a note of section 69A of the Act for the purpose of this case, which reads as under:

**“Section 69A. [ Unexplained money, etc. [Inserted by Act 5 of 1964, Section 16 (w.e.f. 1.4.1964).]**

*-Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the ] [ Substituted by Act 18 of 1992, Section 35, for Explanation 3 (w.e.f. 1.4.1993).][Assessing Officer] [ Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).][, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.] [Inserted by Act 5 of 1964, Section 16 (w.e.f. 1.4.1964).]”*

**6.1** Thus, in order to levy tax u/s 69A of the Act, 3 conditions are need to be satisfied by the AO namely:-

- a) The assessee is found to be the owner of any money, bullion, jewellery or valuable article.
- b) Such money, bullion, jewellery or valuable article is not recorded in the books of accounts, if any maintained by him for any source of income.
- c) The assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery or valuable article or the explanation offered by him in the opinion of the AO satisfactorily.

**6.2** In the present case, assessee has deposited money amounting to Rs.15,00,000/- in his bank account on 16.11.2016 i.e. during demonetization period. The assessee has submitted before the authorities below that the source of cash deposit are withdrawal from the bank amounting to Rs.5,00,000/- on 19.10.2016 and Rs.10,00,000/- on 27.10.2016. In the paper book filed before us, the assessee has placed the bank statement of the account held with

State Bank of India for the period 8.2.2015 to 6.6.2017. The said statements are placed at pages 20 to 25 of the paper book. The details of bank account have also been filed before the AO. It is further noted that the total credits in the bank accounts held by the assessee have not been questioned by the authorities below made by the assessee even prior to the date of demonetization. From the statement of bank account, we also note that assessee has withdrawn cash prior to demonetization date. It is but natural that the assessee would deposit the unused cash back to the bank account as the old notes were no longer legal tender. We also note that ld. AO has not produced or brought on record any evidence against the explanation in order to disregard the cash availability being earlier withdrawals in the hands of the assessee. There has been no cash that has been otherwise unearthed during the assessment proceedings. In these circumstances, anything contrary brought on record by the AO, we are of the view that AO has not made out a case calling for an addition u/s 69A of the Act.

**6.3** Thus, the addition u/s 69A of the Act cannot be made in respect of monies which are recorded in the assessee's bank statement and which are more importantly duly explained. In view of this, we are of the opinion that addition of Rs.15,00,000/- is bad in law and deserves to be deleted.

**7.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 20<sup>th</sup> Dec, 2024

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 20<sup>th</sup> 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.**