



IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - C” : BANGALORE

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No. 251/Bang/2023
Assessment Year : 2017-18

Smt. Hemavathi Ramesh, No.86/188, 1 st Cross, 3 rd Main Road, West of Chord Road, Bengaluru – 560 086. PAN : AGSPR 5799 K	Vs.	The Income Tax Officer, Ward – 6(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ravi Shankar, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Advocate – Standing Counsel for Revenue.

Date of hearing	:	08.06.2023
Date of Pronouncement	:	08.06.2023

ORDER

Per George George K, Judicial Member:

This appeal at the instance of the assessee is directed against order of CIT(A), dated 13.02.2023 passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2017-18.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the addition of Rs.8,66,000/- under section 69A r.w.s. 115BBE of the Act.

3. Brief facts of the case are as follows:

Assesse is an individual, deriving income from house property and other sources. For the Assessment Year 2017-18, return of income was filed on

31.03.2018 declaring total income of Rs.4,80,110/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 13.08.2018 and duly served on the assessee. During the course of assessment proceedings, assessee was asked to show cause as to why cash deposited amounting to Rs.12,40,000/- during the demonetization period ought not to be brought to tax. In response to the show cause notice, assessee filed reply. The AO accepted the explanation regarding Rs.1 lakh, out of the rental income of Rs.2,41,000/- and Rs.2,74,000/- out of the past savings. Regarding balance amount of Rs.8,66,000/-, AO held that the assessee's explanation was unsatisfactory regarding the source of cash deposited and brought to tax Rs.8,66,000/- under section 69A of the Act. The AO also applied the rate of tax as provided under section 115BBE of the Act.

4. Aggrieved, the assessee filed appeal before the First Appellate Authority (FAA). The CIT(A) confirmed the addition of the AO and dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed Paper Book comprising of 58 pages *inter alia* enclosing therein copies of the show cause notice, replies filed before the AO, copy of the written submissions filed before the CIT(A), the bank statements which reflected the cash deposits, affidavit in support of the lease deposits, lease rentals, etc. The learned AR submitted that the AO, having accepted that assessee was in receipt of Rs.5,50,000/- as lease deposit on 12.04.2016, the same ought to have been accepted as a source of cash deposit. Further, the learned AR placed on record the return of income filed along with the statement of income of the assessee and contended that assessee had disclosed income from other sources amounting to Rs.2,64,804/- comprising of bank interest of Rs.14,804/- and sundry receipts and gifts of Rs.2,50,000/- for which

the assessee has duly paid the taxes. Accordingly, the learned AR submitted that for a sum of Rs.2,50,000/- also, the credit should be given while calculating the addition under section 69A of the Act.

6. The learned Standing Counsel relied on the order of the AO and the CIT(A).

7. I have heard the rival submissions and perused the material on record. Assessee has placed on record the details with regard to the receipt of Rs.5,50,000/- being advance of lease agreement. The above said amount has been received on 12.04.2016. The lessee to the said agreement has also given confirmation to the effect that an amount of Rs.5,50,000/- was paid on 12.04.2016. The AO does not dispute the fact of receipt of Rs.5,50,000/- on 12.04.2016. The reasoning of the AO in not taking the same as a source of cash deposited during the demonetization period was that amount was received six months prior and assessee could not have held the cash for more than six months. The Hon'ble High Court of Karnataka in the case of S. R. Venkata Ratnam Vs. CIT reported in 127 ITR 807 and in the case of Smt. P. Padmavathi and ITO in ITA No.414/2009, judgment dated 06.10.2010, had held that cash deposits out of earlier withdrawal cannot be totally disbelieved. The relevant finding of the Hon'ble High Court in the case of S. R. Venkata Ratnam Vs. CIT (supra) reads as follows:

“5. There is some force in the argument of the learned counsel for the petitioner and the argument advanced by the revenue is, therefore, without any force. Once the petitioner assessee disclosed the source as having come from the withdrawn made on a given date from a given bank, it was not for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e., whether he had kept the same in his house or utilised the services of a bank by depositing the same. The ITO had only two choice before him. One was to reject the explanation as not believable for the reason that on his investigation on such pigmy deposit

was ever made in the bank. In the alternative he ought to have called upon the assessee-petitioner to substantiate his claim by documentary evidence. Having exercised neither of the choice, it was not open to the ITO to merely surmise that it would not be probable for the assessee to keep Rs. 15,000 unutilised for a period of two years. The ITO should have given an opportunity to the assessee to substantiate his assertion as to the source of his capital outlay.”

8. In the instant case, since the fact that receipt of Rs.5,50,000/- has not been doubted by the AO, I am of the view that some amount would be available with the assessee for making the impugned cash deposits. On facts of the instant case, I reasonably estimate a sum of Rs.4,00,000/- as available for making the impugned cash deposits.

9. Further, the assessee has placed on record the return of income and statement of income wherein the assessee had offered to tax a sum of Rs.2,50,000/- being sundry receipts and gifts. I am of the view that a further reduction of Rs.2,50,000/- is also required while determining the source of cash deposit. Therefore, I grant a deduction of Rs.6,50,000/- (Rs.4,00,000/- + Rs.2,50,000/-) and balance amount of Rs.2,16,000/- alone shall be brought to tax under section 69A of the Act.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)
Judicial Member

Bangalore.
Dated: 09.06.2023.
/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.