

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.459/Bang/2022
Assessment Year : 2017-18

Baidoddi Eshappa, Shop No.73, Plot No.10, Rajendra Gunj, Raichur-584 102. PAN NO : ACFPE 5383 H	Vs.	The Pr. Commissioner of Income- tax , Hubali, The Income-tax Officer, Ward-1, Raichur.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sunaina Bhatia, C.A
Respondent by	:	Shri Manjunath Karkihalli, CIT

Date of Hearing	:	10.08.2022
Date of Pronouncement	:	22 .08.2022

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Id.Pr.CIT, Hubli dated 29.03.2022 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

"1. The order of the learned A O in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned P.C.I.T. failed to appreciate that there was no error much less an error prejudicial to the interest of the revenue in the order passed by the learned Assessing Officer warranting revision u/s.263 of the Act and consequently, the order passed by the learned Pr. C.I.T. is opposed to law and facts of the appellant's case and requires to be cancelled.

3. The learned Pr.CIT ought to have appreciated that the issues pointed out by him in the notice issued u/s. 263 of the Act was already examined by the learned AC. in the assessment proceedings and that therefore, the assessment order passed by the learned A.O. cannot be regarded as erroneous in so far as it was prejudicial to the interest on Revenue to take action u/s. 263 of the Act.

4. The learned Pr.CIT failed to appreciate that learned A.O. had examined the specific issue relating to cash deposits of Rs. 52,30,500/- made by the appellant during the period of demonetization in detail along with supporting evidences in the form of cash book, day book, sales ledger, purchase ledger etc and thus the order of assessment passed after due examination of the same could not be considered to be "erroneous and prejudicial to the interest of the revenue" under the facts and in the circumstances of the appellant's case.

5. The learned Pr.CIT ought to have appreciated that the cash deposits were made by the appellant from out of cash sales that was recorded in the books of accounts, which were produced before the learned A.O. and duly examined before acceptance and thus, there was no case to take

recourse to the provisions of section 263 of the Act under the facts and in the circumstances of the appellant's case.

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."

2. The brief facts of the case are that the assessee filed return of income on 30/10/2017 declaring a total income of Rs.6,00,390/- and agricultural income of Rs.1,49,770/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. During the course of assessment proceedings the assessee produced profit and loss account, balance sheet, audit report, computation of income, cash book, sales/purchase ledger, bank statement etc. The assessee filed details as per the justification of notice issued by the AO. The assessee is a proprietorship concern in the name of M/s Sai Vijay Traders and engaged in the business of trading of onions. During the impugned assessment year, the purchase was of Rs.2.67 crores and sales was Rs.3.27 crores and net profit shown by the assessee was at Rs.6,00,388/-. During the course of assessment proceedings, the assessee was asked to substantiate the cash deposit made during the demonetization period i.e from 09/11/2016 30 to 30/12/2016 in the bank accounts and also furnish the reconciliation statement. The assessee submitted reply

stating that in this demonetization period there was cash deposit of Rs.52,30,500/- in bank accounts and the assessee submitted that the sources for cash deposits done in the bank accounts is out of cash receipts from the business of trading of onions and further submitted that in this line of business sales is done mostly through cash and assessee also submitted reconciliation for cash deposits with reference to the sales receipts declared in the books of account. The assessee had shown net profit of 4.88% on turnover. The AO stated that in this line of similar business, the gross profit would be around 5% - 6% and the profit declared by the assessee is low. The AO completed the assessment by observing as under:

“4. The assessee is running a proprietorship concern in the name of M/s Sai Vijay Traders and engaged in the business of trading of onions. During financial year 2016-17 relevant to A.Y. 2017-18, the assessee has shown purchases of Rs.2,67,06,420/- and sales of Rs.3,27,34,326/- and on which the assessee has shown net profit of Rs.6,00,388/-. During the course of assessment proceedings, the assessee furnished the financial statements, Audit Report, Cash book, sales/purchase ledger, Bank statements etc., for financial year 2016-17 relevant to A.Y. 2017-18. The details furnished by the assessee are examined.

5. During the course of assessment proceedings the assessee was requested to furnish the details of sources for the cash deposits made during demonitisation period i.e. 09/11/2016 to 30/12/2016 in bank accounts and also to furnish the reconciliation statement with reference to the sales/receipts declared in the return of income. The assessee

vide his submission through e-proceedings stated that during demonitisation period i.e. 09/41/2016 to 30/12/2016, as per the bank account statements, as per the bank account statements, the assessee has made total cash deposits amounting to Rs.52,30,500/- in bank accounts. The assessee submitted that the sources for the cash deposits done in bank accounts is out of cash receipts from the business of trading of onions. For having sold goods, assessee receives sale receipts in cash and deposits the same in bank account. Further, in this line of business, substantial portion of sales will be through cash only. The cash deposited during the period of demonitisation are out of regular business transactions which has occurred during the course of business activity. The assessee—submitted reconciliation for cash deposits with reference to the sales/receipts declared in the books of account. In this regard the assessee furnished Cash book, Day book, sales ledger, Purchase ledger, VAT returns, Bank statements etc.,. The details furnished by the assessee are examined.

6. During the course of assessment, it is seen from the profit & loss account that the assessee, has declared gross profit of Rs.15,97,668/- on sale turnover of Rs.3,27,34,326/- which works out to 4.88% on turnover. However, when compare to the assessee's turnover and the nature of goods traded and in this line of similar business, the gross profit would be around 5%-6%, hence, the gross profit declared by the assessee appears to be low. Hence, considering the assessee's turnover and nature of commodity traded, it is proposed to the assessee that, gross profit from the business will be estimated at 6% on sale turnover as against 4.88% declared in the books of account. Accordingly, a proposition show cause was issued to the assessee on 24/12/2019. In response to the said notice, the assessee submitted that considering nature of commodity traded by the assessee and expenses incurred in the business, the net profit shown is reasonable and which is commensurate to the business

standard of similar trade and requested to drop the proposal of estimating the net profit at 6% and requested to accept net profit declared in the books of account. However, considering the assessee's submission and profit declared in this line of trade on sale turnover, the assessee's gross profit is considered at 6% on sale turnover of Rs.3,27,34,326/- which works out to Rs.19,64,059/- as against gross profit declared of Rs.15,97,668/- declared in the books of account. Accordingly, Rs.3,66,391/- being addition on account of low gross profit is added to the assessee's returned income. (Addition: Rs.3,66391/-)"

3. The Pr.CIT called the assessment record and observed that the AO has not examined the cash deposited during the demonetization period which was necessary for the AO to examine. Further he observed that the AO has not reconciled the SBNs deposited with the closing cash balance as on 08/11/2016. Accordingly, the Id.Pr.CIT issued show cause notice on 18/03/2022. The assessee filed written submissions. After considering the submission, the Pr.CIT set aside the order passed by the AO u/s 143(3) holding that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue and directed to make a fresh assessment in accordance with law.

4. Aggrieved from the order of Id.Pr.CIT, the assessee filed appeal before the ITAT.

5. The Id.AR submitted that it was first year of the business of the assessee and November and December is the peak period for the onion business, therefore, the sales was increased and in this line of business the sales is mostly done by way of cash. Therefore, there was a huge cash deposits in this period and she has filed paper book containing page Nos.1 to 327. The assessee is also filed case law paper book containing pages 1 to 67 and relied on the following judgment of Hon'ble Supreme Court and also the decisions of various ITAT Benches:-

- 1) M/s India Ltd., (SC)
- 2) M/sHirapanna Jewellers (ITAT, Visakhapatnam)
- 3) Sri Anatpur Kalpana (ITAT, Bang)
- 4) M/s APC Books (ITAT Delhi)
- 5) Shri Baljeet Yadav (ITAT Jaipur)
- 6) Shri Ashish Prasanna Kumar Jain (ITAT, Bang)

5.1 She further submitted that if the cash deposit was done during the ordinary course of business then there is no violation of SBNs. The cash deposits was out of sales receipts and the AO was satisfied with the entire transactions done by the assessee. Therefore, order passed by the AO is not erroneous and prejudicial to the interest of the revenue. The

ld.Pr.CIT is not justified in exercising his power u/s 263 of the Act.

6. On the other hand, the ld.DR relied on the order of the ld.Pr.CIT and submitted that the AO is ignored the cash deposit made during the demonetization period and he has diverted his opinion and calculated estimated profit instead of going into the details of source of the deposits during the demonetization period i.e 8/11/2016 to 31/12/2016. He is also ignored the CBDT guidelines while completing the assessment of the assessee. He has also ignored the opening cash balance as observed by the Pr.CIT. The AO has not done the scrutiny assessment in the line of Explanation (ii) to sec. 263. He further submitted that it was necessary for the AO to examine the source of cash deposit and SBNS deposit and to carry out necessary enquiries in accordance with law and as per CBDT guidelines. He has also not conducted proper enquiries, therefore, the order passed by the AO is erroneous and prejudicial to the interest of revenue and order of the Pr.CIT should be upheld. The ld.DR also stated that the case laws relied on by the ld.AR is not applicable to the present set of facts.

7. We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We observe that the assessee is engaged in the business of purchase and sales of onion and has achieved turnover of Rs.3.27 crores and during the demonetization period he has deposited total amount of Rs.52,30,500/- which was explained by the assessee before the AO that it is a receipt from sales, which has been deposited into the bank account. In this regard the assessee produced cash book, sales book, day book, sales ledger, purchase ledger, return and bank statements etc. and the AO has applied 6% net profit rate on the turnover achieved by assessee. The Id.Pr.CIT after calling the assessment record as per sec. 263 of the Income-tax Act found that the AO has not done necessary investigation in accordance with law and CBDT guidelines recording cash deposit during the demonetization period. On going through the assessment order passed by the AO and paper book furnished by the assessee, the AO has not examined any details regarding cash deposits during the demonetization period. He has simply accepted the entire turnover and applied net profit rate for completion of assessment. Firstly, the AO is an investigating officer thereafter he is an adjudicating officer. He cannot remain

passive in the pace which is apparent in order to call for further enquiry he must discharge both the rules effectively. In other words he must carry out investigation on the facts of the case and also decide the matter judiciously on the materials available with him and has also those produced before him and he may call for further information. He should be fair not only to the assessee but also to the public exchequer. It is the duty of the AO to ascertain the number of facts stated and genuineness of the transactions done when the circumstances of the case are such as to provide enquiry. The AO should have enquired in depth to the sales/purchases and also cash deposits made during the demonetization period.

7.1 The AO has not done assessment as per sec. 263 r.w Explanation (ii) of the Act. In the peculiar facts and circumstances of the case, the case law relied on by the Id.AR are distinguishable on the present facts of the case. We found substance in the explanation made by the Id.DR and also to the findings recorded by the Id.Pr.CIT in his order cited supra that the order passed by the AO is erroneous and prejudicial to the interest of the revenue. The Id.CIT(A) has rightly exercised his power as per sec. 263 of the Act.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 22nd August, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 22nd August, 2022.
Vms

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.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr. P. S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
.....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant Registrar
for signature on the order
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
14. Dictation note enclosed.....