

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.123/Bang/2019
Assessment Year : 2015-16

C. Mithalal Prop: Priyanka Agencies 5 <sup>th</sup> Cross Dam Road N.C. Colony Hospet 583 201  <b>PAN NO : AEYPM3530M</b>	<b>Vs.</b>	The ITO Ward-1 Hospet
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan A.R.
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	15.06.2021
Date of Pronouncement	:	18.06.2021

**ORDER**

**PER GEORGE GEORGE K., JUDICIAL MEMBER:**

This appeal at the instance of assessee is directed against the order of CIT(A) dated 14.12.2018. The relevant assessment year 2015-16.

2. The solitary issue raised is whether the CIT(A) was justified in confirming the addition made by the A.O. u/s 69A of the Income-tax Act,1961 [‘the Act’ for short], amounting to Rs.1,69,57,000/-.

3. Brief facts of the case are as follows. The assessee is an individual having income from house property, business & profession

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and other sources. For the assessment year 2015-16, return of income was filed on 16.12.2016, declaring total income of Rs.9,76,060/-. The assessment was selected for limited scrutiny to explain the source of cash deposit amounting to Rs.1,69,57,000/-. The assessee submitted that cash deposits are out of transport business. The submission/reply of the assessee reads as follows:

*“Priyanka Agencies is a proprietorship concern Mithalal C is the proprietor having a C&F Agencies of Appollo Tyres supply the tyres and Priyanka Agency make the distribution in and around Hospet. The Appollo Company provides commission on the sales and also pay the freight charges for delivering to retail outlets. All the transactions are paid through banks and TDS is deducted on the same. During the FY 2014-15, we have also purchased lorries to transport contractors and industries on trip basis. The lorries used to go to the mine head and unload at the point specified by our contractee and obtain acknowledgement slip and LR copies the same was surrendered along with acknowledgement of unloading at the time of taking the payments. Normally the payments were made in cash on trip basis. The cash payments are received in transport business and I also like to bring to your kind notice that lorry drivers and helpers are uneducated. The same cash was deposits in the bank accounts. So our bank accounts are reflected with cash deposits.”*

4. The A.O. noted that assessee did not file supporting documents to explain the source of cash deposit. Further, A.O. noted that if cash deposits are out of transport business, they ought to be corresponding withdrawals from bank accounts, which according to the A.O. was absent in this case. The hearing of the case was posted to 16.12.2017 directing the assessee to furnish the necessary details. Since assessee did not file the necessary details explaining the source of cash deposit, the case was adjourned to 29.12.2017. For hearing on 29.12.2017, the assessee sought additional time to file the necessary details. Since the assessment was getting time barred, the A.O. completed the assessment u/s 143(3) of the Act vide order dated 29.12.2017. The A.O. made the entire addition of cash deposit u/s 69A of the Act amounting to Rs.1,69,57,000/-.

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5. Aggrieved by the assessment order, the assessee preferred an appeal to the first appellate authority. The assessee filed written submission and supporting documents/evidence with regard to the source of cash deposit. The submissions of the assessee are reproduced at para 4.2 of the impugned order of the CIT(A). The CIT(A) called for a remand report from the A.O. The A.O. filed his remand report dated 17.7.2018. On receipt of the remand report, the CIT(A) dismissed the appeal of the assessee with the following observations as per para 4.4.1 of his order:-

*“4.4.1 The Appellant has neither produced any evidence of ownership of vehicle (lorries) nor the Return of income filed by the appellant reflects income declaration u/s 44AE of the IT Act 1961. Further, the explanation given by the appellant in respect of cash transportation receipts and the credits in the bank accounts in Chamrajnagar Bangalore are contradictory and does not prove that such credits were out of transportation receipts. The trip wise details submitted before me cannot be verified and confirmed. In addition to above, the remand report received from the ITO Ward 1 Hospet has not accepted the explanation of the Appellant and reiterated the additions made u/s 69A. I am in agreement with the observations of the Assessing Officer. In light of the above the Assessee ground Nos.1, 2 & 3 are dismissed and the addition is sustained”*

6. Aggrieved by the order of the CIT(A), assessee has preferred the present appeal before the Tribunal. The Ld. A.R. submitted that both A.O. and CIT(A) failed to appreciate that assessee is the owner of 4 trucks and was doing transportation business. It was submitted that cash deposits in the bank accounts were made out of transport receipts. It was stated that assessee had declared income from transport receipts u/s 44AE of the Act. The necessary evidence could not be furnished before the A.O. due to paucity of time granted by the A.O. It was stated that the A.O. furnished the remand report without verifying the additional evidence produced before the CIT(A) and without providing an opportunity of hearing to the assessee to substantiate his case. It was prayed that the principle of natural justice is violated in this case, therefore for a proper appreciation of

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evidence, which is on record, matter may be remanded to the A.O. for de-novo consideration.

7. The Ld. D.R. supported the order of the A.O. and the CIT(A).

8. We have heard rival submissions and perused the material on record. In the instant case assessment was selected for limited scrutiny for verification of cash deposits made into savings bank account No.40042010073306 with the Syndicate Bank. It was submitted before the A.O. that source of cash deposits made into the said bank account are mainly out of transport business receipts. It was stated that income from transport business was declared in accordance with the provisions of section 44AE of the Act and since no regular books of accounts were maintained in respect of the said transport business, assessee had sought some more time to furnish the details called for by filing a letter dated 28.12.2017. However, the A.O. concluded the assessment proceedings on 29.12.2017 by adding the aggregate cash deposit of Rs.1,69,57,000/- made into the said bank account on various dates.

9. Before the CIT(A), it was submitted that the additions made u/s 69A of the Act was made merely because assessee could not furnish the necessary details as required by the A.O. Before the appellate proceedings, assessee had filed additional evidence. The summary of month-wise transport receipts reconciling with the amounts deposited into the bank account and the trip-wise details of transportation were also furnished. The CIT(A) called for a remand report. The A.O. submitted his remand report dated 17.7.2018 without verifying the additional evidence produced and without giving an opportunity of hearing to the assessee to substantiate his case. The A.O. has not given any adverse findings against the fresh details and evidence furnished during the appellate proceedings.

10. We are of the view that in facts and circumstances of the case the assessee has not been given a proper opportunity to explain the source of cash deposit. Before the A.O., the assessment proceedings were getting time barred and only two hearings were given to the assessee to furnish the necessary details. Before the CIT(A), necessary details explaining the source of cash deposits were placed on record. The CIT(A) called for a remand report from the A.O. The A.O. furnished the remand report without considering the additional evidence placed before the CIT(A). The A.O. also did not provide an opportunity of hearing to the assessee to substantiate his case. Therefore, given the facts and circumstances of the case, the matter needs to be considered afresh by the A.O. The A.O. shall consider the evidence placed by the assessee before the CIT(A) to determine the source of cash deposit, whether it is genuine or not. (The A.O. shall also examine whether assessee has disclosed any income u/s 44AE of the Act for the relevant period). The A.O. shall afford a reasonable opportunity of hearing to the assessee. The assessee shall cooperate with the revenue and shall not seek unnecessary adjournment. It is ordered accordingly.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18<sup>th</sup> June, 2021

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

**Sd/-**  
**(George George K.)**  
**Judicial Member**

Bangalore,  
Dated 18<sup>th</sup> June, 2021.  
VG/SPS

**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.