

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 262/Bang/2023</b>
<b>Assessment Year : 2017-18</b>

Shri Muniyappa Muniraju, No. 94/6, 8 <sup>th</sup> Main, New Oxford School Road, Begur Main Road, Hongasandra, Bengaluru – 560 068. <b>PAN: ABBPM4961A</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 4 (3)(4), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri G. Satyanarayana, CA
Revenue by	:	Shri Nischal .B, Addl. CIT (DR)

Date of Hearing	:	17-07-2023
Date of Pronouncement	:	25-07-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against the order dated 02.02.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

*“1. General Ground*

*1.1. The order passed by the learned CIT(A) to the extent prejudicial to appellant is bad in law and liable to be quashed.*

*2. Conversions of Limited Scrutiny to Extensive Scrutiny and as a result' addition of long term capital gain of Rs.1,00,93,764/-:*

2.1 *The learned CIT(A) has erred in confirming the addition of Rs.1,00,93,764/- to income without providing any findings and operative part on the part of power of Assessing Officer to convert Limited Scrutiny into extensive one without compliance with CBDT Instruction No.07/2014 [F.NO.225/229/2014-ITA.II], dated 26th September 2014. On the said ground alone the said addition of Rs.1,00,93,764/- be deleted and impugned order be quashed.*

2.2 *Without prejudice, assuming without admitting that the impugned addition of Rs. 1,00,93,764/- was required to be made, the learned CIT(A) has erred in not considering the very fact that the Respondent has not even considered the submissions made by the Appellant in respect of reinvestment of capital gains in purchase of another agricultural land and merely confirmed that the reinvestment made is not made within prescribed period of 2 years. Therefore, the impugned Assessment Order as well as Appeal Order be quashed to the extent of addition of long term capital gain of Rs.1,00,93,764/-.*

2.4 *The learned CIT(A) has erred in not admitting the additional evidence to justify incurrance of expenditure in re-investment of proceeds from sale of agricultural land.*

2.5 *The reasons of CIT(A) for rejection of admission evidence are incorrect, contrary to facts, bad in law and liable to be quashed.*

3. *Cash Deposits of Rs.43,39,000/- treated as unexplained and invocation of provisions of Section 69A of the Act:*

3.1 *The learned CIT(A) has erred in not admitting the fact that the entire cash deposits are the results of business income earned by the Appellant and the same has been offered under the provisions of Section 44AD of the Act. Without considering the said facts, the learned CIT(A) dismissed the Appeal. That being so, the appeal proceedings be treated as void and bad in law.*

3.2 *Without prejudice to the foregoing, the learned CIT(A) has erred in not providing any findings or operative part as to why the amount of cash deposits be added to income and the provisions of Section 69A and 115BBE be*

*invoked. Accordingly, the said addition of Rs.43,39,000/- be deleted and impugned order be quashed.*

*4. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned CIT(A) to the extent prejudicial to the appellant be quashed, or in the alternative, the above grounds including the relief prayed for be allowed. The appellant prays accordingly.”*

**2. Brief facts of the case are as under:**

- 2.1 The assessee is carrying on the business of civil works contract and filed return of income for the assessment year 201718 on 31.03.2018.
- 2.2 The assessee declared his business income u/s. 44AD of the IT Act, 1961 on presumptive basis at 8% on the amount received and deposited the receipts to two bank accounts maintained in Canara Bank and State Bank of India. The assessee has not maintained any books of account.
- 2.3 The Ld.AO accepted this return of income and income offered u/s. 44AD on the turnover declared by assessee.
- 2.4 The case was selected for scrutiny by CASS for the reason “Large Cash Deposits” in the year. Accordingly, notice u/s. 143(2) was issued on 12.09.2018.
- 2.5 In response the assessee submitted the computation of income and the bank account statements. The assessee in his reply has stated that he is an agriculturist and during his free time undertakes contract work on piece work basis in his village limits and the cash deposit to

the bank account is made out of contract works received and the agricultural proceeds.

- 2.6 The Ld.AO after considering the submissions of the assessee observed that the assessee failed to provide any details such as the nature and type of contract work undertaken by him. The Assessee has neither submitted any documentary evidence for the contract work undertaken by him nor has submitted any details to prove the veracity of his submissions. The Assessee has not provided any confirmation or any documents/contract agreements from his clients to prove that he has undertaken and performed the contract work. The Assessee has also not submitted the statement of affairs of his business to support the income earned. Hence, the Assessee's submission that he has received cash from contract receipts is not acceptable.
- 2.7 The Ld.AO thus issued the SCN dated 14.11.2019 calling upon the assessee as to why the cash deposited and the income from the sale of immovable property should not be brought to tax.
- 2.8 The Ld.AO observed that assessee deposited cash to the extent of Rs.45,39,000/- in his bank accounts of Canara Bank and State Bank of India during the F.Y. 2016-17. An amount of Rs.37,00,000/- has been deposited to his Canara Bank account No.0437101020756 and Rs.8,39,000/- in his State

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Bank of India account No.64002611149 during the F.Y.201617. He thus held that the source of cash remains unexplained. The Ld.AO gave benefit of the basic exemption towards non pursuit of enquiry in respect of the source of cash deposited to the extent of Rs.2 lakhs, the balance sum of Rs.43,39,000/- was treated as unexplained income and brought to tax u/s.69A

r.w.s 115BBE of the Act.

2.9 The Ld.AO further noticed that the Assessee, in the Computation of income for the A.Y.2017-18 claimed NIL income from Long Term Capital Gains on sale of agricultural land. The Assessee was asked to submit the documents supporting the sale of Agricultural land. The Assessee has submitted the copies of the sale deeds of the land owned by him. The same has been perused. On verification of the sale deeds, it is noticed that the Assessee has purchased land bearing Survey No.111, situated at Mylasandra Village, Begur Hobli, Bangalore South Taluk, on 17.06.1992 and has sold the immovable property by way of registered sale agreement dt.22.04.2016 for a sale consideration of Rs.1,05,00,000/- where the payments received are reflected in the bank statements of the Assessee. The Assessee has provided a copy of the notarized unregistered Agreement dated 23.02.2017 for purchase of the new asset which cannot be relied upon as a piece of evidence. The Assessee in his reply dt.07.12.2019 has accepted that the land is not registered and the required

documents are not furnished and as the land is under litigation the same is not registered and possession not taken by the Assessee. The Assessee in the statement of income submitted for the A.Y.2017-18 has declared sale of agricultural land and claimed exemption u/s.54 of Rs.1,35,00,000/- and declared NIL income under the head "Long Term Capital Gain". On verification of the submissions, it is noticed that the Assessee has neither purchased or constructed any new asset within the time allowed as per the Income Tax Act nor has provided any documents to prove the exemption claimed u/s.54 of the Income Tax Act. 1961.

2.10 The Ld.AO was of the opinion that the exemption claimed by the Assessee on the sale of the immovable asset does not fit under sections 54B or 54F of the Income Tax Act, 1961 as the proceeds of sale were not re-invested in a new asset within the time period allowed as per the Income Tax Act and also failed to submit proper supporting evidences for investment. From the preceding paragraphs it is clear that the Assessee has received a net consideration of Rs.1.05,00,000/- on the sale of land during the year 2016-17. Hence. the total consideration received of Rs.1,05,00,000/- is brought to tax under the head "Income from Long Term Capital Gain".

2.11 Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A).

2.12 The Ld.CIT(A) observed and held as under:

*“7.5 In the light of above facts and discussion and the legal precedents submitted by the appellant in his written submission, I have come to the conclusion that there are two main issues for determination:-*

*a. Whether the sale of land could have been investigated by the AO under the limited scope of scrutiny?*

*b. Whether the LTCG on the sale of such land was entitled to exemption u/s 54 B or 54 F as claimed by the appellant.*

*7.6 On the first issue; the AO has started his enquiry from trying to find the source of the cash deposits in the appellant's bank accounts and he has limited enquiry to the same. The deposits in the bank accounts of the appellant included deposits of sale proceeds of the land which are claimed to have been reinvested transaction within the 2 year window provided.*

*7.7 Thus AO has rightly held that the exemption u/s 54 B or 54 F was not eligible as the new asset has not been purchased within the time period allowed as per IT Act and also failed to submit the required evidences regarding the same. The AO has also allowed indexed cost of acquisition accordingly. Thus, the two addition made by the AO are affirmed as being within the purview of the IT Act and the grounds of appeal are accordingly dismissed.”*

2.13 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

**3. Ground No. 1** is general in nature and do not require adjudication.

**4. Ground no. 2:**

4.1 Before this *Tribunal*, the Ld.AR argued that the notice issued u/s. 143(2) was a limited scrutiny to verify the huge cash deposits. However the subsequent notice issued by the Ld.AO dated 14.11.2019 has widened the scope of assessment without following the due process of law. He relied on the CBDT Instruction No. 7/2014



dated 26.09.2014 and submitted that the Ld.AO failed to convert the limited scrutiny to complete scrutiny and therefore the addition made in the hands of the assessee under LTCG is bad in law. The Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

4.2 Admittedly the Ld.AO failed to convert the limited scrutiny to complete scrutiny. For sake of convenience, the 1<sup>st</sup> notice issued u/s. 143(2) is scanned herewith as under:



भारत सरकार/ GOVERNMENT OF INDIA  
 वित्त मंत्रालय/ MINISTRY OF FINANCE  
 आयकर विभाग/ INCOME TAX DEPARTMENT  
 OFFICE OF THE INCOME TAX OFFICER  
 WARD 4(3)(4), BANGALORE

सेवा में/ To,

MUNIYAPPA MUNIRAJU  
 NO 94/6, 8TH MAIN, NEW OXFORD SCHOOL  
 ROAD, BEGUR MAIN ROAD, HONGASANDRA,  
 BENGALURU 560068 ,Karnataka  
 India

स्थायी लेखा संख्या/ PAN:  
 ABBPM4961A

निर्धारण वर्ष/ AY:  
 2017-18

नोटिस संख्या / Notice No.:  
 ITBA/AST/S/143(2)/2018-  
 19/1012209459(1)

दिनांक/ Dated:  
 12/09/2018

आयकर अधिनियम, 1961 की धारा 143(2) के अधीन नोटिस

Notice under section 143(2) of the Income-tax Act, 1961

सीमित संवीक्षा (कंप्यूटर आधारित संवीक्षा चयन)

Limited Scrutiny (Computer Aided Scrutiny Selection)

महोदय/महोदया/ मेयर्स,

Sir/ Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पावती संख्या 562310730300318 के अनुसार आपके द्वारा दिनांक 30/03/2018 को दायित्व की गई आयकर विवरणी को सीमित संवीक्षा के लिए चुना गया है और निम्नलिखित कारणों / मुद्दों को जांच हेतु अभिचिन्हित किया गया है:

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack. no. 562310730300318 on 30/03/2018 has been selected for Limited Scrutiny and following issue(s) have been identified for examination:

i. Cash deposit during the year

2. इस संबंध में, आपको दिनांक 24/09/2018 को 01:28 PM तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 24/09/2018 at 01:28 PM.

3. उपरोक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप में [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in) पर अपने ई-फाइलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

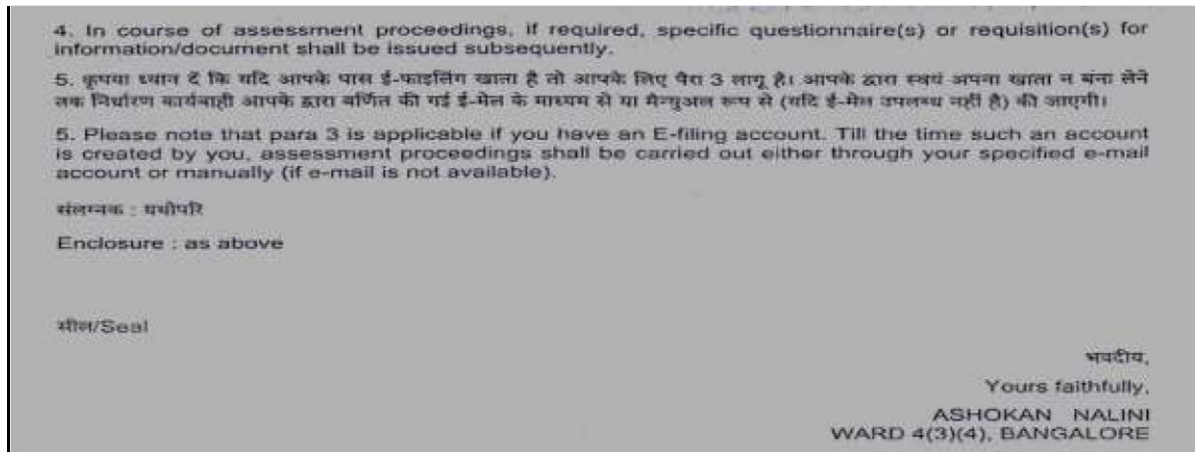
3. The evidence/information specified above has to be furnished online electronically through your E-filing account in [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in). Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना /दस्तावेज हेतु विशेष प्रशिक्षण (यों) या अधिमाचना (यों) को बाद में जारी किया जाएगा।

Note: If digitally signed, the date of digital signature may be taken as date of document.


BMTC BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095

Email: BANGALORE.ITO4.3.4@INCOMETAX.GOV.IN.



4.3 On reading of Circular No. 7 dated 26.09.2014 , it is discernible that the circular is applicable during the scrutiny assessment by the Ld.AO under CASS. CASS is a system driven identification of returns for limited scrutiny. The picking up of a return under CASS for scrutiny must be restricted only to the selected reason. Therefore procedurally, the Ld.AO must confine the scrutiny to the limited reasons selected under CASS.

4.4 However we note that there is another notice issued by the Ld.AO on 14.11.2019 which is scanned and reproduced as under:

 <b>GOVERNMENT OF INDIA</b> <b>MINISTRY OF FINANCE</b> <b>INCOME TAX DEPARTMENT</b> <b>OFFICE OF THE INCOME TAX OFFICER</b> <b>WARD 4(3)(4), BANGALORE</b>				
<b>To,</b> <b>MUNIYAPPA MUNIRAJU</b> <b>NO 94/6, 8TH MAIN, NEW OXFORD SCHOOL</b> <b>ROAD, BEGUR MAIN ROAD, HONGASANDRA,</b> <b>BENGALURU 560068 ,Karnataka</b> <b>India</b>				
<b>PAN:</b> <b>ABBPM4961A</b>	<b>AY:</b> <b>2017-18</b>	<b>Notice No:</b> <b>ITBA/AST/F/143(3)(SCN)/20</b> <b>19-20/1020416071(1)</b>	<b>Dated:</b> <b>14/11/2019</b>	<b>Hearing Date and Time:</b> <b>18/11/2019 11:00 AM</b>
<b>SHOW CAUSE NOTICE</b>				
<p>According to your submission dated 15.07.2019, the cash deposit during the F.Y. 2016-17 is out of income earned from Agriculture and civil contract works. On verification, it is noticed that your total cash deposit of Rs. 45,09,000/- and other credits of Rs. 88,50,000/- and you have sale of immovable property of Rs. 1,05,00,000/- . In this regard, you are requested to upload following information and supporting documentary evidences on e-proceedings/ITBA Portal:</p> <ol style="list-style-type: none"> <li>1. Copy of land of sale deed/purchase deed.</li> <li>2. Copies of relevant details in support of the claim/exemption made in the ROI for the A.Y.2017-18</li> <li>3. Details of large cash deposit during the year in the bank account, Kindly explain the sources of cash.</li> <li>4. Details of exemption/deduction claimed u/s 54/54F with copies of sale deed.</li> </ol> <p><b>Compliance solicited by 18.11.2019.</b> Please note that in the event of failure to comply with the requirements of this letter on or before the said date, it will be construed that you have no objection to the proposed addition as mention above in para 1 and the pending assessment for the A.Y.2017-18 will be concluded after making addition without affording any further opportunities.</p>				
<p style="text-align: center;"><small>Note: If digitally signed, the date of digital signature may be taken as date of document.</small></p> <p style="text-align: center;"><small>,BMTc BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095</small>  <small>Email: BANGALORE.ITO4.3.4@INCOMETAX.GOV.IN.</small></p>				
<p><small>* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.</small></p>				
<b>ALAMELU ANANTHA RAMA KRISHNAN</b> <b>WARD 4(3)(4), BANGALORE</b>				
<small>(In case the document is digitally signed please refer Digital Signature at the bottom of the page)</small>				

4.5 In the above notice, the details in respect of sale deed / purchase deed, the exemption claimed by the assessee in the return of income were also called for along with the details of large cash deposits. However we note that no steps has been taken to convert the limited scrutiny into complete scrutiny wherein the Ld.AO could have had the jurisdiction to verify other details.

4.6 Under such circumstances, we are of the considered view that the Ld.AO has overstepped his jurisdiction by making an addition in the hands of the assessee by disallowing the deduction claimed u/s. 54F. We direct the Ld.AO to delete the disallowance so made.

**Accordingly, ground no. 2 raised by the assessee stands allowed.**

**5. Ground no. 3:**

5.1 The next issue in appeal is regarding cash deposited during the financial year relevant to Assessment Year under consideration of Rs.41,19,500/- u/s. 69. The Ld.AO disallowed Rs.41,19,500/- as per the rates applicable u/s. 115BBE of Income from business deposited as cash allegedly made prior to the demonetisation period.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

5.2 Before the Ld.CIT(A), assessee failed to furnish necessary evidence in support of the claim that the sum of Rs.41,19,500/- represents sale proceeds of business and therefore this addition so made was upheld.

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

5.3 The Ld.DR on the contrary, submitted that the cash has been deposited during the period when demonetisation was declared and therefore necessary verification has to

be carried out in accordance with the circulars issued by the CBDT.

We have perused the submissions advanced by both sides in the light of records placed before us.

5.4 Admittedly cash was deposited to the account of the assessee for which no explanation was offered by assessee regarding the source before the authorities. It was submitted that the cash deposited are business receipts in the hands of assessee. It is also submitted that, the sum was received in cash prior to the date of demonetisation.

The cash receipt and payments statement has been filed by the assessee which is scanned and reproduced as under:



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Muniyappa Muniraju (PAN: ABBPM4961A) - ITA No.262/BANG/2023							
Statement of Cash Receipts and Payments For The F.Y 2016-17							
Receipts		Amount	Amount	Payments		Amount	Amount
<b>Opening Balance:</b>				<b>Cash Deposited To Bank:</b>			
Cash		65,360	65,360	Date	Narration		
<b>Receipts from Work Contracts:</b>				06-04-2015	Cash Deposit	8,00,000	
<b>Cash Receipts from Various Parties:</b>				12-04-2016	Cash Deposit	5,00,000	
Date	Narration			22-04-2016	Cash Deposit	15,00,000	
06-04-2016	Cash Received	8,00,000		28-06-2016	Cash Deposit	9,00,000	
17-04-2016	Cash Received	5,00,000		01-04-2016	Cash Deposit	7,500	
22-04-2016	Cash Received	15,00,000		02-06-2016	Cash Deposit	3,50,000	
28-06-2016	Cash Received	9,00,000		06-08-2016	Cash Deposit	5,000	
01-04-2016	Cash Received	7,500		03-10-2016	Cash Deposit	10,000	
02-06-2016	Cash Received	3,50,000		10-11-2016	Cash Deposit	8,750	
06-08-2016	Cash Received	5,000		24-11-2016	Cash Deposit	16,250	
03-10-2016	Cash Received	10,000		05-01-2017	Cash Deposit	6,000	
10-11-2016	Cash Received	8,750		30-01-2017	Cash Deposit	6,000	
24-11-2016	Cash Received	16,250		06-03-2017	Cash Deposit	10,000	41,19,500
05-01-2017	Cash Received	6,000		<b>Expenses For Work Contracts:</b>			
30-01-2017	Cash Received	6,000		Sub Contractor and Mestri Payments		5,00,000	
06-03-2017	Cash Received	10,000	41,19,500	Wages & Coolie		11,80,000	
<b>Cheque Withdrawal From Bank:</b>				Staff Welfare		1,20,000	
Date	Narration			Vehicle Maintenance		2,00,000	
23-05-2016	Self	10,00,000		Mobile & Internet Charges		27,000	
01-06-2016	Self	5,00,000		Printing & Stationery		3,000	
02-06-2016	Self	7,00,000		<b>Purchase of Land:</b>			
06-06-2016	Self	4,00,000		Advance paid for Purchase of Land		17,00,000	
09-06-2016	Self	2,00,000		Personal Drawings		26,709	
17-06-2016	Self	1,50,000		<b>Closing Balance:</b>			
12-09-2016	CASA Cheque Withdrawal	50,000		Cash		38,651	38,651
03-11-2016	CASA Cheque Withdrawal	4,50,000					
05-11-2016	CASA Cheque Withdrawal	1,50,000					
16-11-2016	CASA Cheque Withdrawal	24,000					
23-11-2016	CASA Cheque Withdrawal	10,000					
31-12-2016	CASA Cheque Withdrawal	24,000					
05-01-2017	CASA Cheque Withdrawal	24,000					
12-01-2017	CASA Cheque Withdrawal	24,000					
27-01-2017	CASA Cheque Withdrawal	24,000	37,30,000				
<b>Total</b>			<b>79,14,860</b>	<b>Total</b>			<b>79,14,860</b>

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5.5 The total cash deposited during the relevant Financial Year is Rs.41,19,500/-. The Ld.AO has made disallowance of Rs.43,39,000/- u/s. 69A r.w. 115BBE of the act. There is a disparity in the cash deposit as per the statement filed by the assessee, scanned and reproduced hereinabove vis-a-vis the observation of the Ld.AO in para 5 of the assessment order. The summary of the total deposits provided by the assessee at page 22 of paper book reveals that in Canara Bank account there is a deposit of Rs. 37 Lakhs and in State Bank of Mysore account, a sum of Rs.4,19,500/- was deposited.

5.6 In any event, assessee has not provided any details as to the source of such cash deposited for the relevant financial year except for stating that these are business receipts.

In the interest of justice, we remand this issue back to the Ld.AO for necessary verification in accordance with law. Assessee is directed to file all relevant details in respect of the source of actual cash deposited into the bank accounts in order to exonerate himself from the rigour of section 69A r.w. 115BBE of the Act.

**Accordingly, ground no. 3 raised by the assessee stands partly allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 25<sup>th</sup> July, 2023.

Sd/-  
(CHANDRA POOJARI)

Sd/-  
(BEENA PILLAI)



ITA No. 262/Bang/2023

Accountant Member

Judicial Member

Bangalore,

Dated, the 25<sup>th</sup> July, 2023.

/MS /

Copy to:

- |               |                        |
|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore