



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**  
**BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND**  
**SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA no. 65/Nag./2017  
(Assessment Year : 2011-12)

Shri Sanjay Nanasaheb Bharsakale  
1, Shivaji Nagar, Banosa  
Daryapur Dist. Amrawati 444 803  
PAN – AHRPB8625J

..... Appellant

v/s

Income Tax Officer  
Ward-1, Amrawati 444 601

..... Respondent

Assessee by : Shri Manoj Moryani  
Revenue by : Shri A.R. Ninawe

Date of Hearing – 22.06.2017

Date of Order – 30.06.2017

**ORDER**

**PER AMARJIT SINGH, J.M.**

The assessee has filed the present appeal against the impugned order dated 5<sup>th</sup> January 2017, passed by the learned Commissioner (Appeals)-I, Nagpur, relevant to the assessment year 2011-12.

2. The grounds raised by the assessee is reproduced below:–

*"1. The order passed by learned Commissioner of Income Tax (Appeals)-I, Nagpur U/s. 144 is illegal, invalid and bad in law.*

*2. The learned Commissioner of Income Tax (Appeals)--I erred in not considering the facts of service of notice dated 28/12/2016 to the assessee. As the assessee residing at Amravati and assessee has communicated notice to his counsel at Amravati who is busy in time bearing assessment proceedings and has not*

*communicated notice to counsel at Nagpur hence counsel at Nagpur unable to attend hearing, therefore order passed is unjustified, unwarranted and excessive,*

*3. The learned Commissioner of Income Tax (Appeals)-I erred in confirming the addition made by the assessing officer U/s. 68 at Rs.2,05,00,000/- as unexplained cash credits, therefore order passed is unjustified, unwarranted and excessive.*

*4. The learned Commissioner of Income Tax (Appeals)-I erred in not granting opportunity to rebutte the evidence as well as cross examination of all the 17 persons from whom assessee has taken money, passed is unjustified, unwarranted and excessive.*

*5. The learned Commissioner of Income Tax erred in not considering that there is no fault part of the assessee and lenient view of the matter be taken, therefore, order passed is unjustified, unwarranted and excessive."*

2. Brief facts of the case are that the assessee filed his return of income on 25<sup>th</sup> January 2012, declaring total income of ₹ 4,60,290. The return of income was processed under section 143(1) of the Income Tax Act, 1961 (for short "the Act") on 17<sup>th</sup> February 2012. Enquiry under section 131 of the Act was conducted at the premises of the assessee on 19<sup>th</sup> April 2013, by the DDIT (Inv.), Unit-III, Nagpur. It was observed that the assessee introduced cash to the tune of ₹ 2.05 crore in his books of account on 3<sup>rd</sup> January 2011 and on the same day, he deposited the cash to the tune of ₹ 1.06 crore in the bank account with Central Bank of India, Dariyapur. The assessee was in the business of lodging and restaurant, video game parlour and trading in sand. The Assessing Officer issued notices to the 20 persons from whom he received the amount to the tune of ₹ 2.05 crore. 17

people attended the proceedings and the Assessing Officer after recording their statement was of the view that the said amount to the tune of ₹ 2.05 crore was unexplained therefore, the same was added to the income of the assessee in view of the provisions of section 68 of the Act. The total income of the assessee was assessed to the tune of ₹ 2,09,60,290. Thereafter, the assessee filed an appeal before the learned Commissioner (Appeals), who partly allowed the appeal of the assessee. However, the assessee failed to join the proceedings before the learned Commissioner (Appeals). Aggrieved by this, the assessee filed the present appeal before us.

3. We have heard the rival contentions and perused the material available on record. At the very outset, the learned Counsel for assessee has argued that the learned Commissioner (Appeals) has decided the appeal of the assessee ex-parte and without giving opportunity of being heard the assessee, therefore, the in the said circumstances, the order of the learned Commissioner (Appeals) in question dated 5<sup>th</sup> January 2017, is wrong against law and fact and is liable to be set aside. However, on the other hand the learned Departmental Representative has refuted the said contention of the learned Counsel. On appraisal of the impugned order dated 5<sup>th</sup> January 2017, passed by the learned Commissioner (Appeals) in question, we notice that the said appeal has been decided by the learned

Commissioner (Appeals) ex-parte. The appeal was not represented by the assessee as well as the learned Departmental Representative also. On appraisal of the said order, we also find that the matter of controversy is in connection with the addition of ₹ 2.05 crore has not been adjudicated on the basis of even material available on record. The assessee only wants to represent the matter in support of his claim and to adduce some evidence also. Since the matter of controversy is not adjudicated by the learned Commissioner (Appeals) on merits and the assessee failed to appear before the learned Commissioner (Appeals) due to any reason, we are of the view that the order passed by the learned Commissioner (Appeals) is not justifiable in the interest of justice. In view of the said circumstances, we are not inclined to decide the case on merits and set aside the findings of the learned Commissioner (Appeals) with the direction to the learned Commissioner (Appeals) to decide the issues on merits by giving adequate opportunity to the assessee in accordance with law.

4. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 30.06.2017

**Sd/-**  
**P.K. BANSAL**  
**VICE PRESIDENT**

**Sd/-**  
**AMARJIT SINGH**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 30.06.2017**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Nagpur City concerned;*
- (5) *The DR, ITAT, Nagpur;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Nagpur