

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1777/Hyd/2017
Assessment Year: 2016-17**

Dinesh Kumar Lahoti, Hyderabad. PAN: AAZPL 8609 H (Appellant)	Vs.	ITO, Ward-8(2), Hyderabad. (Respondent)
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Assessee by: Sri Y. V. Bhanu Narayan Rao
Revenue by: Sri Nilanjan Dey, DR

Date of hearing: 08.10.2018
Date of pronouncement: 12.10.2018

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This is assessee's appeal for the assessment year 2016-17 filed against the order of the CIT(A)-2, Hyderabad dated 31.07.2017. Assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case, the order passed by the Learned CIT(A) is erroneous and bad in law.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) ought not to have dismissed the appeal filed by the assessee for non-appearance on the given date of hearing.*
3. *The Ld. CIT(A) ought not have upheld the addition made by the A.O. u/s 69A of the IT Act, 1961 of an amount of Rs. 99,02,613/- being the entire amount of cash deposited in the savings bank account for the year under review.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in treating the entire amount of cash of Rs. 99,02,613/- deposited in the bank as income ignoring the basic fact that only income element needs to be taxed."*

2. Further, assessee has also raised the following additional grounds of appeal:-

- “1. *On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have treated the amount of Rs. 99,02,613/- being the entire amount of cash deposited in the savings bank account for the year under review as difference in turnover / gross receipts as shown in ITR and deposits into the bank.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered the profit margin @ 8% of the above said amount in the absence of maintenance of proper books of account instead of treating the entire amount as income u/s 69A of the I.T. Act, 1961.”*

3. During the course of hearing, it is submitted by the Learned Counsel for the Assessee that though the assessment was completed u/s 143(3) of the Act, it was an *ex-parte* order without giving the assessee any opportunity of submitting the explanation for the sources of cash deposits in the assessee's bank account. He further submitted that even before the CIT(A), the assessee had not been given sufficient opportunity of representation. He pointed out that the CIT(A) had given only two dates of hearing of the case and has dismissed the appeal for non-appearance, without discussing anything on the merits. He also referred to the paper book filed before us to submit that all these documents filed therein are necessary for disposal of the assessee's appeal. He therefore, prayed that the issue may be remitted for re-consideration of the issue on merits.

4. Learned Departmental Representative was also heard.

5. Having regard to the rival contentions and the material on record, we find that the A.O. as well as the CIT(A) have passed the order *ex-parte*. Before the CIT(A), the case was first posted for hearing on 19.06.2017 and secondly on 31.07.2017, on which

date the final order was passed by the CIT(A). Therefore, we are satisfied that the assessee has not been afforded a reasonable opportunity of being heard. Further, assessee has also filed paper book containing documents pertaining to the present appeal which needs verification. In view of the same, we deem it fit and proper to remit the issue to the file of the A.O to consider the issue afresh after affording a reasonable opportunity of being heard to the assessee in accordance with law. Accordingly, grounds of appeal and the additional grounds raised by the assessee are treated as allowed for statistical purposes.

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

Pronounced in the open Court on 12th October, 2018.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: October, 2018

OKK

Copy to:-

- 1) Y.V. Bhanu Narayana Rao, Chartered Account, 10-2-195, Opp. Deccan Club, East Maredpally, Secunderabad – 500026.
- 2) The Income Tax Officer, Ward-8(2), Hyderabad.
- 3) The CIT(A)-2, Hyderabad
- 4) The Pr. CIT-2, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File