

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' SMC ' BENCH, HYDERABAD.**

BEFORE SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER

ITA No.128/Hyd/2022 (Assessment Year : 2017-18)		
Shri Sasidhar Samantula, Nellore. PAN DCOPS 1781P	Vs.	Income Tax Officer, Ward 3, Nellore.
Appellant		Respondent
Appellant By : Shri K. Pandu Rangaiah, Adv. Respondent By : Shri R.S. Arvindhakshan (D.R.)		

Date of Hearing : 27.06.2022.

Date of Pronouncement : 29.06.2022.

ORDER

This appeal filed by the assessee is directed against the order dt.29.12.2021 of the National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. There is a delay of 50 days in filing of this appeal for which the assessee has filed a condonation application along with an affidavit. After considering the contents of the condonation application and after hearing the learned Departmental Representative, the delay in

filing of this appeal is condoned and the appeal is admitted for adjudication.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the order of NFAC in dismissing the appeal of the assessee by confirming the addition of Rs.26,18,786 made by the Assessing Officer.

3.1 Facts of the case, in brief, are that the assessee is an individual and had not filed his Return of Income. The Assessing Officer had information that the assessee has made cash deposits of Rs.11,57,100 in ICICI Bank, Aditi Crystal Branch, Nellore having A/c. No.631005500274 during demonetization period in the financial year 2016-17. He observed that the assessee has done cash/credit transactions during F.Y. 2016-17 in the bank A/c. No.631005500274 maintained with the ICICI Bank, Aditi Crystal Branch, Nellore to the tune of Rs.26,18,786. The assessee did not file the return nor filed any reply or information before the Assessing Officer. He, therefore, issued a show cause notice dt.20.09.2019 asking the assessee to explain the source of cash deposits. In absence of any reply from the assessee's side, the Assessing Officer

completed the assessment u/s. 144 of the Act determining the total income of the assessee at Rs.26,18,786.

3.2 In appeal, the Id. CIT (Appeals) dismissed the appeal of the assessee by observing as under :

“ 5. Decision:-

5.1 The present appeal has been filed by the appellant against order passed by the AD u/s 144 of the Act on 30.11.2019, wherein total taxable income has been computed at Rs.26,18,7901-. From the impugned assessment order it is noted that AO had specific information that the appellant during the demonetization period had made cash deposits to the tune of Rs.11,57,1 00/- in IGIGI Bank, Aditi Crystal Branch, Nellore Bearing account No.631005500274. Relying on the above specific information, AO issued notice u/s. 142(1) dated 09.03.2018 to the appellant to file his ITR for the assessment year under consideration, but no return of income was filed and AO completed the proceedings u/s 144 of the Act relying on the information available with him. As per impugned order, appellant had total deposits including cash and credit entries in the mentioned bank account ICICI Bank amounting to Rs.26,18,786/-, but despite being given specific opportunities to explain the source of the above deposit/credit, appellant failed to explain the source. Therefore, AO invoked the provisions of section 69A of the Act in respect of the above amount and treated the same accordingly.

5.2 During appellate proceedings, various notices u/s 250 of the Act were issued through ITBA Portal to the appellant vide dated 29.12.2020, 14.10.2021 and 08.12.2021. It has been noted from the appeal record that the appellant was given opportunity to present its appeal by way of written submission and supporting documents/evidences. However, the assessee failed to comply with any reply/submission. The appellant has not made any written submission and has only furnished copy of the assessment order, grounds of appeal and statement of facts in Form No. 35. In view of the above, the appeal is decided on the basis of facts and material available on record.

5.3 Ground No. 1 - The only issue in the grounds of appeal taken pertains to the addition of Rs.26,18,790/- u/s 69A of the Act on account of unexplained cash deposit and credits in the bank accounts maintained with ICICI Bank Bearing no. 631005500274 during the period relevant to assessment year under consideration

and specifically during the demonetization period. As per impugned assessment order, AO issued notice u/s 142(1) dated 09.03.2018 to the assessee to file return for the assessment year under consideration relying on the specific information (OCM) that there are deposits to the tune of Rs.26,18,7901- in above bank account but no ITR has been filed despite being given specific opportunity to file the ITR. Considering the non compliance of the appellant and the fact that no ITR was filed, AO had no other option but to treat the entire cash deposit and credit entries as taxable income of the assessee for the year under consideration. The option exercised by the AO to invoke the provisions of section 144 is found to be justifiable.

5.4 During the appellate proceedings, the appellant was provided many opportunities as enumerated above. The appellant, for the reasons best known to him has remained non-compliant. No material facts have been brought on record to rebut the finding of the A.O. There remains no doubt that statute has cast upon the appellant a duty to explain the source of deposits / credits in the bank account mentioned above during the period relevant to assessment year under consideration but appellant failed to discharge the above onus. Considering the above factual matrix of the case I am of the considered view that provisions of section 69A are clearly found to be applicable in the case as appellant despite being given ample opportunities during assessment and appellate proceedings, failed to offer any explanation about the nature and source of the deposits and credit entries amounting to Rs.26,18,790/- in the bank account maintained with ICICI Bank, mentioned supra. In view of the above, I have no reason to interfere with the findings of the Assessing Officer. Accordingly, the addition of Rs.26,18,790/- is confirmed and grounds of appeal taken by the appellant are dismissed.

5.5 In the second ground of appeal, the appellant has claimed that AO has failed to apply the peak credit theory while making addition in respect of un-accounted and unexplained money. The peak credit theory and the benefit of telescoping is generally accepted when there is reasonable material to show that withdrawals or repayments could have been available on the date of subsequent credit or repayment, more so, in the accounts of different persons, but appellant in the present case failed to substantiate the above claim with any supporting evidence. More so, the entire appellant proceedings have remained uncomplied with. Hence, the above claimed is devoid of any merit and is rejected."

4. Aggrieved with such order of CIT (Appeals), the assessee is in appeal before the Tribunal.

5. The learned counsel for the assessee, at the outset, submitted that due to non-receipt of notice, the assessee could not appear before the Assessing Officer for which the Assessing Officer passed ex parte order u/s. 144 of the Act. Similarly due to lack of proper opportunity granted by the NFAC, the assessee could not substantiate his case before the NFAC. He, accordingly submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case.

6. The learned Departmental Representative, on the other hand, heavily relied on the order of the Assessing Officer and NFAC and submitted that despite number of opportunities granted, the assessee did not appear before the Assessing Officer or NFAC for which they passed ex parte order. He accordingly submitted that the order of NFAC be upheld.

7. I have heard the rival arguments made by both sides, perused the orders of the Assessing Officer and NFAC and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. It is an admitted fact that due to non-appearance of the assessee before the Assessing Officer, he passed

the exparte order by making addition of Rs.26,18,786 u/s. 69A being the various cash deposits made by the assessee in the bank account. I find due to non-appearance of the assessee before NFAC, the NFAC also passed exparte order and sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned counsel for the assessee that due to non-receipt of notice from the Assessing Officer there was non-representation before the Assessing Officer for which he has passed the exparte order. Similarly, due to lack of proper opportunity granted by the NFAC, the assessee could not file the requisite details before the NFAC for which the NFAC also passed the exparte order sustaining the addition made by the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. I hold and direct accordingly. The

grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.06.2021.

Sd/-

(RAMA KANTA PANDA)

Accountant Member

* Reddy gp

Copy to :

1.	Shri Sasidhar Samantula, Kalivelapalem, Kalivelapalem Vill. & Post, Nellore-524 346
2.	ITO, Ward 3, Nellore.
3.	CIT(Appeals), NFAC, Delhi.
4.	DR, ITAT, Hyderabad.
5.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.