

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA No.115/Hyd/2022		
Assessment Year: 2017-18		
Shri Vuppala Baswaraju Hyderabad PAN:ALDPB0570A	Vs.	Income Tax Officer (International Taxation)-1, Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri P.C. Yadav, Advocate	
Revenue by:	Sri S.P.G. Mudaliar, DR	
Date of hearing:	19/07/2022	
Date of pronouncement:	21/07/2022	

ORDER

This appeal filed by the assessee is directed against the order dated 15.2.2022 of the learned CIT (A0)-10, relating to A.Y. 2017-18

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) in sustaining the addition of Rs.10,05,500/- out of the addition of Rs.15,65,500/- made by the Assessing Officer.

3. Facts of the case, in brief, are that the assessee had not filed his return of income for the impugned A.Y within the time prescribed u/s 139(1) of the Act. On the basis of statement of financial transactions filed by the Bank in the wake of demonetization, information was available with the Department that the assessee has made huge cash deposit during the

demonetization period. Accordingly, the Assessing Officer issued notice u/s 142(1)(i) of the Act to the assessee calling the assessee to prepare a true and correct return of income. Although the same was duly served on the assessee, however, the assessee did not file the return of income in response to the notice u/s 142(1) of the I.T. Act. The Assessing Officer, therefore, decided to complete the assessment u/s 144 of the I.T. Act. The Assessing Officer again issued notices u/s 142(1) and show cause notices for a number of times. Since there was no response from the assessee, the Assessing Officer proceeded to complete the assessment u/s 144 of the I.T. Act, 1961. He noted that the assessee has deposited cash of Rs.10,05,500/- during the demonetization period and Rs.5,60,000/- during the other period of financial year 2016-17. Since nothing was available before the Assessing Officer to substantiate the source of such cash deposit in the Bank A/c including the cash deposit during the demonetization period, the Assessing Officer made addition of Rs.15,65,500/- to the total income of the assessee u/s 69A of the Act and interest income of Rs.1,916/- and determined the total income at Rs.15,67,420/-.

4. In appeal, the learned CIT (A) after considering the written submission filed by the assessee sustained addition of Rs.10,05,500/- and deleted the addition of Rs.5,61,916/- made by the Assessing Officer u/s 69A by observing as under:

“As the notice issued by the Assessing Officer u/s 142(1) suffers from A procedural defect but is in every way in conformity with the intent and purpose of the act, the best judgment assessment proceedings concluded by the Assessing Officer u/s. 144 stands valid.

The second question is what is the purview of notice u/s. 142 (1) issued. As per the record the purview of the notice is to examine and verify the cash deposits made during demonetization period and, therefore. the Assessing officer, by drawing the proceedings to deposits made before demonetization period, after demonetization period and credit entries in the bank account has over stretched himself. He is legally not

entitled to do the same and therefore the addition made by the AO to the extent of R5 50.000/+Rs 10.000/- Rs 1.916/- totaling to Rs. 5.61,916/-stand deleted.

The third and the most important question is whether the cash deposited during demonetization period stands explained and therefore does not attract Section 69A Unfortunately. the appellant made several paradoxical and contradictory statements which defeats his credibility.

1 Firstly. the bank account operated is a Joint savings account of the appellant along with his wife Smt Kavitha Basva Raju Vuppala.

2. Secondly the bank account speaks of a language where the major expenditure of the appellants family seems to be payment for school fees, certain travelling and may be little eating out Apart from the above there are neither major deposits nor withdrawals except for the above cash deposits

3 During January to March, 2014. there are remittances from NRE account, but it is beyond imagination to stretch myself to agree that the same can be sources for cash deposits made during demonetization, let alone the deposit of Rs 5.50,000/- made before demonetization. The security deposit and the rents received as claimed by the appellant despite the material evidence being weak may be the source for Rs 5,50,000/- However, I am disinclined to visit this issue.

4 The appellant claims rents from a property, which has never seen the face of any record If there is rental income, from house property. the appellant has chosen to speak about the same for the first time before me. Whether the rental income is above taxable income or below taxable income, had the appellant filed the income tax return the same would have shouldered him enough. The lack of legal compliance sometimes hurt badly in fact very badly.

5 The appellant, by his own admission as per his passport stamping. stayed in India from Sept, 2014 to 31st August, 2017 which means he was in India whether resident, Nonresident irrespective of his citizenship

6. The appellant claims that he has given a property on development basis and there was no capital gains as section 54F is squarely applicable. The legal authority of the claim without any documentary proof stands defeated.

7. The Documentary evidence filed by the appellant corroborates the order of the Assessing Officer. The Non-compliance of the appellant by not filing a return of income u/s. 142(1). thereby avoiding scrutiny assessment proceedings, the submissions made by the appellant during the course of assessment proceedings, new submissions made by the appellant during the course of appellate proceedings and supporting the same with paper proof. taking the plea that as he is a Non-resident,

he does not have active source of income in India go to prove that there is a device to explain a credit which has come into bank account but for the demonetization process.

8. Needless to say. the appellant himself claimed that he is the owner of the money and that there are no books of accounts. The third important prerequisite is the "Nature and the source of the money" should remain unexplained. In this case all the three conditions stand fully met and therefore, uphold the order of the Assessing Officer, to the extent of Rs. 10,05,500/- i.e., "Cash deposit made by the appellant during the demonetization period", The destination of the deposit to two Fixed deposits on 15/11/2016 also complement the fact that the appellant is the owner of the money.

Thus, the application of Sec. 69A to the said cash deposit is correct and the consequent application of section 115BBE also stands Thus, ground of appeal No. 1& 2 and additional grounds of appeal No.1 & 2 stand partly allowed. The addition of Rs 561,916/ u/s 69A stands deleted on legal grounds The addition of Rs10,05,500/, stands, sustained both on facts and on law. In result, the appeal stands partly allowed"

5. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee filed a paper book containing 99 pages which include certain new evidences such as copy of the development agreement, copy of rental agreement for flat, affidavit of Shri K. Rajendra Prasad which are placed in the Paper Book from page 34 to 82. He submitted that these evidences could not be filed before the Assessing Officer to substantiate the source of cash deposit during demonetization period and although these were stated before the learned CIT (A), however, the learned CIT (A) has not properly appreciated the fact and has only given part relief. He submitted that in the interest of justice, the matter may be remanded to the file of the Assessing Officer for giving an opportunity to the assessee to substantiate his case.

7. The learned DR, on the other hand, strongly opposed the additional evidence filed by the assessee and submitted that there are no compelling circumstances to substantiate as to how the assessee was prevented from filing these documents before the learned CIT (A). Further, the Assessing Officer has given enough opportunity to the assessee. However, the assessee for the reasons best known to him did not file even the return of income. He submitted that the learned CIT (A) has passed a speaking order on this issue and therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

8. I have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. I find the AO in the instant case on the basis of information obtained from the Bank that the assessee has made huge cash deposit during the demonetization period, issued notice u/s 142(1) to the assessee to file his return of income. However, the assessee did not respond to the various notices issued by the Assessing Officer from time to time for which the Assessing Officer completed the assessment u/s 144 of the I.T. Act making addition of Rs.15,65,500/- u/s 69A of the Act and Rs.1,916/- as interest income from the Bank. The addition of Rs.15,65,500/- includes cash deposit of Rs.10,05,500/- during the demonetization period. I find the learned CIT (A) on the basis of various submissions made before him deleted an amount of Rs.5,61,916/- and sustained an amount of Rs.10,05,500/-. The reasons for sustaining the addition of Rs.10,05,500/- has already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the deposit of cash in the Bank A/c is out of the rental income from flat and given opportunity the assessee is

in a position to substantiate the source of such cash deposit in the Bank A/c during the demonetization period. 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 the Assessing Officer with a direction to grant one last 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.

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

Order pronounced in the Open Court on 21st July, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 21st July, 2022.

Vinodan/sps

Copy to:

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2	Income Tax Officer (International Taxation)-1 Aayakar Bhavan, Basheerbagh, Hyderabad 500001
3	CIT (A)-10, Hyderabad
4	CIT -(IT & TP) Hyderabad
5	The Chief Commissioner of Income Tax (IT) (SZ) Bengaluru
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order