

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.221/Hyd/2022		
Assessment Year: 2019-2020		
Subash Namburu, Hyderabad. PAN : AJTPS3515J	Vs.	Asst. Commissioner of Income Tax, Central Circle – 1(4), Hyderabad – 500 004.
(Appellant)		(Respondent)
Assessee by:		Shri S.K. Gupta.
Revenue by:		Shri K.P.R.R. Murthy.
Date of hearing:		29.08.2022
Date of pronouncement:		29.08.2022

ORDER

Per Laliet Kumar, J.M.

The appeal of the assessee for A.Y. 2019-2020 arises from the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dated 23.03.2022 involving proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”) raising the following grounds :

“1. The Id.CIT(A) erred on facts in sustaining addition of Rs.73,34,200/- which was made by AO without appreciating the facts of the case.

2. CIT(A) ought to have considered the fact that the cash seized during the course of search proceedings was amounting to Rs.1,46,34,200/- of this an amount of Rs.73,00,000/- was already offered to tax by the assessee.

3. CIT(A) ought to have considered that the cash of Rs.73,34,200/- are the agricultural receipts of the assessee, his brother and his earlier savings.

4. The CIT(A) failed to appreciate that the declaration of Rs.73,00,000/- was made during the search as the appellant was not in a position to give reconciliation at the time of search which was subsequently filed during the course of assessment proceedings.

5. The appellant and his brother have been declaring substantial agricultural income year on year and the cash found during the course of search reflected the same. Hence, no addition is warranted with regards to cash found during course of search.

6. Though the CIT(A) has listed number of hearings, it is regretted to inform that some of them were not received by the appellant.”

2. The brief facts of the case are that assessee is an individual and is one of the partners in the partnership firms viz. M/s. ANS Acqua Services, M/s. Sumeru Infrastructure Park and Director of M/s. Mas Aqua Technicks Pvt Ltd, deriving income from business and other sources. The assessee had filed his return of income u/s 139(1) of the Act on 31.10.2019 declaring total income of Rs.82,33,440/- apart from declaring agricultural income of Rs.27,66,580/- and exempt income of Rs.54,98,272/-. A search and seizure operation u/s 132 of the Act was conducted in M/s Sumeru Infrastructre Park, wherein the assessee is working as one of the partners.

2.1. During the course of search, cash of Rs.1,00,34,200/- was found at assessee's residential premises.

Further, a cash of Rs.4,60,000/- was also found in the bank lockers of assessee's mother Smt. N. Vijaya Lakshmi, thus totalling to Rs.1,46,34,200/-. Out of the cash found, an amount of Rs.1,46,00,000/- was seized. On questioning about the sources of the cash by issuing notices u/s 142(1) of the Act, assessee had admitted an amount of Rs.73,00,000/- as his additional income and that the remaining cash was out of agricultural receipts, his brother and his earlier savings. However, he failed to produce the supporting documents. In the absence of supporting documents, an amount of Rs.73,34,200/- was treated as unexplained income u/s 69A of the Act and thus, the Assessing Officer completed the assessment u/s 143(3) of the Act on 15.04.2021 and initiated the penalty proceedings separately.

3. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who dismissed the appeal of assessee on account of non-prosecution and on merits.

4. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

5. Before us, Id.AR submitted that the learned lower authorities have decided the issue without considering the explanation offered by the assessee and that assessee failed to appear due to unavoidable circumstances. Ld.AR further submitted that as the assessee has sufficient cause from putting

in appearance before the ld.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication.

6. Per contra, the ld.DR has raised objection for remanding the matter back to the file of lower authorities.

7. We have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), we found that ld.CIT(A) passed an exparte order confirming the action of the Assessing Officer, as the assessee failed to appear despite granting of sufficient opportunities. In para 6.1. of the ld.CIT(A)'s order, clearly mentioned the details of various opportunities granted to the assessee. On perusal of the order of ld.CIT(A) on merits, we found that the ld.CIT(A) has failed to consider the explanation given by the assessee that the assessee and the family members of the assessee are having the substantial land holdings of more than 200 acres of land income from which cash was available to the tune of Rs.73,34,200/-. As the explanation of the assessee has not been considered by the ld.CIT(A) and the order of Assessing Officer had been confirmed without appreciating the record, we deem it appropriate to remand back the matter to the file of ld.CIT(A) with a direction to consider the explanation offered by the assessee and the documents placed on record before us after affording sufficient opportunities of hearing to the assessee in accordance with the law.

8. The assessee shall be at liberty to file documents, if any, as required for proving his case and the Id.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication. The assessee is directed to appear before the Id.CIT(A) and cooperate in early hearing of the appeal.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 29th August, 2022.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER

(LALIET KUMAR) JUDICIAL MEMBER

Hyderabad, dated 29th August, 2022.

TYNN/sps

Copy to:

S.No	Addresses
1	Subash Namburu, 198, Road No.14, Jubilee Hills, Hyderabad – 500 034.
2	Asst. Commissioner of Income Tax, Central Circle – 1(4), Hyderabad – 500 004.
3	CIT(Appeals) – 11, Hyderabad.
4	Pr.CIT(Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order