

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.824/Bang/2022 : Asst.Year 2019-2020

Sri.Santosh Nagesh Jannu H.No.6-1-1921, Manjunath Nilaya Kustagi Road, Sindhanur Raichur – 584 128. PAN : ADYPJ9231B.	v.	The Deputy Commissioner of Income-tax, Central Circle Bellary.
(Appellant)		(Respondent)

Appellant by : Sri.S.V.Ravishankar, Advocate

Respondent by : Sri.K.R.Narayana, Addl.CIT-DR

Date of Hearing : 19.10.2022	Date of Pronouncement : 19.10.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 07.09.2022. The relevant assessment year is 2019-2020.

2. The grounds raised read as follows:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence probabilities, facts and circumstances of the appellant's case.

2. The appellant denies himself liable to be assessed on a total income of 1,32,60,404/-, in the assessment order passed u/s. 144 of the Act as against the returned income of Rs.62,37,260/- for the year under appeal, under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in upholding the impugned addition of RS.1,31,80,644/- made as unexplained investment in stock of gold ornaments and silver articles by invoking the provisions of Section 69B of the Act while rejecting the appellant's additional business income declared in course of survey of Rs.61,57,500/- that was offered in the return of income filed for the year under appeal under the facts and in the circumstances of the appellant's case.

4. *The learned CIT[A] ought to have appreciated that there was no material found in course of survey to conclude that there was any excess stock found in quantitative terms and that the excess stock worked out at the time of survey was only on account of method of valuation and thus, the appellant's offer of business income ought to have been accepted and the addition made invoking the provisions of section 69B of the Act was misconceived and therefore, the provisions of section 115BBE of the Act was also inapplicable.*

5. *Without prejudice to the above, the impugned addition made by adopting the gross weight of the gold jewellery found at the time of survey is highly excessive and unreasonable in as much as the net weight of gold ornaments alone had to be considered for determination of the value as was even done at the time of survey and therefore, the addition of Rs.1,31,80,644/- made by the learned A.O. and upheld by the learned CIT[A] is opposed to law, highly excessive and therefore, the same is liable to be reduced substantially.*

6. *Without prejudice to the above, the learned CIT[A] ought to have appreciated that the valuation of the closing stock on the date of survey was arrived at by adopting the rates prevalent on the date of survey i.e. 20/02/2019 and the same was therefore the value of stock arrived at on the basis of market value of the gold and silver itself was erroneous since the closing stock has to be valued either at cost or fair market value, whichever is lower and therefore, no addition ought to have been made and sustained on this basis under the facts and in the circumstances of the appellant's case.*

7. *The learned CIT[A] is not justified in disposing off the appeal filed ex-parte without giving sufficient and effective opportunity to the appellant and therefore, the order passed by the learned CIT[A] deserves to be vacated.*

8. *Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies himself liable to be charged to interest u/s.234-A, 234-B and 234-Cof the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.*

9. *For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

3. The brief facts of the case are as follows:

The assessee is an individual, engaged in the business of trading of gold and silver jewellery under the name and style of M/s.Sri Srinivasa Jewellers. There was a survey u/s 133A of the I.T.Act in the premises of the assessee on 20.02.2019. In the course of survey proceedings, certain books of account, loose sheets and other documents maintained by the assessee were found and impounded. These materials impounded, inter alia, contain details of the sales, purchases, etc. undertaken by the assessee. Pursuant to survey, a statement u/s 131(1) of the I.T.Act was recorded from the assessee on 21.02.2019. In the statement so recorded, the assessee agreed to offer additional income of Rs.61,57,500. The relevant portion of the statement is reproduced as under:-

“Q.No.13. Please explain how do you propose to value the closing stock of gold jewellery and silver items and its treatment in the books of accounts as on the date of survey?”

Ans: I agree to consider the valuation of Rs.2,37,06,848/- as closing stock of gold jewellery and silver items as on the date of survey i.e., 20.02.2019. I submit that I am agreeing to adopt the valuation of gold jewellery and silver items at Rs.2,37,06,848/- with a view to avoid litigation and purchase peace with the department, I agree to offer the difference of Rs.61,57,500/- as additional income for F.Y.2018-19 relevant to the A.Y. 2019-20.”

4. Thereafter, the assessee filed return of income wherein he had reported total income of Rs.62,37,260. The total income declared by the assessee included the additional income declared during the course of survey u/s 133A of the I.T.Act. The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued on 28.09.2019. The A.O. during the course of assessment proceedings issued several notices u/s 142(1) of the I.T.Act, for which there was no

response from the assessee. Further, the A.O. also sent a proposal to complete the assessment u/s 144 of the I.T.Act, to which there was no response from the assessee. Consequently, noting the failure of the assessee, the assessment was completed u/s 144 of the I.T.Act dated 26.02.2021, wherein the A.O. made solitary addition of Rs.1,31,80,644 u/s 69B of the I.T.Act as unexplained investment in excess stock of gold jewellery and silver articles. While doing so, the A.O. excluded the additional income of Rs.61,57,500 offered by the assessee in the return of income. The computation of assessed income reads as follows:-

Total income as return of income dated 31.10.2019	Rs.62,37,260
Add : unexplained investment in excess stock of gold jewellery and silver articles assessed u/s 69B and charged to tax u/s 115BBE of the Act.	Rs.1,31,80,644
	Rs.1,94,17,904
Less : Additional income offered to tax during the course of survey proceedings.	Rs.61,57,500
Total Income Assessed to Tax	Rs.1,32,60,404

5. Aggrieved, the assessee filed appeal before the first appellate authority, raising several grounds. The CIT(A) fixed the case for hearing on 28.07.2022. In response to the hearing notice, since there was no adjournment application nor written submissions filed, the case was again fixed on 02.09.2022. On the said date, there was no written submission filed by the assessee. Accordingly, the CIT(A) decided the appeal *ex parte*.

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR

submitted that the assessee carries on business in a small rural town and he was totally unaware of his case being taken up for scrutiny and the notices uploaded on the e-filing portal. Especially as no physical notices were received, the assessee was unaware and there was no appearance before the A.O. It was further submitted that the assessee, who resides in rural area was unfamiliar with the technology and e-assessment proceedings of the Income-tax and did not check the Income-tax portal regularly. In the said background, when assessee's case was taken up for scrutiny after wave of the COVID-19 pandemic, which has caused a major disruption in the business of the assessee, neither the assessee nor the assessee's AR noted the Income-tax proceedings being taken up by the A.O. It was further submitted that the CIT(A) had granted only one opportunity of hearing. On the said date of hearing, notices were not received by the assessee, consequently, could not appear before the CIT(A). Even on the merits, the learned AR submitted that the addition of Rs.1,31,80,644 is not warranted and explained the same by referring to answer to question No.9 of the statement recorded pursuant to the survey conducted u/s 133A of the I.T.Act.

7. The learned Departmental Representative supported the order of the A.O. and the CIT(A).

8. We have heard rival submissions and perused the material on record. The A.O. had issued three notices u/s 142(1) of the I.T.Act for which there was no response from the assessee. Even before the CIT(A), to the hearing fixed on

28.08.2022 and 02.09.2022, there was no response by the assessee. Consequently, the CIT(A) passed an *ex parte* order. The A.O. had taken the stock of gold jewellery at Rs.7379.78 grams as against 5903 grams admitted by the assessee. Similarly, for the stock of silver articles was taken at 2,13,066 grams as against 1,49,146 grams admitted. To the proposal by the A.O. for adoption of 7379.78 grams for gold and 2,13,067 grams for silver article, there was no objection filed by the assessee. We strongly deprecate the practice of the assessee in not making appearance before the A.O and the CIT(A). However, in the interest of justice and equity, as a last chance, we deem it appropriate that the assessee should be given one more opportunity to raise objections to the additions made by the A.O. and confirmed by the CIT(A). Accordingly, the matter is restored to the files of the A.O. The assessee is directed to cooperate with the revenue and shall furnish the objections to the additions without any delay. It is ordered accordingly.

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

Order pronounced on this 19th day of October, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 19th October, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Panaji
4. The Pr.CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore