

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.999/Bang/2022
Assessment Year: 2017 – 18

Mr. Malagaranhalli Chikkonu Prasanna No.36, Lekhana House, Ground Floor, 3 rd Main Road, HBCS, ITI Layout, Nayandahalli Bangalore 560 039 PAN NO : BBUPP5953M	Vs.	ITO Ward-3(2)(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Thippeswamy, A.R.
Respondent by	:	Shri Gudimella V.P. Pavan Kumar, D.R.

Date of Hearing	15	11	2022
Date of Pronouncement	15	11	2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of the CIT(A) dated 17.8.2022 for the assessment year 2017-18. The assessee has raised various grounds with regard to sustaining addition of Rs.94,32,524/- towards deposit in assessee's bank account with the Axis Bank No.94020056631515 and estimation of income from business. Originally, the assessment order was framed u/s 144 of the Income-tax Act,1961 ['the Act' for short] by the AO as follows:-

Returned income	Nil
Addition u/s 69A of the Act (Taxed at 60% u/s 150BBE of the Act) (8% Income on turnover of Rs.1,43,43,936/-)	1,29,86,825/-
	11,47,514/-
Total:-	1,41,34,339/-

2. Against this assessee filed petition u/s 154 of the Act before the AO stating that assessee has deposited total amount of Rs.1,04,60,327/-, out of which an amount of Rs.93,43,150/- was deposited before demonetization and only an amount of Rs.12,75,450/- was deposited after demonetization and the entire amount has been from assessee's business receipts as the assessee is engaged in the selling of Milky Mist products like Panneer, Cream, Ghee, Curd, Khova, etc. According to the assessee, the assessment has been framed wrongly in this case and requested the AO to recall the order and pass fresh order. However, the said petition filed by the assessee u/s 154 of the Act has been dismissed. Against this, assessee went in appeal before Ld. CIT(A). The Ld. CIT(A) has also observed that assessee has not explained the source of deposit into bank account and also the AO have no power to recall the order passed u/s 144 of the Act by exercising power u/s 154 of the Act. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. In this case, originally assessment order has been passed u/s 144 of the Act dated 21.10.2019. The assessee has not participated in the assessment proceedings. The order is ex-parte. The assessee has filed petition u/s 154 of the Act seeking the recall of the said order, which the AO failed to do so.

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Against this, assessee has also filed appeal before Ld. CIT(A) requesting the Ld. CIT(A) to set aside the order passed by the AO u/s 144 r.w.s. 154 of the Act, which has not been considered by the Ld. CIT(A). In our opinion, in the interest of justice, it is fair to set aside the entire issue to the file of the AO as the assessment order is ex-parte with direction to the AO to give an opportunity of hearing to the assessee before deciding the same. Accordingly, the entire issue is remitted to the file of AO for fresh consideration and to decide in accordance with law after giving an opportunity of hearing to the assessee.

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

Order pronounced in the open court on 15th Nov, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 15th Nov, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore