

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K. JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1007/Bang/2022

Assessment year : 2017-18

Mr. Deepu Bangalore Prasannakumar, No.385, 12 th Main Road, SBM Colony, Banashankari 1 st Stage Bangalore - 560 050. PAN - ALIPP 7758 D	Vs.	The Income Tax Officer, Ward-5(2)(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Koushik K.M, Advocate
Revenue by	:	Smt. Priyadarshini Baseganni, Addl. CIT (DR)

Date of hearing	:	22.11.2022
Date of Pronouncement	:	22.11.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

This appeal filed by the assessee against the order of National e-Assessment Center (NFAC) dated 25/08/2022 with the following grounds of appeal:-

"1. The order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1044940905(1) dated 25.08.2022 for the above-mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in dismissing the appeal for non-prosecution without appreciating the fact that the Appellant had sought for adjournment on 01.08.2022 till 15.08.2022 for the notice dated 21.07.2022 for providing additional details to substantiate the facts of the case and grounds of appeal. The CIT(Appeals) action was wholly unjustified and not legally sustainable.

3. The CIT (Appeals) failed to appreciate that the adhoc addition of 10% amounting to Rs. 2,49,96,589/- made by the assessing officer on the credits in the bank accounts not pertaining to the Appellant was wholly unjustified and not tenable.

4. The CIT (Appeals) failed to appreciate that non consideration of the issues raised on merits should be reckoned as nullity in law and further ought to have appreciated that the dismissal of the appeal for non-prosecution as stated in the impugned order was wrong, erroneous, unjustified, and incorrect.

5. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law."

2. The brief facts of the case are that the assessee filed return of income on 07/11/2017 declaring an income of Rs.28,76,300/- . The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. As per notice u/s 142(1) issued on 20/05/2019 and 05/09/2019, the details was called for from the assessee like computation of income, other financial statements, audit report and details of cash deposited into the bank account. The assessee did not furnish any documents as called for and further notice u/s 142(1) was issued on 15/10/2019 and 13/11/2019. The assessee did not furnish the details but sought for adjournment. Thereafter show cause

notice dated 11/12/2019 was issued to the assessee for completing the assessment as per sec. 144 of the Act. In response to the show cause notice, the assessee submitted computation of income, balance sheet, income expenditure account and Form 3CB but he did not submit any documents in regard to the cash deposited into the bank account. Accordingly, the AO on the basis of information available before him, disallowed 10% of the total cash deposited during the financial year 2016-17 in his bank account and computed a sum of Rs.2,49,96,589/- , accordingly completed the assessment.

3. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(A) raising 3 grounds, which has been incorporated by the CIT(A) in his order. The CIT(A) posted the case for hearing on 4 occasions and notices were sent by registered email address given by the assessee but in all the 4 occasions, the assessee did not appear. Accordingly, the CIT(A) dismissed the case of the assessee on relying some judgments as per para No.4.2 of his order and dismissed the case of the assessee without going on the merits of the case.

4. Aggrieved from the order of the CIT(A), the assessee filed appeal before us.

5. The Id.AR submitted that request for adjournment was sought upto 15/08/2022 for providing certain details which was relevant for the case. The request was sent to the CIT(A) through IT portal but the CIT(A) without considering the adjournment request, decided the issue ex-parte without going into the merits of the case. The assessee has filed Affidavit and bank statements before us as additional evidence to support his case and he also undertook that if a chance is given to the assessee to prove his case before the AO, he will prove the genuineness of the case in detail.

6. On the other hand, the Id.DR supported the order of the lower authorities and she submitted that ample opportunity was given by the lower authorities but in spite of that the assessee did not represent his case and, therefore, the case should not be sent back to the file of lower authorities for consideration and order of the lower authorities should be upheld.

7. After hearing both the parties and perusing the entire materials on record and examining the orders of the authorities below, the case was selected for scrutiny for the reason that "cash deposited during the year". The AO gave many opportunity but the assessee did not substantiate the huge cash deposits in his bank account and before the CIT(A) he also did not represent his case on the specified date of hearing. On

perusal of the appeal set, the assessee has enclosed the adjournment request for requesting the adjournment on 01/08/2022 up to 15/08/2022 but which has not been considered by the CIT(A) and decided the case ex-parte without going into the merits of the case. Considering the totality of the facts and circumstances of the case and in the interest of justice and without going much into the merits of the case and also to meet the end of justice, we remit the matter back to the file of the AO to decide the case of the assessee *de novo* after verifying the documents available with the assessee to substantiate his claim as per law. Needless to say that the assessee shall be given three effective opportunity of being heard. The assessee is also directed to co-operate with the AO for early disposal of the case. Accordingly, the grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in court on 22nd day of November, 2022

Sd/-

Sd/-

(George George K)

(LAXMI PRASAD SAHU)

Judicial Member

Accountant Member

Bangalore,

Dated, 22nd November, 2022

/ vms /

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.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
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4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the
Sr. P.S.
6. Date of uploading the order on
website.....
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8. Date on which the file goes to the Bench Clerk
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11. The date on which the file goes to the Assistant
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12. The date on which the file goes to dispatch
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13. Date of Despatch of Order.
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