

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

ITA No.500/Hyd/2020		
Assessment Year:2011-12		
Shri Raj Kumar Appala Nellore PAN: AFUPA8773R (Appellant)	Vs.	Income Tax Officer Ward-1 Nellore (Respondent)
Assessee by:	N O N E	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	17/01/2023	
Date of pronouncement:	19/01/2023	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 5.2.2020 of the learned CIT (A)-Tirupati, relating to A.Y.2011-12.

2. None appeared on behalf of the assessee at the time of hearing when the name of the assessee was called. No petition seeking adjournment of the case has been filed. A perusal of the record shows that this case was first fixed for hearing on 6.7.2021 and was getting adjourned from time to time due to non-appearance from the side of the assessee. The notices issued by the Registry through RPAD were also returned unserved by the postal authorities with the remarks "addressee left without giving

instructions”. The assessee has also not intimated the change of address, if any. Under these circumstances, we have no other option left but to decide the appeal on the basis of material available on record and after hearing the learned DR.

3. Facts of the case, in brief, are that the assessee is an individual and is engaged in retail trading. He filed his return of income on 13.6.2016 declaring ‘Nil’ Income. The case of the assessee was reopened on the ground that the assessee along with his family members had sold immovable properties and the total proportionate share of the assessee is at Rs.47,04,000/-. However, the assessee has not shown the transactions in the return of income. Accordingly, notice u/s 148 of the Act was issued to the assessee on 26.3.2018 which was duly served on him on 27.3.2018. In response to the same, the assessee filed a letter dated 25.4.2018 before the Assessing Officer which was received by him on 26.4.2018 requesting him to provide 10 days’ time to collect the Bank statement and to file the Income Tax Return for the A.Y 2011-12. However, there was no compliance from the side of the assessee to the notice issued u/s 148. The Assessing Officer, therefore, issued notice u/s 142(1) of the Act calling for the following information:

- A) *Nature of business/profession/employment and the present address.*
- B) *Books of account for the financial year 2020-11 relevant to the A.Y 2011-12.*
- C) *Details of Bank A/c and respective account copies for the financial year 2010-11 relevant to the A.Y 2011-12.*
- D) *Details of movable/immovable properties sold/purchased during the financial year 2010-11 relevant to the A.Y 2011-12.*
- E) *Details of Sundry Debtors/Creditors and confirmation thereof.*
- F) *Computation of Total Income including working of capital Gains for the A.Y 2011-12.*

4. However, despite several opportunities granted by the Assessing Officer, there was no response from the side of the assessee for which the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act determining the total income of the assessee at Rs.69,96,644/- wherein he made the following additions:

i)	<i>Income from sale of the properties</i>	: Rs.14,85,287/-
ii)	<i>Sundry Creditors</i>	: Rs. 26,35,451/-
iii)	<i>Short Term Capital Gains</i>	: Rs. 12,68,000/-
iv)	<i>Undisclosed TDS receipts</i>	: Rs. 15,07,906/-

5. In appeal, the learned CIT (A) dismissed the appeal filed by the assessee. While doing so he noted that although the assessee furnished the written submissions during the course of appeal proceedings, however, the assessee failed to comply with the letter dated 28.12.2019 and produce books of account and related documents for verification as directed by him.

6. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds:

*"1. The Ld. CIT-A erred in law and facts of the case in confirming the order of the Assessing Officer "who had not considered the loss of Rs 12,37,901 which is reflected in the return of income":*

*2. The Ld. CIT-A erred in law and facts of the case in confirming the order of the Assessing Officer "who added Rs 14,85,287 under the head "Business Income as income from sale of properties and Rs 12,68,000 under the head Capital gains as income from sale of immovable properties" particularly in view of the fact that the entire amount of gains arising from transfer of immovable properties of Rs 46.68,445 is already factored in the computation which is duly reflected in the return of income;*

*3. The Ld. CIT-A erred in law and facts of the case in confirming the order of the Assessing Officer "who erred in adding increase in trade creditors of Rs. 26,35,451 as unexplained income" particularly in view*

*of the fact that the trading results of the appellant are not disturbed during the assessment;*

*4. The Ld. CIT-A erred in law and facts of the case in confirming the order of the Assessing Officer 'who had wrongly taken the receipts of Rs 15,07,906 as undisclosed' particularly in view of the fact that all the receipts corresponding to the TDS amounts have been duly considered in the return of income.*

*5. The Ld. CIT-A erred in confirming the order of the AO who assessed the total income at Rs 69,96,644 whereas the various additions made by the AO aggregated to Rs 68,96,644 only.*

*6. The Ld. CIT-A erred in confirming the order of the AO who erroneously assessed the income of Rs 4,09,315 (which formed part of the addition of Rs 14,85,287) arising from transfer of immovable property having document number 4037, which in fact does not belong to the appellant.*

*7. The Appellant craves leave to add, amend, alter, vary and / or withdraw the above grounds of appeal."*

7. The assessee has also filed the following additional grounds:

*"Additional Ground #1 raised as Ground No #5' in Form No 36:*

*The Ld. CIT-A erred in confirming the order of the AO who assessed the total income at Rs 69,96,644 whereas the various additions made by the AO aggregated to Rs 68,96,644 only.*

*Additional Ground # 2 raised as Ground No #6' in Form No 36: The Ld. CIT-A erred in confirming the order of the AO who erroneously assessed the income of Rs 4,09,315 (which formed part of the addition of Rs 14,85,287) arising from transfer of immovable property having document number 4037, which in fact does not belong to the appellant.*

*In view of the above, we request you to kindly consider the above additional grounds which grounds are in addition to those submitted along with the Form 36".*

8. However, in absence of any arguments advanced by the assessee on admissibility of the additional grounds, the same are dismissed.

9. So far as the other grounds raised by the assessee are concerned, we find despite several opportunities granted by the Assessing Officer there was no response from the side of the assessee giving details as called for by the Assessing Officer for which the Assessing Officer was constrained to complete the assessment u/s 144 r.w.s. 147 of the I.T. Act. Even before the CIT (A) also despite specific directions by the learned CIT (A), the assessee failed to produce the relevant details and books of account for which the learned CIT (A) confirmed the various additions made by the Assessing Officer by observing as under:

*“7. The assessment order and the written submissions of the appellant have been perused and various grounds of appeal and additional grounds of appeal are adjudicated, as below.*

*7.1 Before proceeding to adjudicate the issues involved it is relevant to note that there was total failure on the part of the appellant to comply with notices, letters and show-cause issued, before the Assessing Officer. There is no change in the factual position and nothing new has been furnished in the course of the appeal proceedings. It is seen from the assessment order that numerous opportunities were provided to the appellant to represent the case and there is total non-compliance on the part of the appellant. As the appellant failed to declare taxable capital gains in the return of income filed, the Assessing Officer issued notice u/s. 148 of the I.T. Act 1961. To this, after a long delay, the appellant responded and stated that the return filed on 13.06.2015 may be treated as the return filed in response to the notice u/s 148. In spite of serving multiple notices and show-cause letters, requiring specific details and documents, the appellant failed to meet the requirements made out.*

*7.2 Further, no sufficient cause was brought on record in respect of the noncompliance and utter disregard for the legal provisions. In the given scenario, the Assessing Officer was justified in computing the capital gains based on the sale deeds and purchase deed in respect of the immovable property related transactions of the appellant.*

*7.3 As already mentioned, though the appellant furnished written submissions, in the course of the appeal proceedings, the appellant failed to Comply with the letter dated 28.02.2019 and produce books of account and related documents, for verification.*

*8. The additional grounds of appeal relate to the contention that brokerage charges, payments towards cleaning and maintenance of the land and other expenses need to be allowed while computing the capital gains.*

8.1 No specific details of these expenses have been furnished and their relevance remains unexplained. Even in the appeal proceedings, the appellant did not furnish the details and proof of the expenses, towards brokerage paid. AS the fact of relevance and genuineness is allowed. Accordingly, unsubstantiated, these expenses cannot be the claim relating to brokerage, cleaning and maintenance charges, watch and ward charges is rejected.

8.2 In the assessment order, the Assessing Officer considered indexed cost of acquisition. The appellant claims that stamp duty/registration charges paid should be allowed while computing the capital gains. These are allowable expenses and the Assessing Officer is directed to allow the same, if not considered already, and grant relief to that extent.

8.3 In view of the above, the additional grounds of appeal are treated as partly allowed, for statistical purpose, and the appellant gets relief only in respect of the registration charges/stamp duty paid and that too if the Assessing Officer has not considered the same already.

9. The ground of appeal no. 1 relates to the contention that the Assessing Officer has not considered the loss filed in the return of income. The appellant has not substantiated this claim with relevant details/ documents. The year-wise details of losses declared and the returns filed with relevant details have not been furnished by the appellant with copies of supporting documents. At para 2 of the assessment order, it is noted that the return of income, for A.Y. 2011-12, was filed on 13.06.2015. In other words, the return was not tiled within the prescribed time period and the same is not even a belated return. The Assessing Officer, then, rightly computed the income without considering loss, if any. Therefore, the ground of appeal no. 1 is dismissed.

10. The ground of appeal no. 2 relates to the contention that the profit on sale of property was already included in the profit and loss account, 10.1 On page 5 of the assessment order, there is a categorical finding that the business profit was not included in the profit and loss account filed for A.Y. 2011-12.

10.2 Even in the appeal proceedings, the appellant has not furnished the details of incomes included in the profit and loss account, filed with return of income, for A.Y. 2011-12, and did not explain the relevance of the same to the addition made by the Assessing Officer along with copies of supporting documents. In the absence of specific details and verifiable documents, the factual position available in the assessment order cannot be disturbed.

10.3 In view of the above, the ground of appeal no. 2 is dismissed.

*11. The ground of appeal no. 3 relates to the contention that the Assessing Officer erred in adding trade creditors as unexplained income. The Assessing Officer discussed the issue at para 5.2 of the assessment order. The appellant failed to furnish the particulars in respect of the increase in the sundry creditors. The appellant was also required to furnish confirmation letters. In the absence of relevant details, the Assessing Officer made the addition.*

*11.1 Even in the appeal proceedings, the appellant failed to meet the requirements as mentioned in the assessment order. The appellant stated that the trading results were accepted and that the trade creditors may increase or decrease depending upon the business. This will not help the case of the appellant. The addition made is sustained and the ground of appeal no. 3 is dismissed.*

*12. The ground of appeal no. 4 relates to the addition made on account of undisclosed receipts. The discussion in respect of the addition is at para 4 of the assessment order. The Assessing Officer compared the receipts declared with TDS details and details available in 26AS statement. No explanation was given before the Assessing Officer and no specific submissions have been made in the course of the appeal proceedings. Therefore, the ground of appeal no. 4 is dismissed.”*

9.1 Even before the Tribunal also, there was no appearance from the side of the assessee and there is nothing before us to take a contrary view than the view taken by the Assessing Officer and the learned CIT (A). Further, there is a delay of 155 days in filing of the appeal and the assessee has not filed any condonation application explaining the reasons for such delay. Under these circumstances and considering the careless attitude of the assessee and scant regard to the statutory notices issued by the Revenue as well as the Tribunal, we do not find any merit in the grounds raised by the assessee. Accordingly, the grounds raised by the assessee are dismissed.

9.2 In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 19<sup>th</sup> January, 2023.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 19<sup>th</sup> January, 2023

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Shri Raj Kumar Appala, S/o Appala Ranganadham, D.No.26-12-1757/A Sriharikota Colony, B.V. Nagar, Nellore 524004
2	Income Tax Officer Ward-1 Grand Trunk Road, Saraswathi Nagar, Dargamitta, Near KVR Petrol Bunk, Nellore 524003 A.P
3	CIT (A)- , Tirupati
4	Pr. CIT-, Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*