

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

**BEFORE**

**SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.711/Hyd/2022		
Assessment Year: 2019-20		
Vishal Jain, Hyderabad. PAN : AYMPJ0559M.	Vs.	The Asst.Commissioner of Income Tax, Central Circle – 3(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	None	
Revenue by:	Ms. Reema Yadav.	
Date of hearing:	17.01.2023	
Date of pronouncement:	17.01.2023	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2018-19 arises from the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dt.01.09.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

*“1. The ld.AO erred in upholding the order of Assessing Officer passed u/s 143(3) of the Act dated 22.06.2021 which is bad both under facts and law.*

*2. The ld.AO erred in making an addition of Rs.11,83,000/- to the income as unexplained income in hands of assessee u/s 69A.*

*3. The ld.CIT(A) ought to have appreciated the fact that the provisions of section 115BBE are not applicable to the case of the assessee.*

*4. The ld.CIT(A) ought to have appreciated the fact that the total cash seized relates to his business income and same is already offered to tax by him.*

*5. The ld.CIT(A) ought to have appreciated the fact that the Assessing Officer erred in not considering the submissions made by the assessee and went on to add the entire amount of Rs.11,83,000/- as unexplained money u/s 69A.*

*6. The ld.CIT(A) ought to have appreciated the fact that the assessee has offered all his income tax, the cash seized by the authorities is out of the income offered to tax.*

*7. The ld.CIT(A) erred in making an addition of Rs.11,83,000/- as it has been already offered to tax and the same cannot be taxed again which leads to double taxation.”*

3. The appeal filed by the assessee is barred by limitation by 46 days. He has moved a condonation petition explaining the reasons thereof. On the other hand, the ld. DR reported no objection for the same. In view of no objection from ld. DR and having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

4. Facts of the case, in brief, are that the assessee is an individual who filed his return of income for A.Y. 2019-20 on 30.08.2019 admitting total income of Rs.13,51,680/-. The Investigating Team found cash of Rs.11,83,000/- in possession of assessee on 12.03.2019. As the assessee could not explain the sources for the cash, the same was seized. On enquiry, assessee could not substantiate his claim with any documentary evidence and hence, the said cash was requisitioned u/s 132A of the Act. Subsequently, the Assessing Officer had completed the assessment u/s 144 of the Act interalia by making an addition of Rs.11,83,000/- as unexplained income of the assessee and thereby assessed the total income of the assessee at Rs.25,34,680/-.

5. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who dismissed the appeal of assessee.

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

7. It was noted by the Id.CIT(A) that despite various opportunities granted to the assessee as mentioned by the Id.CIT(A) at Para 6.1, none appeared on behalf of the assessee in the appellate proceedings. The Id.CIT(A) was forced to decide the appeal on the basis of material available on record as there was no representation on behalf

of the assessee. The findings of the Id.CIT(A) are mentioned at Para 6.4 of his order which is to the following effect :

*“6.4. It is seen that even on merits, the case of the appellant does not hold any ground. The Assessing Officer clearly mentioned the reasons for making the addition u/s. 69A of the Act and reproduced in the assessment order, the text of show cause notice issued to the appellant proposing to add the cash found with the appellant as its unexplained income u/s. 69A of the Act.*

*Going into the facts of the case, the appellant was found in possession of cash of Rs. 11,83,000/- on 12.03.2019 by the Police Task Force, East Zone Team, Hyderabad and as the appellant failed to explain the sources for the cash, the cash was seized by the Police and later requisitioned u/s. 132A of the IT Act by the Investigation wing on 13.03.2019. Assessment proceedings u/s. 143(3) were completed on 22.06.2021 by making addition of Rs. 11,83,000/- and thereby assessing total income of the appellant at Rs. 25,34,680/-.*

*During the course of assessment proceedings, the appellant submitted that out of the total cash of Rs. 11,83,000/-, Rs.1,80,000/- pertained to the business receipts of its proprietorship concern and offered the remaining cash of Rs. 10,03,000/- as additional income over and above the regular income.*

*However, as the appellant did not provide evidences for the sources of cash seized, the Assessing Officer issued a Show cause notice to the appellant requiring the appellant to show cause why the cash found and seized from the appellant should not be treated as unexplained income u/s. 69A in the absence of any documentary evidences substantiating the sources for the cash seized. The Assessing Officer noted that the appellant did not furnish any explanation in response to the show cause notice and accordingly treated the cash found with the appellant as its unexplained income u/ s. 69A and passed the assessment order.*

*As stated in the preceding paragraphs, the appellant was given sufficient time and opportunities during the appeal proceedings to substantiate its claims/contentions regarding the sources for cash found and seized with relevant documentary evidence. However, the appellant did not respond to any of the notices issued during the course of appeal proceedings. The appellant has refused to submit any cogent material like bank statements, cash book, salq bills etc., to adjudicate the issue on better merits or to substantiate its claim of doing any business activity as such to consider the said amount as related to business. The appellant has not discharged its onus of being into a bonafide business activity to map the*

*cash seized as being having a nexus to its so claimed business activity. Therefore there is no evidence on record but for the finding of the Assessing Officer and hence the addition is confirmed accordingly. In view of the above, ground no. 2, 3 and 8 are dismissed accordingly.*

*In the ground no. 4, the appellant claimed that sufficient opportunity was not provided by the Assessing Officer. The appellant claimed that the hearing date was fixed on 25.06.2021 but the assessment order was passed on 22.06.2021. It is observed from the assessment order that the Assessing Officer had mentioned that the show cause notice issued on 21.05.2021 with Date of hearing mentioned as 25.05.2021, however date of hearing was inadvertently written as 25.06.2021 in the body of the notice. Further, the Assessing Officer had issued one more show cause notice on 28.05.2021 with date of hearing on 01.06.2021. The appellant did not respond to this show cause notice. With regard, to the show cause notice dated 21.05.2021, in the subject area, "Hearing Date and Time" was clearly mentioned as 25/05/2021 11:30 AM. However, in the body of the said notice, the date was mentioned as 25.06.2021. In case of the ambiguity as to the date of hearing, the appellant should have responded to the Assessing Officer about the same, which was not done by the appellant. Further, the appellant had not filed any response or adjournment request to the show cause notice issued on 28.05.2021. The appellant has not even complied to the notice during appeal to avail any opportunity in case of any grievance, the appellant is merely trying to find an escape route to get relief, the appellant is non-compliant and sufficient opportunities have been given in this process In view of the above, the ground no. 4 is dismissed.*

*The ground no.4 and 7 pertain to invoking of provisions of Section 69A and taxing the addition u/s. 115BBE 'of the Act. In this regard, the provisions of Section 69A are reproduced as under:*

*69A. "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of 1Ju bullion, jewellery or other valuable article mazi be deemed to be the income of the assessee for such financial year."*

*In the instant case, the appellant did not furnish any evidence to substantiate the sources for cash of Rs.11,83,000/- found during the course of Police check. As the entire cash of Rs.11,83,000/- stands unexplained, the Assessing Officer has rightly invoked the provisions of Section 69A of the IT Act.*

*The Section 115BBE is reproduced as under:*

*"115BBE.f(1) Where the total income of an assessee,—*

- a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 691) and reflected in the return of income furnished under section 139; or*
- b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of—*
  - i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and*
  - ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause N.]*

*(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance for set off of any loss] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) fond clause (b)) of sub-section (1).1"*

*In the present case, the Assessing Officer has determined the addition u/s 69A and taxability u/s 115BBE and therefore, the applicability of the Section 115BBE(1)(b) is valid. In view of the above discussion, the ground no.4 and 7 are dismissed.*

*With regard to ground no. 6, the appellant contended that the Assessing Officer erred in not giving the notice u/s. 153A. It is relevant to note that the Section 153A talks about issuance of notice in respect of the assessment years preceding the previous year in which the search was conducted and it does not include the year in which the search was conducted. In this regard, the relevant extract of Section 153A are as below:*

*"Assessment in case of search or requisition.*

*153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 221but on or before the 31st day of March, 20211, the Assessing Officer shall—*

(a) *issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

(b) *assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :*

*In the instant case, AY 2019-20 pertains to the year in which the requisition u/s. 132A was made and does not fall in the period specified in the Section 153A of the IT Act. Therefore, the claim of the appellant is incorrect and the ground no. 6 is dismissed accordingly.*

*The ground no. 1 and 9 are general in nature and need no separate adjudication.*

*To sum up the appeal is dismissed on account of non-prosecution and on merits.”*

8. During the course of hearing, despite the notice sent by the Registry through post as well as e-mail, none appeared on behalf of the assessee even during the course of hearing before us. As such, the Tribunal was left with no other option but to hear the appeal on the basis of material available on record. I have heard the rival contentions of both the parties. The assessee was not present before the Id.CIT(A) in the appellate proceedings and has not filed any document to substantiate his case before the Assessing Officer wherein the assessee has submitted that the income of Rs.10,03,000/- were from the income of other sources. No evidence has been filed either before the Assessing Officer or before the Id.CIT(A). In light of the above, though, invariably the appeal of the assessee is required to be dismissed on account of non-furnishing of documents, however, considering the totality of the facts

and circumstances, one more opportunity is granted to the assessee to appear and contest the case before the ld.CIT(A). Hence, I remand back the appeal to the file of ld.CIT(A) with a liberty to grant one more opportunity to the assessee to prove his case. On the date of hearing fix by the ld.CIT(A), the assessee shall file all the documents in support of his case. In case, the assessee failed to file any documents in support of his case, ld.CIT(A) shall decide the matter in accordance with the law. Accordingly, the appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 17<sup>th</sup> January, 2023.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 17<sup>th</sup> January, 2023.  
***TYNM/sps***

Copy to:

S.No	Addresses
1	Vishal Jain, 14-3-62, Goshamahal, Joshiwadi, Hyderabad. – 500012.
2	Asst. Commissioner of Income Tax, Central Circle – 3(4), Hyderabad.
3	Commissioner of Income Tax (Appeals) – 11, Hyderabad.
4	Pr.CIT (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*