

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

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.655/Hyd/2022		
Assessment Year: 2017-18		
Sree Aditya Homes, Hyderabad. PAN : AAMCS1829G. (Appellant)	Vs.	The Income Tax Officer, Ward 3(3), Hyderabad. (Respondent)
Assessee by:		Shri A. Kiran Manohar
Revenue by:		Ms. Reema Yadav.
Date of hearing:		19.01.2023
Date of pronouncement:		19.01.2023

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dt.28.09.2022 invoking proceedings under section 144 of the Income Tax Act, 1961 (in short, “the Act”).

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

“1. The order of the NFAC / Commissioner of Income- Tax (Appeals) is erroneous both in law and on facts of the case.

2. The order of the NFAC/ Commissioner of Income- Tax (Appeals) erred in completing the appellate order ex-parte without providing proper opportunity on 28.09.2022. when the appellant sought for adjournment which was granted upto 28.09.2022.

3. The Learned NFAC/ Commissioner of Income-Tax (Appeals) erred in upholding the order of assessment he ought to have considered the fact that there were sufficient sources for depositing the amount into bank account and the said amount cannot be considered as unexplained.

4. The Learned NFAC / Commissioner of Income-Tax (Appeals) erred in adding the amount of Rs.21,75,000/- as unexplained money u/s 69A of the I.T Act when the appellant possessed the required sources.

5. The Learned NFAC / Commissioner of Income-Tax (Appeals) erred in treating the assessee as a company where as the assessee is a partnership firm.

6. Any other ground that may be urged at the time of hearing.”

3. Facts of the case, in brief, are that the assessee being a partnership firm did not file return of income. Noticing the same, a notice u/s 142(1) of the Act was issued to the assessee on 19.02.2018 by way of mail calling for the return of income. However, assessee did not file return of income within the stipulated period. Hence, the Assessing Officer had proposed to complete the assessment u/s 144(1)(b) of the Act and issued show cause notice by mail on 18.09.2019 calling information about the sources for the cash deposits made during the F.Y. 2016-17. Assessee has not chosen to reply for the same, faced with this

situation, Assessing Officer had completed the assessment u/s 144 of the Act inter alia by making an addition of Rs.21,75,000/- u/s 69A of the Act.

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

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

6. Before us, Id. AR had submitted that assessee had opened bank account on 02.12.2016, however, the firm was in existence from 12.04.2007. It is also the case of the assessee that one of the partner of the assessee was having the cash in hand and our attention was drawn to page 28 of the paper book. Based on the said document, it was argued that assessee was having sufficient amount through its partner for its disposal. It is also the case of assessee that the partner namely, Devender Rao is also having bank account which is placed at Pages 21 to 25. However, the account placed on record does not pertain to the assessment year under consideration.

7. Per contra, the Id. DR had submitted that though the order was passed by the Assessing Officer as well as the Id.CIT(A) u/s 144 of the Act, however, from the facts which are emanating

from Para 2 of the order of the Assessing Officer, it is clear that the assessee had deposited a sum of Rs.75,000/- and Rs.9,00,000/- on 02.12.2016, Rs.9,00,000/- on 03.12.2016 and Rs.3,00,000/- on 05.12.2016. It was submitted that it is abnormal for the assessee to open a new account during the demonetization period when various accounts of its partners and other partnership firm were already available for the purpose of depositing the cash. It was submitted that the entire act of the assessee is against human probabilities and human conduct, and it is expected from a prudent person to deposit the amount in the bank account already opened and the assessee or its partner would not resort to open a fresh account and deposit such huge amount in its bank account.

8. On a pointed query, ld. DR had also submitted that the assessee was non-filer, despite it was registered on 12.04.2007. Further, no business was shown to have been carried out and transacted by the firm from 2007 to 2016 and therefore, it cannot be said that the cash so deposited during the demonetization period was available with the assessee on account of previous business transactions. It was submitted by the ld. DR that the assessee was having all the avenues / opportunities to file the documents and substantiate its claim before the ld.CIT(A), however assessee failed to file the explanation either before the Assessing Officer or before the ld.CIT(A).

9. We have heard the rival submissions and perused the material on record. The Assessing Officer in Para 5 and 6 recorded the findings and was called upon to submit his response. However, despite the specific direction of the Assessing Officer, the assessee has neither filed the return in response to the notice nor filed any information before the Assessing Officer. The Assessing Officer in Para 9.2 had recorded the following facts.

“9.2 In the present case, as the assessee has not furnished any information with regard to nature and sources for the credits in the bank account. The assessee has also not furnished any information with regard to maintenance of books of accounts. In these circumstances, it is to be considered that the assessee-company has not maintained any books of accounts. In such a situation, the provisions of section 69A are clearly applicable. The applicability of provisions of section 69A to the facts of the present case is supported by the following case laws.

(1) Vinod Behari Jain vs. ITO: 117 ITD 220 (Del ITAT)

(2) ITO vs. Naveen Kumar Agarwal: 25 SOT 253 (Del ITAT)

(3) Smt. Renu Agarwal vs. ITO : 51 taxmann.com 207 (Agra ITAT).”

10. The assessee carried the matter before the ld.CIT(A), belatedly, however, the ld.CIT(A) had condoned the delay in filing the appeal. Thereafter, the ld.CIT(A) had granted as many as five opportunities to the assessee to file the reply which was mentioned in Para 6 of the order of ld.CIT(A) to the following effect :

“6. During the course of appellate proceedings, opportunity of being heard was given by this office notices dated 13.01.2021, 06.05.2022, 20.06.2022, 23.08.2022 and 23.09.2022. However, there is no response. The appellant has thus failed to avail the opportunities provided by this office to furnish explanation/submission in support of its contentions. In view of the said non-submission of explanation, the appeal is decided on the facts and material available on record assuming that the appellant has nothing to submit in the matter.

11. However despite receipt of notices, the assessee failed to furnish any explanation to substantiate the deposit of the amount made in the bank account, which was opened by it on 02.12.2016. Having faced with the above situation, Id.CIT(A) / NFAC had passed an order confirming the addition made by the Assessing Officer. The finding of the Id.CIT(A) is mentioned in Para 7.3 which is to the following effect :

7.3. During the course of appellate proceedings, the appellant was provided many opportunities as enumerated above. However, the appellant has remained non-compliant. No material facts have been brought on record in support of the grounds of appeal or to rebut the finding of the AO. In the statement of facts the appellant had submitted that one of the partners is also a partner of Shri Ram Constructions and the amount withdrawn from the said firm is also deposited in the bank account of Sree Aditya Homes. Separate accounts were maintained for Sree Aditya Homes and the appellant was under the bonafide impression that no return of income need be filed as there is no source of income. However, the contention of the appellant remains unsubstantiated.

There remains no doubt that statute has cast upon the appellant duty to explain the source of deposits/income for the assessment year under consideration but in the instant case appellant failed to discharge the above onus. The appellant has to establish the source of the deposit with submission / evidences, which it has failed to do. Considering the above factual matrix of the case, I am of the considered view that provisions of 69A are clearly found to be applicable in the case. The appellant inspite of being given ample opportunities during assessment and appellate proceedings, failed to offer any explanation about the nature and source of the deposits with documentary evidence. In view of the above facts, I do not find any reason to interfere with the order of the AO. Hence, addition of 21,75,000/- u/s.69A on account of Unexplained deposits in bank account made by the AO, is confirmed. Accordingly, all the grounds of appeal taken by the appellant are dismissed.

12. In my view, for the purposes of proving the case by the assessee, it is essential that there the assessee had been able to explain by way of cogent evidence substantiating the credit entry in its books of accounts / bank account. In the present case, the assessee had failed to furnish any explanation, explaining the source of money deposited in the bank on various dates. In the present case, during the demonetization, the account was opened on 02.12.2016 and on the said date and thereafter on 02.12.2016, 03.12.2016 and 05.12.2016, the assessee had deposited an amount of Rs.21,75,000/-. In my view, the assessee was not able to explain the source of investment made and discharge its onus as contemplated u/s 69A of the Act. As the assessee failed to discharge his onus and prove to the satisfaction of the Assessing Officer that the amount deposited in the bank account was from known sources, therefore, assessee do not deserve any indulgence from the Tribunal. It is a fact that in the present case, the conduct of the assessee clearly shows that the assessee was not vigilant and compliant before the Assessing Officer as well as the Id.CIT(A) in so much as so, the assessee had failed to file the return of income in reply to the notice u/s 142(1) of the Act and also failed to file any supporting documents. In view of the foregoing reasoning, I do not find any merit in the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed.

13. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 19th January, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 19th January, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Sree Aditya Homes, P.No.9, Main Road, Narapally, Ghatkesar, Ranga Reddy District, Telangana - 501 301.
2	Income Tax Officer, Ward 3(3), Hyderabad.
3	Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order