आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 426/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2011-12)

Pemmasani Naveen Kumar Rep. by P. Ashwin Kumar, GPA Holder, Govardhanagiri Pichatur (M), Chittoor (AP) [PAN No. BOTPN2865L]	Vs.	Income Tax Officer, Ward-2(2), Tirupati
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri Sashank Dundu, AR
राजस्व द्वारा / Revenue by: Shri A.P.Babu, DR

सुनवाई की तारीख/Date of hearing: 01/02/2023
घोषणा की तारीख/Pronouncement on: 07/02/2023

आदेश / **ORDER**

Aggrieved by the order dated 20/01/2022 passed by the learned Commissioner of Income Tax (Appeals), Delhi-42 ("Ld. CIT(A)"), in the case of one Pemmasani Naveen Kumar, represented by P. Ashwin Kumar, GPA Holder ("the assessee") for the assessment year 2011-12, assessee preferred this appeal, challenging the service of notice issued under section 148 of the Income Tax Act, 1961 (for short "the Act") and also the addition made under section 68 of the Act by the learned Assessing Officer and sustained by the learned CIT(A) under section 69A of the Act.

2. Assessee preferred this appeal with a delay of 170 days. In this connection, GPA Holder of the assessee filed an affidavit, attributing the reason for delay in filing the appeal that appeal order was uploaded only to the e-mail id created for the purpose of PAN application which is not in use either by the assessee or by any of the family members. In addition, the appeal order was not received in the other mail id (AR) and the hard copy of the appeal order was also not received by the GPA holder of the assessee. Having regard to the reason assigned by the assessee to the delay, and also in view of the fact that the assessee resides at Canada and no residence as such in India, I am inclined the accept the contention of the assessee to condone the delay and proceed to hear the matter on merits.

3. Brief facts of the case are that the assessee had a joint account with his mother at State Bank of India, Tirupati branch, wherein during the assessment year 2011-12 learned Assessing Officer found credits to the tune of Rs. 23,09,900/-. According to the learned Assessing Officer, in spite of issuance of notice under section 148 and 142(1) of the Act, the assessee failed to respond and, therefore, the assessment had to be completed under section 144 r.w.s.147 of the Act and added the same under section 68 of the Act. Assessee obtained PAN on 22/02/2018 for the purpose of filing of the appeal and, therefore, he filed appeal with a delay. Though the CIT(A) declined to condone the delay, nevertheless he adverted to the merits of the case and disposed of on merits also.

4. According to the learned CIT(A), assessee failed to deny the fact that he does not own any agricultural land and the agricultural land of 24 acres belongs to his family members and also that the money was given to him by the family members by way of gift, loan, etc. In these circumstances, learned CIT(A) dis-believed the contention of the assessee that the money does not belong to him, but it belongs to his mother, which was derived from agricultural operations. Learned CIT(A), however, was of the opinion

that instead of under section 68 of the Act, learned Assessing Officer should have made the addition under section 69A of the Act.

5. Assessee is, therefore, before me in this appeal contending that at relevant time, he was only a student and for the purpose of depositing the agricultural deposits of his mother and family members, he opened a joint account with his mother at State Bank of India, Tirupati. According to him for the purpose of higher studies, he left India on 08/01/2010 and till today, he visited India only on three or four occasions for a short spell of one or two weeks and at no point of time he had any sources of income subsequent to 08/01/2010. According to him, notice under section 148 of the Act being not served on him in India because subsequent to September, 2014 till this day, he had not visited India. His grievance is that no notice was served either on his family members or by way of affixture at the address where he was last found in which case, the matter would have reached his knowledge and he would have responded to the assessment proceedings. He, therefore contends that there was no proper notice under section 148 of the Act which vitiates the entire proceedings. Apart from this his contention is that the amount lying on the joint account is attributed to the family members or to himself or both but in any event he had no source of income at that time and more particularly on the day of deposit of Rs. 20 lakhs in the account, he was not in India, such income cannot be attributed to any source in India. For these reasons, he prays that the addition cannot be sustained, it has to be deleted.

6. Per contra, it is the submissions of the learned DR that the notice issued to proper address and with postage pre-paid must be presumed to have been served properly and, therefore, merely because it is not served on the person, it cannot be said that there is no proper service. He further submitted that till 08/01/2010 the assessee was in India and, therefore, it is for the assessee to explain the deposits with cogent evidence, in the

absence of which, the authorities are justified in making addition and sustaining the same.

7. I have gone through the record in the light of the submissions made on either side. Insofar as the facts contended by the assessee that he left for Canada on 08/01/2010 for further studies and subsequently, he returned to India only on three or four occasions that too for a short spell of one or two weeks, so no chance of any income accruing to him in India, his mother is an illiterate woman and the other family members are likely to make the deposits in the account, which are derived from the agricultural proceeds are concerned, those are verifiable facts. There is force in the submissions of the assessee that the deposits could be attributed to assessee himself or to the family members; that in the event of such deposits to be attributed to assessee, such income is not sourced in India and, therefore, no addition could be made. Otherwise, if the said receipt belongs to the other family members, assessee cannot be fastened with any liability. On either of the cases, assessee cannot be fastened with any liability with income tax.

8. I find force in the further submission of the assessee that in the case of notice served either on the immediate family members or by way of affixture at the premises where the assessee last resided, he would have naturally come to know of the proceedings and, therefore, assessee's conviction that there is no proper notice under section 148 of the Act. I also find substance on the submissions made on behalf of the assessee that if the learned Assessing Officer is of the opinion that the receipts in question in the bank belong to the assessee, then, it is for the learned Assessing Officer to verify whether on that particular day, the assessee had any source in India. If the learned Assessing Officer is of the opinion that such a receipt is relatable to any of the family members, then, it is not possible to fasten the assessee with any tax liability under the Act. So, it is

now imperative for the learned Assessing Officer to verify the receipt relatable either to the assessee or to the family members.

9. At this juncture, I deem it just and proper to record the submissions made on behalf of the assessee that the particular receipt of Rs. 20 lakhs on 09/02/2011 was deposited by the family members for the purpose of securing bank security by making such deposit for the further studies of his brother, who is the GPA holder on behalf of the assessee. This fact needs to be verified by the learned Assessing Officer and if the learned Assessing Officer is satisfied with this particular receipt, then, there will be no issue with regard to the balance of the amount of Rs. 3 lakhs and odd which could safely be attributed to the agricultural proceeds.

10. With this view of the matter, I set aside the impugned orders and remand the issue to the file of the learned Assessing Officer for verification of the service of notice issued under section 148 of the Act whether in person or by way of affixture also the issue relating the source of deposit of Rs. 20 lakhs and whether it is relatable to the assessee's income sourced in India. With this view of the matter, I direct the learned Assessing Officer to decide the issue afresh, affording an opportunity to the assessee to produce whatever the material he desires in support of his contentions.

11. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 7th day of February, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 07/02/2023

TNMM

Copy forwarded to:

1. P. Ashwin Kumar, GPA Holder of Pemmasani Naveen Kumar, C/o. Katrapati & Associates, 1-1-298/2/B/3, 1st Floor, Ashok Nagar, Street No. 1, Hyderabad.
2. Income Tax Officer, Ward-2(2), Tirupati.
3. CIT(A), Delhi-42.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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