

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. 94/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Sri Sunil Kumar Agarwal Kishan, Vs. ADIT (Int Taxn)-2,
Morrisville, USA Hyderabad
[PAN No. DTGPK4900P]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri P. Vinod, AR
राजस्व द्वारा / Revenue by: Shri Ajith Kumar Laskar, DR

सुनवाई की तारीख/Date of hearing: 16/02/2023
घोषणा की तारीख/Pronouncement on: 21/02/2023

आदेश / ORDER

Aggrieved by the order dated 27/09/2022 passed by the learned Commissioner of Income Tax (Appeals), Hyderabad-10 ("Ld. CIT(A)"), in the case of one Sunil Kumar Agarwal Kishan ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Briefly stated relevant facts are that the assessee is an individual, is a non-resident, working abroad and a non-filer of income tax returns for the assessment year 2017-18. During the course of assessment proceedings, the learned Assessing Officer observed that during the demonetization period, the assessee deposited an amount of Rs. 13,09,000/- in his bank accounts, maintained with ICICI Bank and SBI. According to the learned Assessing Officer assessee did not respond to the

notice under section 142(1) of the Income Tax Act, 1961 ('the Act') and failed to submit return of income for the assessment year 2017-18, and, therefore, he had no option but to complete the assessment under section 144 of the Act by making an addition of Rs. 13,09,000/- towards unexplained income under section 69A of the Act. He passed the order accordingly.

3. Aggrieved by the said action of learned Assessing Officer, assessee preferred appeal before the learned CIT(A) and submitted that he did not receive any notices said to have been issued by the learned Assessing Officer.

4. In the impugned order, learned CIT(A) observed that the assessee did not comply with any of the notices issued on various dates viz., 06/07/2021, 13/09/2021, 18/10/2021, 22/07/2022 and 05/09/2022. After careful consideration of the facts, learned CIT(A) dismissed the appeal of assessee stating that in spite of repeated and sufficient opportunities given, the assessee did not file any details/evidences in support of his claim.

5. Aggrieved, assessee preferred appeal before the Tribunal stating that the learned CIT(A) failed to appreciate that in response to notices dated 06/07/2021, 13/09/2021 and 18/10/2021, the assessee filed petitions to grant time, and insofar as the other notices are concerned, the assessee never received the same.

6. Per contra, learned DR submitted that the impugned order speaks that five notices were issued to the assessee and the assessee failed to avail the opportunity granted to him, and, therefore, the assessee is not entitled to seek any further opportunity.

7. I have gone through the record in the light of the submissions made on either side. It could be seen from the record that the case of the assessee before the learned CIT(A) was that assessee is a non-resident, working abroad, he advanced certain amounts to his friends and relatives

out of the money earned by him after subjecting the same to tax, which he collected during his visit to India during the year 2016 and deposited in the bank.

8. According to the assessee, though he received three notices issued by the learned CIT(A) and sought time, he did not receive any notice subsequent to 18/10/2021. Assessee seeks an opportunity to submit his case before the authorities below and he is ready to co-operate with the authorities to get the matter disposed of on merits. Learned AR submits that assessee will not stand to gain by this exercise because if ultimately he is found liable to pay the tax, he would be fastened with the interest liability for this period also.

9. Recording the submissions of the learned AR, I am inclined to accept the request made on behalf of the assessee to give an opportunity to the assessee to prosecute this case diligently before the learned Assessing Officer. The impugned orders are, therefore, set aside and the issues is restored to the file of the learned Assessing Officer to consider the same afresh after affording an opportunity to the assessing to submit the material at the request, and take a view according to law. It is very clear that it is the last opportunity the assessee to get the matter disposed of on merits and no further opportunity be given to him. Learned Assessing Officer will issue the notices and other communication to the address given by the assessee in form 36, namely, Mr. Sunil Kumar Agarwal Kishan, Flat No. 610, 6th floor, Babukhan Estate, Basheerbagh, Hyderabad-500001.

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

Order pronounced in the open court on this the 21st day of February, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 21/02/2023
TNMM

Copy forwarded to:

1. Shri Sunil Kumar Agarwal Kishan, C/o. Flat No. 610, 6th Floor, Babukhan Estate, Basheerbagh, Hyderabad.
2. ADIT(Int Taxn)-2, Hyderabad.
3. CIT(IT&TP), Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD