

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

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.473/Hyd/2022		
Assessment Year: 2017-18		
Smt.Nemuri Jana Bai Hyderabad PAN:AJFPN1362C (Appellant)	Vs.	Income Tax Officer Ward 7(1) Hyderabad (Respondent)
Assessee by:	Shri T. Chaitanya Kumar	
Revenue by:	Shri Kumar Aditya for Shri KPRR Murthy, CIT(DR)	
Date of hearing:	23/02/2023	
Date of pronouncement:	07/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 25.07.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT (A)-NFAC in sustaining the addition of Rs.1,66,31,100/- made by the Assessing Officer u/s 69A of the I.T. Act being unexplained money deposited in the Bank A/c and levy of interest of Rs.37,25,775/- u/s 234A of the I.T. Act.

3. Facts of the case, in brief, are that the assessee is an individual and has not filed her return of income for the impugned A.Y. On the basis of the data analytics and information gathered during the phase of online verification under 'Operation Clean Money', the I.T. Department gathered a list of assesseees who had deposited substantial cash in Bank A/cs during the demonetization period but have not filed the return of income for the A.Y 2017-18. As per the data available it was seen that the assessee has made cash deposit of Rs.3,19,050/- in the Bank A/c maintained vide A/c No.62276591961 with SBI Vijayanagar Colony Branch, Hyderabad during the demonetization period. Since the assessee has not filed the return of income for the impugned A.Y, the Assessing Officer issued notice u/s 142(1) on 14.12.2017 fixing the date of hearing on 13.01.2018. Since there was no response from the side of the assessee, the Assessing Officer issued two reminders on 16.5.2019 and 8.7.2019 respectively and thereafter issued two show-cause notices on 9.9.2019 and 16.11.2019 respectively. Since there was no response from the side of the assessee, the Assessing Officer issued summon u/s 131 of the I.T. Act on 22.11.2019 asking the assessee to appear before him on 27.11.2019. However, again there was no response. The Assessing Officer, therefore, proceeded to complete the assessment on the basis of material available on record. He noted that the total credits in the above mentioned Bank A/c for the period from 1.4.2016 to 31.3.2017 is Rs.1,66,31,100/-. Since the assessee did not appear before the Assessing Officer to explain the nature and source of such cash deposits in the Bank A/c and did not file return of income nor appeared before him in compliance to the statutory notices issued, the Assessing Officer completed the assessment u/s 144 of the I.T. Act, 1961 determining the total income of the assessee

at Rs.1,66,31,100/- by making addition of the same u/s 69A of the I.T. Act.

4. Before the CIT (A) NFAC, it was argued that the assessee is a partner of M/s Sri Balaji Restaurant & Bar. It was submitted that the cash deposited during financial year 2016-17 belongs to the firm and the cash deposited in the said Bank A/c is out of the cash sales of the firm and available cash balance which was duly admitted by the firm in the return of income filed for the A.Y 2017-18. It was further submitted that the cash so deposited in the above mentioned Bank A/c does not belong to the assessee and therefore, the addition made by the Assessing Officer is not correct.

5. However, the CIT (A)-NFAC was not satisfied with the arguments advanced by the assessee. It was noted that despite issuance of notice again and again repeatedly asking the assessee to furnish the details, the assessee failed to substantiate with any documentary evidence to show that the cash so deposited in the Bank A/c in fact belongs to Sri Balaji Restaurant & Bar. The CIT (A)-NFAC noted that Sri Balaji Restaurant & Bar has reported 'nil' cash deposit which is surprising and goes contrary to the assertions made by the assessee. The CIT (A)NFAC accordingly sustained the addition made by the Assessing Officer.

6. Aggrieved with such order of the CIT (A)NFAC, the assessee is in appeal before the Tribunal.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and CIT (A)-NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.1,66,31,000/- u/s 69A of the Act as unexplained money being the cash deposited in the A/c maintained with SBI on the ground that the assessee neither filed the return of income nor explained the source of such cash deposited in the Bank A/c maintained by her despite sufficient opportunities granted. We find before the CIT (A)NFAC, the assessee submitted that the Bank A/c belongs to the partnership firm namely Balaji Restaurant & Bar and the cash so deposited in the Bank A/c belongs to the partnership firm which is out of the sale proceeds and the available cash. We find the CIT (A)NFAC did not accept the contention of the assessee on the ground that no documentary evidence were furnished by the assessee to substantiate that the said cash deposited in fact belongs to Sri Balaji Restaurant & Bar especially when the Bank A/c mentions the PAN of the assessee. It is the submission of the learned Counsel for the assessee that Sri Balaji Restaurant & Bar filed its return of income declaring total income of Rs.4,56,059/- and in the return of income, copy of which is placed at Pages 23 to 34 of the Paper Book, the said Bank A/c has been shown as belonging to the firm. It is also the submission of the learned Counsel for the assessee that in the balance sheet as on 31.3.2017, the closing balance of Rs.2,03,789/- of the said bank a/c has been shown, copy of which is placed at page 27 of the Paper Book.

8. We find some force in the argument of the learned Counsel for the assessee. A perusal of the balance sheet of Sri Balaji Restaurant & Bar, copy of which is placed at page 27 of the Paper Book, clearly shows the above mentioned Bank A/c and the closing balance has been shown at Rs.2,03,789/- which is as under:

M/s Sri Balaji Restaurant & Bar
H.No.12-1-630/1, Syed Ali Guda, Asifnagar, Hyderabad-500028

BALANCE SHEET AS ON 31.03.2017			
LIABILITIES	Amount	ASSETS	AMOUNT
Capital A/c		Fixed Assets	
N.Janabai Capital Account	109651	As per Schedule	303,110
N.Srivani Capital Account	4322856	Rental Advance	1000000
		Excise lisencc fee	835200
Other Outstanding Liabilities	265009	TCS-2017-18	142166
Provision for Tax	136815	Closing stock-Liquor	1665320
		Closing stock-Provisions	38615
		Bank Balance	
		SBI_1961	203789
		BOM_3988	13752
		BOI_2003	612313
		Cash Balance	20066
Total	4834331	Total	4834331

For Pravalika Panda & Associates
Chartered Accountants
FRN.No: 017707S

Pravalika
Pravalika
Proprietor
M.No:239662



N. Dina
Partner

9. Similarly, in the return of income of the firm, the assessee has declared the above Bank A/c as belonging to the

Partnership Firm, the details of which is available at Page 25 of the Paper Book and which is as under:

NAME OF ASSESSEE : SRI BALAJI RESTAURANT & BAR		A.Y. 2017-2018	PAN : ABJFS0774R	Code : F-2
NEMURI JANABHAI	5.00	5.00	Nil	0
Total			0	0

Details of Depreciation

Particulars	Rate	Opening	More Than 180 Days	Less Than 180 Days	Total	Sales	Sales Less Than 180 days	Balance	Depreciation (Short Gain)	WDV Closing
Furniture and Fitting including electric Fitting	10%	224278	0	0	224278	0	0	224278	22428	201850
Kitchenware	15%	33105	0	0	33105	0	0	33105	4966	28139
generator	15%	86024	0	0	86024	0	0	86024	12904	73120
Total		343407	0	0	343407	0	0	343407	40298	303109

Details of T.C.S.(26 AS Import Date:29 Oct 2017)


S.No	Name of the Collector	Tax Deduction and Tax Collection Account Number of the Collector	Total tax collected	Amount out of (4) claimed during the year
1	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	8161	8161
2	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	8029	8029
3	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	10153	10153
4	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	9790	9790
5	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	11936	11936
6	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	8526	8526
7	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	12556	12556
8	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	14445	14445
9	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	13486	13486
10	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	14442	14442
11	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	18692	18692
12	TSBCL IMFL RANGA REDDY- III DEPOT	HYDT05960D	11950	11950
	Sub Total		142166	142166
	Total		142166	142166

Bank Account Detail

S. No.	Bank	Address	Account No	IFSC Code	Type	Cash Deposited
1	State Bank of Hyderabad	vijayanagar colony, hyderabad	62276591961	SBHY0021489	Current(Primary)	0
2	Bank of Maharashtra	SECUNDERABAD	60174253988	MAHB0000387	Current	0

Maximum Allowable Salary to Partners

Profit Before Remuneration	456049
Maximum Allowable Salary to Partners	
1. 90% On First 3,00,000 of Book Profit	270000
2. 60% of the rest (156049 x 0.6)	93629
Maximum Allowable Salary to Partners	363629


Signature
(N. SRIVANI)
For SRI BALAJI RESTAURANT & BAR

CompuTax : F-2 [SRI BALAJI RESTAURANT & BAR]

10. Since the assessee has not filed the relevant details before the CIT (A) NFAC and the assessment was completed u/s 144 of the I.T. Act, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant an opportunity to the assessee to substantiate her case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and substantiate her case by filing the requisite details without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 7th March, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
--	--

Hyderabad, dated 7th March, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Nemuri Jana Bai C/o T, Chaitanya Kumar, Advocate, Flat No.102, Gowri Apartments, Urdu Lane, Himayathnagar, Hyderabad
2	Income Tax Officer Ward 7(1) Hyderabad
3	CIT-NFAC, Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order