

**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.600/Hyd/2022		
Assessment Year: 2019-2020		
Ajay Kumar Agarwal, Adilabad. PAN : ABFPA5795A.	Vs.	Deputy Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Siddharth Mantri, CA	
Revenue by:	Shri K.P.R.R. Murthy.	
Date of hearing:	15.02.2023	
Date of pronouncement:	17.02.2023	

**ORDER**

**Per Laliet Kumar, J.M.**

The appeal of the assessee for A.Y. 2019-2020 arises from the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dated 01.09.2022 involving proceedings under section 153A of the Income Tax Act, 1961 (in short, “the Act”) raising the following grounds :

*“1.The order of the learned Commissioner of Income Tax (Appeals) - 11, Hyderabad [Ld. CIT(A)] in sustaining the levy of tax on the cash found and seized of 6,20,000 u/s 69A of the Act is wholly unsustainable both on facts and in law.*

*2.The Ld. CIT(A) erred in confirming the levy of tax on the cash found and seized of 6,20,000 under section 69A of the Act without considering the fact that the cash belongs to the Assessee's client, 'M/S Ambika Steel Distributors, for which M/S Ambika Steel Distributors had accepted at the time of cash seizure.*

*3.Without prejudice to ground no.2, The Ld. CIT(A) failed to appreciate the fact that merely because the explanation provided by the Appellant does not meet the acceptance of the Ld.AO cannot be a ground for addition when there is no evidence to the contrary. Therefore, the Ld. CIT(A) erred in confirming the addition of the cash found of 6,20,000/- under section 69A of the Act.*

*4.Without prejudice to the above grounds, The Ld. CIT(A) failed to appreciate the fact that the order of the Ld.AO in adding 6,20,000/- under section 69A of the Act without providing an opportunity to the Appellant for its rebuttal is in violation of principles of natural justice and fair play. Therefore the assessment is void ab intio and must be annulled.*

*5.The Ld. CIT(A) has erred in passing an ex-parte order without providing reasonable opportunity of being heard to the appellant hence the same being against the principles of natural justice and law requires to be cancelled.”*

2. The brief facts of the case are that the assessee is an individual who filed his return of income for AY 2019-20 on 24.08.2019 admitting total income of Rs. 6,66,800/-. During the period of General Elections 2019, on 20.02.2019, the assessee was found to be in possession of cash of Rs. 6,20,000/- during Police Check by Dhone Rural PS. Subsequently, the said cash was requisitioned by the Investigation Wing u/s. 132A of the IT Act. Further, notice u/s. 153A was issued to the assessee on

10.03.2021 and in response to the same, the assessee filed return of income admitting total income at Rs. 6,66,800/- after claiming deduction under Chapter VIA of Rs. 1,30,000/-. Thus, assessment u/s. 153A of the IT Act was completed 25.09.2021 by making addition of Rs. 6,20,000/- being the cash found with the assessee and disallowance of Chapter-VIA deductions of Rs. 1,03,894/- thereby assessing total income of the assessee at Rs. 13,90,690/-.

3. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who dismissed the appeal of assessee on account of non-prosecution and on merits.

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

5. Before us, Id.AR submitted that the learned lower authorities have decided the issue without considering the explanation offered by the assessee and further the assessee failed to appear due to unavoidable circumstances. Ld.AR further submitted that as the assessee has sufficient cause from not putting in appearance before the Id.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication.

6. Per contra, the Id.DR has raised objection for remanding the matter back to the file of lower authorities.

7. We have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by Id.CIT(A), we found that Id.CIT(A) passed an exparte order confirming the action of the Assessing Officer, as the assessee failed to appear despite granting of sufficient opportunities. In para 6.1. of the Id.CIT(A)'s order, clearly mentioned the details of various opportunities granted to the assessee. Further, admittedly, the dates between 16.10.2021 to June 2022 falls within the Covid period. Hon'ble apex court's recent order dt.23.09.2021 in Miscellaneous Application No.665/221 in SMW(C) No.3/2020 in IN RECOGNIZANCE FOR EXTENSION OF LIMITATION has already excluded time period between 15th March, 2020 till 2<sup>nd</sup> October, 2021 for the purpose of computing all limitations. Further Hon'ble Supreme Court in Cognizance for Extension of Limitation, reported in [2022] 134 taxmann.com 307 (SC) had held as under:-

*“ Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions :*

*I. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*II. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.*

*III. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual*

*balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.*

*IV. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

Hence delay in pursuing the appeal before ld.CIT(A) is required to be condoned .

On perusal of the order of ld.CIT(A) on merits, we found that the ld.CIT(A) has failed to consider the explanation given by the assessee that being an executive of M/s.Ambika Steel Distributors, he was carrying the said amount for making the payments to labour, work contractors, etc. for the godown construction that was taking place at Amakathadu Village which was near toll gate and that the detailed sources of cash was mentioned in the letter addressed to the Deputy Director of Investigation, Unit 1(1), Hyderabad dated 6-Mar-2019 by Ambika Steel Distributors. As the explanation of the assessee has not been considered by the ld.CIT(A) and the order of Assessing Officer had been confirmed without appreciating the record, we deem it appropriate to remand back the matter to the file of ld.CIT(A) with a direction to consider the explanation offered by the assessee and

the documents placed on record before us after affording sufficient opportunities of hearing to the assessee in accordance with the law.

8. The assessee shall be at liberty to file documents, if any, as required for proving his case and the Id.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication. The assessee is directed to appear before the Id.CIT(A) and cooperate in early hearing of the appeal.

9. Further, the appeal is remanded back with the above directions subject to costs of Rs.2,000/- (Rupees Two Thousand only) in favour of Prime Minister National Relief Fund which shall be payable within one month or from the date of receipt of this order or whichever is earlier. Thus, the grounds of the assessee are allowed for statistical purposes.

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

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

<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 17<sup>th</sup> February, 2023.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Ajay Kumar Agarwal, C/o. Madhu Mantri & Associates, C-103, Mathrushree Apartments, 3-5-873, Hyderguda, Hyderabad – 500029.
2	Deputy Commissioner of Income Tax, Central Circle – 1(3), Hyderabad – 500 004.
3	Pr.CIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*