

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.583/Hyd/2022		
Assessment Year: 2017-18		
Union Petrol Service, Hyderabad. PAN : AABFU9342E.	Vs.	Income Tax Officer, Ward – 8(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri Mohd. Afzal, Advocate.
Revenue by:		Shri KPRR Murthy.
Date of hearing:		22.02.2023
Date of pronouncement:		22.02.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, on the following raised grounds :

“1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner erred in confirming the order of the Assessing Officer wherein, the credits amounting to Rs.7,56,98,381/- in the bank account of individual are considered as income of the firm whereas, the proprietary concern admitted a turnover of Rs.8,82,12,007/-from sale of petroleum products and filed return of income u/s 139(1).

3. The learned Commissioner erred in confirming the order of the Assessing Officer wherein, the income is assessed at Rs.7,56,98,381/-, which is the aggregation of credits in the Bank account whereas, the assessee as an individual (proprietary concern) offered the turnover at Rs.8,82,12,007/- considering the same Bank account.

4. The learned Commissioner erred in 4 confirming the order of the Assessing Officer in which income is assessed at Rs.7,56,98,381/- u/s 69A of the IT Act.

5. The learned Commissioner ought to have accorded one more opportunity by sending the notice by way of other than email and therefore, erred in confirming the order of the Assessing Officer in which income is assessed at Rs.7,56,98,381 /-.”

2. The brief facts of the case are that in the present case, Assessing Officer had made assessment by invoking provisions u/s 144 of the Act as assessee failed to furnish the return of income for A.Y. 2017-18 despite the receipt of the notice issued u/s 142(1) of the Act. The Assessing Officer had given several opportunities to the assessee as discernible from Para 5 of his order, wherein as many as five opportunities have been granted by the Assessing Officer. However, the assessee had failed to file any reply to the said notices. Under the said circumstances, the Assessing Officer had made an addition of Rs.7,56,98,381/-, to the income of the assessee, being the cash deposited during the demonetization period in the bank account.

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who noticed that assessee had not complied with the notices issued by the NFAC, Delhi as mentioned in Para 5 of the order. The assessee had failed to provide any reasons best known to him for non-compliance of notices and for not furnishing any evidence before the 1st appellate authority. In view of the above, the ld.CIT(A) had confirmed the addition made by the Assessing Officer.

4. Before us, it is submitted by the ld. AR for the assessee that the assessee could not appear before the lower authorities because of the reason beyond his control, however, it was submitted that the entire receipt of money shown by the assessee was in the proprietary concern and the return was filed declaring turnover of Rs.8,82,12,007/-. It was submitted that one more opportunity be granted to the assessee for the purposes of bringing the above said fact to the notice of lower authorities.

5. Per contra, ld. DR had vehemently opposed for granting opportunity to the assessee.

6. We have heard the rival contentions and perused the material available on record. Undoubtedly, it is clear from the order of the Assessing Officer as well as the ld.CIT(A), that the assessee failed to appear before the Assessing Officer as well as the ld.CIT(A) despite numerous opportunities granted by the lower authorities. Before us, reason was given by the assessee for not participating in the proceedings before the lower authorities due to misunderstanding, as the assessee was opinion that the amount had already been taxed in the proprietor firm . However, nonetheless, before us, the case of the assessee is that Proprietor Mr. Ansar Ahmed Khan has already declared turnover of Rs.8,82,12,007/- while filing the return of income as Proprietor of M/s. Union Petrol Service, Hyderabad and it is the case of the assessee before us that an amount of Rs.7,56,98,381/- which was added to the income of the assessee had been disclosed by the said Mr. Ansar Ahmed Khan, who is the Proprietor of M/s. Union Petrol Service, while filing the return of income. Therefore, the said amount cannot be taxed in the hands of Mr. Ansar Ahmed Khan, subject matter of the present assessment proceedings.

7. In our view, both are independent assessee under Income Tax Act 1961, therefore, the case is required to be examined from the point of view of whether the bank account in which the huge cash were deposited belong to the assessee before us or to Mr. Ansar Ahmed Khan, Proprietor of M/s. Union Petrol Services. In our view, the KYC of the said bank account, must have been carried out by the bank thereby bringing on record the owner of the account. From the material available on record, the assessee do not deserve any sympathy, however, considering the peculiarity of the facts, we are of the opinion that one more opportunity is required to be given to the assessee. In the light of the above, we deem it appropriate to remand back the matter to the file of Id.CIT(A) subject to cost of Rs.10,000/- (Rupees Ten Thousand only) to be deposited in the 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. The Id.CIT(A) is directed to decide the case afresh in the light of the above said observation, after affording opportunity of hearing to the assessee and after seeking remand report from the Assessing Officer.

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

Order pronounced in the Open Court on 22nd February, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd February, 2023

TYNN/sps

Copy to:

S.No	Addresses
1	Union Petrol Service, C/o. Mohd Afzal, Advocate, #402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad -04.
2	The Income Tax Officer, Ward - 8(2), Hyderabad.
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order