

आयकर अपीलिय 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.724/Hyd/2022		
Assessment Year: 2017-18		
Venkateswara Ready Mix Concrete, Tumkunta Village, RR Distt. PAN:AABCA7142D (Appellant)	Vs.	Income Tax Officer Ward 15(4) Hyderabad (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Shri Kumar Aditya for Shri K.P.R.R. Murthy, DR	
Date of hearing:	14/03/2023	
Date of pronouncement:	14/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 26.10.2022 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 ex-parte order of the CIT (A)-NFAC in confirming the action of the Assessing Officer in estimating the income of the assessee at 10% of the total sales.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of supplying ready mix

concrete to various parties on order basis. The Assessing Officer noted that the assessee has done huge cash transactions through his Bank A/c. The Assessing Officer, therefore, issued a notice u/s 142(1) on 30.11.2017 calling for the assessee to file its return of income which was duly served on the assessee. Despite expiry of the time allowed to file the return of income, the assessee did not file the return of income. The Assessing Officer, therefore, asked the assessee to explain as to why the cash deposit of Rs.1,64,93,419/- should not be treated as income from unexplained sources and assessed accordingly.

3.1 Thereafter, the A.R of the assessee appeared before the Assessing Officer and filed certain details. It was informed that due to dispute among the Partners, the returns were not filed well in time. So far as the cash deposits are concerned, it was explained that the same are out of the sale and redeposits.

3.2 The Assessing Officer on verification of the Bank statement observed that cash sales are worked out to Rs.1.13 crores and balance Rs.51.93 lakhs was explained to be redeposits. In absence of any books of account and relevant vouchers, the A.R requested the Assessing Officer to consider the difference cash deposit of Rs.51.93 lakhs as sales receipts which were not taken to receipts as he was not able to explain the same. However, the Assessing Officer was not satisfied with the arguments advanced by the A.R of the assessee and proposed profit @ 10% of the gross sales of Rs.10,35,81,682/- to which the AR of the assessee agreed. However, the request of the A.R to consider the allowance of brought forward loss of A.Y 2011-12 to 2016-17 was rejected by the Assessing Officer on the ground that the same can

be considered only after the proceedings of those years are completed. The Assessing Officer, accordingly, after rejecting the books of account, estimated the income of the assessee at 10% of the gross sales and determined the taxable income at Rs.1,03,58,168/-.

4. In appeal, the learned CIT (A) NFAC dismissed the appeal filed by the assessee on the ground that the assessee is not interested in pursuing the appeal.

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

6. The learned Counsel for the assessee drew the attention of the Bench to Para 4 of the order of the CIT (A)-NFAC and submitted that the last notice was issued by the CIT (A)-NFAC on 24.12.2020 fixing the hearing of the appeal on 6.1.2021 when the Covid situation was at its peak. He submitted that the CIT (A) NFAC passed the order on 26.10.2022 and from 6.1.2021 to 26.10.2022 no notice of hearing was given to the assessee. He submitted that in the interest of justice, the assessee should be given an opportunity to represent its case before the CIT (A) NFAC.

7. The learned DR, on the other hand, while supporting the order of the CIT (A) NFAC has no objection, if the matter is restored to the file of the CIT (A) NFAC for fresh adjudication.

8. We have heard the rival arguments made by both sides and perused the record. It is an admitted fact that despite number of opportunities granted by the office of CIT (A) NFAC before the pandemic, the assessee did not appear before the CIT (A). However, as per the order of the CIT (A) NFAC, the last notice was issued on 24.12.2020 fixing the hearing of the appeal on 6.1.2021. Thereafter, no notice of hearing was issued to the assessee and the order was passed on 26.10.2022. It is also an admitted fact that on 6.1.2021 when the last date of hearing was fixed by the CIT (A) NFAC, the pandemic was at its peak. Further, the learned CIT (A) NFAC instead of deciding the issue on merit has summarily dismissed the appeal filed by the assessee for want of prosecution. As per provisions of section 250(6) of the I.T. Act, the order of the CIT (A) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. However, in the instant case, as mentioned earlier, the learned CIT (A) NFAC has dismissed the appeal for want of prosecution and has not decided the appeal on merit. 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 CIT (A) NFAC with a direction to grant one last opportunity to the assessee to substantiate its case and decide the issue as per fact and law by passing a speaking order. The assessee is also hereby directed to appear before the CIT (A) NFAC and substantiate its case without seeking any adjournment under any pretext failing which the learned CIT (A) NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. Grounds raised by the assessee is accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court itself on 14th March, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 14th March, 2023.

Vinodan/sps

Copy to:

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1	Venkateswara Ready Mix Concrete, C/o CH Parthasarathy & Co. 1-1-298/2/B/3, 1 st Floor, Ashok Nagar, Hyderabad 500020
2	Income Tax Officer Ward 15(4) IT Towers, AC Guards, Masab Tank, Hyderabad 500004
3	CIT- Hyderabad
4	Pr. CIT, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order