

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE 'SMC' BENCH, INDORE**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
ITA No.415/Ind/2022**

Assessment Year: 2017-18

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| Sh. Abhishek Modi, 45, Tilak Nagar, Indore. PAN-AKPPM2097J | v. | ITO-2(1), Indore |
| (Appellant) | | (Respondent) |
| Assessee by: | Ashish Goyal & N.D. Patwa, ARs | |
| Respondent by: | Sh. Ashish Porwal, Sr. DR | |
| Date of hearing: | 01.03.2023 | |
| Date of pronouncement: | 23.03.2023 | |

ORDER

SHRI VIJAY PAL RAO, J.M.:

This appeal by the Assessee is directed against the order dated 13th August, 2022 of CIT(A) (National Faceless Appeal Centre, Delhi) for the Assessment Year 2018-19. The assessee has raised the following grounds:

"1. That the Id. CIT(A), NFAC was not justified in confirming the assessment order, which is bad-in-law, void ab-initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2. The Id. CIT(A), NFAC did not provide the fair opportunity to the appellant to furnish document or reply in support of the claim and confirmed the addition.

3. The Id. CIT (A) NFAC not justified in confirming the addition amounting to Rs. 29,59,750/- as undisclosed bank deposit treating the same as unaccounted income.

4. The Id. CIT (A) NFAC not justified in invoking the provisions of Section 115BBE of the Act.

5. The appellant carves leave to add, amend or modify any of the grounds of appeal.”

2. The assessee is an individual and engaged in the trading business of PVC sheet, Printing inks, printing material etc. The assessee filed his return of income on 29th March, 2018 declaring total income of Rs. 11,88,210/-. The case of the assessee was selected for scrutiny in CASS in respect of abnormal increase in the cash deposit in the bank account during the demonetization period. The AO has made an addition of Rs. 29,59,750/- on account of unexplained cash deposited in the bank account during the month of November, 2016. The assessee challenged the action of the AO before the CIT(A) however, there was no response to the various notices issued by the CIT(A) therefore, the appeal of the assessee was dismissed while passing the *ex-parte* impugned order.

3. The Learned AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee in limine without deciding the grounds raised by the assessee and particularly, the validity of the assessment order being barred by limitation as well as the addition made by the AO rejecting the explanation of source of the deposit being sales proceeds when the profit on the said turnover was accepted by the AO. He has further submitted that the applicability of Section 69A as well as higher tax rate under Section 115 BBE was also challenged before the CIT(A) but the same was not adjudicated by the CIT(A) while passing the impugned order. Thus, the Learned AR has submitted that the impugned order of the

CIT(A) may be set aside and the matter may be remanded to the record of the CIT(A) for deciding the afresh after giving the proper opportunity of hearing to the assessee.

4. On the other hand, the Ld. AR has submitted that despite eight notices issued by the CIT(A), there was no response on behalf of the assessee nor any submissions were filed in support of the appeal. Therefore, the CIT(A) was having no option but to decide the appeal of the assessee *ex-parte*. He has relied upon the orders of the authorities below.

5. Having considered the rival submissions as well as relevant material on records it is noted that the Assessing Officer has made an addition of Rs. 29,59,750/- to the return of income of Rs. 11,88,210/- declared by the assessee under Section 44AD of the Act on the turnover of Rs. 47,76,860/-. The AO calculated the average deposit of per month in the bank of the assessee by taking the total deposit of Rs. 43,17,000/- divided by 12 which comes to Rs. 3,59,750/- . The said average amount of deposit in the bank account is reduced from the total deposit of cash in the bank account during the month of November, 2016 of Rs. 34,00,000/- and the balance of Rs. 29,59,750/- was treated as deposit from undisclosed source under Section 69A of the Income Tax Act. It is pertinent to note that this addition of Rs. 29,59,750/- resulting double taxation of the income to the extent of 8% income declared by the assessee under Section 44AD on the total turnover. The AO has made the addition of

this amount of Rs. 29,59,750/- being deposit from undisclosed source to the declared income of Rs. 11,88,210/- which is declared by the assessee under Section 44AD on the total turnover. Therefore, the profit declared by the assessee under Section 44AD on this amount of Rs. 29,59,750/- has been taxed twice. While accepting the business income, the AO in fact, accepted the total turnover of the assessee otherwise, the total turnover of the assessee was required to be reduced by this amount which is treated as deposited in the bank account from undisclosed source. The assessee has raised various grounds before the CIT(A) which are reproduced in Para 3 of the impugned order as under:

“1. That in the facts and circumstances of the case, the assessment order passed is invalid, illegal, without jurisdiction, barred by limitation, void- ab- initio and therefore liable to be quashed.

2. That in the facts and circumstances of the case, the Id Assessing Officer was not justified in making an addition of Rs. 29,59,750 on account of undisclosed bank deposits treating the same as unaccounted income.

3. That in the facts and circumstances of the case, the Id Assessing Officer was not justified in applying tax rate w/s. 115BBE.

4. That in the facts and circumstances of the case, the Id Assessing Officer was not justified in levying interest u/s, 234A, 234B and 234C.

5. That in the facts and circumstances of the case, the Id. Assessing Officer was not justified in initiating penalty u/s 271AAC.

6. The appellant carves leave to add, amend or modify any grounds of appeal.”

6. Thus, the assessee has raised the jurisdictional issue of limitation and validity of the assessment order passed by the AO as well as applicability of the provisions of Section 69A r.w.s. 115BBE but the CIT(A) has not adjudicated any of these legal issues raised by the assessee and confirmed the addition made by the AO on this account in Para 6 of the impugned order as under:

"6. DECISION: I have gone through and duly considered the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant didn't furnish any documentary evidence to explain the source of cash deposit in his bank account during the F.Y. 2016-17 and thus, he has nothing to say in support of his claim.

During the appellate proceedings, the appellant has not complied for even once nor filed any written submission. In absence of the written submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. If the appellant claims that the assessment order was objectionable he should have provided supporting arguments of evidences. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

In the case of Anil Goel Vs CIT. [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through

authorized representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 ITR 577'. has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority."

Accordingly, I agree with the reasons given by the AO and confirm his action of making addition of Rs. 29,59,750/- on account of undisclosed income u/s 69A of the IT Act, 1961. The Ground is hereby DISMISSED."

7. The impugned order was passed *ex-parte* as there was no response on behalf of the assessee to the notices issued by the CIT(A). However, when the CIT(A) has not adjudicated the grounds of appeal raising certain legal issues then the impugned order passed by the CIT(A) dismissing the appeal of the assessee summarily is not in accordance with the provisions of Section 25(6) of the Income Tax Act. Accordingly, in the facts and circumstances of the case and in the interest of the of justice, the impugned order of the CIT(A) is set aside and the matter is remanded to the record of

the CIT(A) for fresh adjudication on merits after giving a proper opportunity of hearing to the assessee.

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

Order pronounced on 23/03/2023 as per Rule 34 (4) of I.T.A.T. Rules, 1963.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Dated: 23/03/2023

Indore/Allahabad

K.D. Azmi

Copy forwarded to: Durgesh Shukla

1. Appellant- The ACIT, Indore
2. Respondent-
3. CIT(A),
4. CIT
5. DR

By order
Sr. P.S.