

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

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA Nos.120 to 123/Hyd/2023		
Assessment Years: 2017-18 to 2020-21		
Shri Sanjay Awathare Chandrapur, (MS) PAN:AKWPA7660C	Vs.	Asstt. Commissioner of Income Tax, Central Circle 2(4) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri A.V. Raghuram, Advocate	
Revenue by:	Shri Jeevan Lal Lavidiya, CIT (DR)	
Date of hearing:	27/03/2023	
Date of pronouncement:	27/03/2023	

ORDER

Per R.K. Panda, A.M

The above batch of 4 appeals filed by the assessee are directed against the separate common orders dated 20.12.2022 of the learned CIT (A)-12, Hyderabad relating to A.Ys 2017-18 to 2020-21 respectively. Since identical grounds have been raised by the assessee in all these appeals, therefore, these appeals were heard together and are being disposed of by this common order.

2. In all these appeals, the assessee has challenged the ex-parte order of the CIT (A) in confirming the various additions made by the Assessing Officer.

2.1 First we take up ITA No.120/Hyd/2023 for the A.Y 2017-18 as the lead case.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 21-09-2017 admitting a total income of Rs.6,01,750/-. Information was received from Police Authorities, Sironcha Police Station, District Gadchiroli that cash of Rs.1,20,00,000/- was found in the possession of Sri Sanjay Gangaram Awathare alongwith his driver on 02-06-2020 and he was not having any supporting documents to establish the source of the cash. Sri Sanjay Awathare stated that he is working for Mr.Mohd Bashu Miya, who is a Tendu Patta contractor. He further stated that the cash being carried in the vehicle belongs to Mr.Mohd.Bashu Miya for making payment to Tendu Patta gatherers in the contract area of Bhamragarh, Gadchirli for various Gram Sabhas and their villages.

3.1 Based on the information that the assessee Sri Sanjay Awathare could not furnish evidence in support of the sources of the cash found, a warrant of authorization u/s.132A was executed on the assessee Sri Sanjay Awathare and Sri Mohd.Bashu Miya on 26-06-2020.

4. In response to the notice, the assessee filed his return of income on 05-02-2022 admitting a total income of Rs.6,01,750/-. However, neither the assessee e-verified the return filed by him nor filed the details called for by the Assessing Officer from time to time. The Assessing Officer, therefore, completed the assessment u/s 153A r.w.s. 144 of the Act determining the total income of the assessee at Rs.87,44,630/-.

4.1 Since the assessee did not appear before the CIT (A) despite number of opportunities granted, the learned CIT (A) in the ex-parte order passed by him sustained the addition made by the Assessing Officer by observing as under:

“6. Decision: 6.1 It is relevant to mention here that during the appellate proceedings several opportunities are provided and the appellant/appellant’s A.R. failed to produce any explanation in support of appellant's claim.

<i>Date</i>	<i>Remarks</i>
<i>23.05.2022</i>	<i>Appeal filed</i>
<i>13.06.2022</i>	<i>The appeal notice was sent to the address mentioned in Form No.35 and the case was refixed for hearing on 17.06.2022</i>
<i>17.06.2022</i>	<i>No compliance</i>
<i>08.08.2022</i>	<i>Fresh hearing notice with DOH on 16.6.2022 issued</i>
<i>16.08.2022</i>	<i>The appellant filed adjournment request</i>
<i>18.08.2022</i>	<i>Fresh hearing notice with DOH on 29.08.2022, issued</i>
<i>29.08.2022</i>	<i>No compliance</i>
<i>16.09.2022</i>	<i>Fresh hearing notice with DOH on 22.09.2022 issued</i>
<i>22.09.2022</i>	<i>The appellant filed adjournment request</i>
<i>10.11.2022</i>	<i>Fresh hearing notice with DOH on 17.11.2022 issued</i>
<i>17.11.2022</i>	<i>No compliance</i>
<i>6.12.2022</i>	<i>Fresh hearing notice with DOH on 12.12.2022, issued</i>
<i>12.12.2022</i>	<i>The appellant filed adjournment request.</i>

6.2 Neither appellant nor Authorized Representative appeared on the dates posted for hearing on several occasions as mentioned above nor were any written submissions filed. The applicant failed to appear before the undersigned and substantiate its grounds of appeal with evidences. The appellant has filed adjournment request for two weeks on 16.08.2022, three weeks on 22.09.2022 and again filed adjournment request for four weeks on 12.12.2022. Therefore, it can be seen that the appellant is in habit of filing frequent adjournments. Several opportunities have been granted in the interest of natural justice. Hence, no further hearings in this case can be granted.

6.3 As there is no response to appeal notices, the appeal is liable to be dismissed in terms of verdicts of the Hon'ble Apex Court and the various High Courts. The Hon'ble Apex Court, in the case of CIT v. B.N. Bhattacharjee and another (10 CTR 354) held that an appeal means an effective appeal "expression "prefer an appeal" would mean effectively prosecuting an appeal".

Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it. If a party retreats before the contest begins, it is as good as not having entered the fray.

The Hon'ble MP High Court in Estate of Late Tukojirao Holkar v. CIT, 223 ITR 480(MP) has held that if a party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of paper books so as to enable hearing of the reference, the court is not bound to answer the reference. Similar view has also been taken in the case of CIT v. Multiplan (India) Pvt. Ltd., 38 ITD 320 (Del). Following the ratio of Multiplan (India) Ltd (supra), the Chennai Tribunal has also dismissed appeal for non-prosecution in the case of M/s Helios and Matheson Information Technology Ltd v ITO in ITA No.134/Mds/2011 dated 5.7.2011 for A.Y.2006-07. It is pertinent to add here that the laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus Non Dormientibus JuraSubveniunt". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligence and careful plaintiff is favoured to the prejudicial of him who is careless. In view of the above, the appeal is liable to be dismissed.

6.4. It is seen that even on merits, the case of the appellant does not hold any ground. In the instant case, it was found that during the year, the appellant had credits amounting to Rs.81,72,880/- in Warangal Urban Coop Bank Ltd. account no.200204180001369. The appellant could not produce the sources of said credits before the Assessing Officer, therefore the assessment was completed by making the addition of Rs.81,72,880/- on account of unexplained cash credits u/s 68 of the I.T. Act.

The facts of the case are that cash of Rs.1,20,00,000/- was found in the possession of the appellant along with his driver on 02.06.2020 and the appellant was not having any supporting documents to establish the sources of cash. The appellant stated that he works for Mr. Mohd Bashu Miya, who is TenduPatta Contractor and the cash being carried in the vehicle belongs to Mr. Mohd. Bashu Miya for making payment to Tendu Patta gatherers in the contract area of Bhamragarh, Gadchiroli for various Gram Sabhas and their villages. Later, notices u/s 142(1) of the Act were issued to the appellant, however the appellant had not filed any information before the Assessing Officer. Accordingly, the Assessing Officer completed the assessment u/s 144 of the Act by making addition of Rs.81,72,880/- on account of unexplained cash credits u/s 68 of the Act.

During the appeal proceedings, the appellant has been provided sufficient time and opportunities, 6 hearing notices in number, to present its case and rebut the findings of the Assessing Officer. However, the appellant has not attended the hearing nor did any submissions were filed. The appellant has only filed frequent adjournments to delay the appellate proceedings. The appellant's requests were considered and he was granted hearing six times, however, there was no written

submission filed in response to these hearing notices as well. The appellant, despite in the knowledge of receipt of hearing notices, seems to have chosen not to file any submissions, implying casual nature on part of the appellant. In view of the above, it is clear that the appellant has no bonafide explanation to rebut the findings of the Assessing Officer and, therefore, chose not to avail the opportunities afforded to it during the appeal proceedings.

Further, the sources of the credits have not been neither reconciled nor any effort has been made to provide a nexus of the same with accounted sources of the appellant. The income for the year is Rs.6,01,750/- and the credits in bank account of the appellant amount to Rs.81,72,880/-. The prima facie examination itself will lead to a conclusion that the unaccounted income of the appellant has been credited in the bank account. Needless to state that nothing cogent was filed during the assessment proceedings.

Even during appellate proceedings, the appellant failed to submit any substantive evidence regarding the source of credits in bank account. The appellant's cases pertain to A.Y. 2017-18 to A.Y. 2021-22 and in all the years, it is seen that the Assessing Officer has relied on the bank account of the appellant which was called for and on the basis of the same, the addition has been made. The bank credits were not explained by the appellant as a bonafide business activity and the bank transactions appeared to be abnormal. Therefore, the Assessing Officer has rightly considered the same and taxed the credits in the bank account. The appellant has failed to justify any of the bank entries with bonafide evidences and purpose even during the appellate proceedings. In view of the same, the Assessing Officer has correctly treated the credits in the bank account of the appellant of Rs.81,72,880/- for the year under consideration as unexplained income of the appellant and in view of the same, the addition is upheld accordingly.

Accordingly, ground no.2 of the appeal is dismissed.

In ground no.3, the appellant contended that the credits were transferred from M/s. R.B. Enterprises through RTGS and the sources for credits remain explained. It is seen that the appellant could not produce any evidence to prove the identity, creditworthiness of the company and genuineness of the transactions. The appellant has also not produced any evidence to prove that the sources were not belonged to him and not routed through the company M/s. R.B. Enterprises. Therefore, in absence of such substantive evidences, this ground no.3 of the appellant cannot be entertained and accordingly dismissed.

The grounds no. 1 & 4 are general in nature and need no separate adjudication.

To sum up the appeal is dismissed on account of non-prosecution and on merits.”

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order passed by Ld. CIT(A) is erroneous and in violation of principles of natural justice.

2. Without prejudice to the above, on 12.12.2022 adjournment was filed requesting 4 weeks' time, as the counsel was in the process to get information from the accused who is in jail.

3. The Ld. CIT(A) erred in confirming the addition of Rs.81,72,000 made by the AO as unexplained credit u/s.68 of the Act. The authorities below failed to appreciate the documentary evidence in the form of bank statements and that the sources are from business which is considered while filing return of income.

4. The Ld. CIT(A) failed to appreciate that the amount was transferred through RTGS from R.B. Enterprises and that the sources remained explained.

5. Any other ground that may be urged at the time of hearing.”

6. The learned Counsel for the assessee at the outset submitted that the Assessing Officer in the impugned order made addition of Rs.81,72,000/- on the ground that the assessee did not file the information with regard to the source of the credit till completion of the assessment despite opportunities granted. He submitted that the assessee during the course of assessment proceedings had filed the bank statement of the assessee along with other partners and the source of the same are business which were considered while filing the return. He submitted that the Bank statement do reveal that the amounts were received by the assessee through RTGS from M/s. R.B Enterprises. He submitted that during the appeal proceedings before the CIT (A), the assessee could not appear before him since he was in prison for which the learned CIT (A) passed the ex-parte order. He

accordingly submitted that given an opportunity, the assessee is in a position to substantiate his case by filing the requisite details.

7. The learned DR, on the other hand, strongly opposed the arguments advanced by the assessee and supported the order of the CIT (A).

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A). We find the Assessing Officer in the instant case made addition of Rs.81,72,880/- on the ground that the assessee could not explain the source of the various credits appearing in the Bank A/c maintained with Warangal Urban Cooperative Bank Ltd despite opportunities granted. We find the learned CIT (A) sustained the addition made by the Assessing Officer on the ground that despite number of opportunities granted by him the assessee did not appear before him. It is the submission of the learned Counsel for the assessee that since the assessee was in jail when the CIT (A) issued the notices to him, the assessee could not engage his lawyer to represent before the CIT (A) for which nobody could appear before the CIT (A). It is also his submission that given an opportunity, the assessee is in a position to substantiate his case before the CIT (A). 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) with a direction to grant one last opportunity to the assessee to appear before the CIT (A) and substantiate his case without seeking any adjournment under any pretext failing which the CIT (A) 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.

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

ITA Nos. 121 to 123/Hyd/2023

10. Grounds of appeals raised by the assessee in the above three appeals are identical to the grounds of appeal raised by the assessee in ITA No.120/Hyd/2023 for the A.Y 2017-18. We have already decided the issue and the matter has been restored to the file of the CIT (A) for fresh adjudication. Following similar reasonings, we restore the issue to the file of the CIT (A) for adjudication of the issue in the light of our directions given therein.

11. In the result, all the 4 appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 27th March, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 27th March, 2023

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Sanjay Awathare C/o Shri A.V. Raghuram, Advocate, Flat No.610, Babukhan Estate, Basheerbagh, Hyderabad 500001
2	ACIT Central Circle 2(4) Aayakar Bhavan, Opp: LB Stadium, Basheerbagh, Hyderabad
3	Pr.CIT -Central Circle ,Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order