

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

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

ITA Nos.124 & 125/Hyd/2023		
Assessment Years:2016-17 & 2019-20		
Shri Gopi Gunda, Nalgonda PAN:AGFPG0558C (Appellant)	Vs.	A.C.I.T Central Circle 2(4) Hyderabad (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Dr. Rajendra Kumar, CIT (DR)	
Date of hearing:	11/04/2023	
Date of pronouncement:	13/04/2023	

ORDER

Per R.K. Panda, A.M

The above two appeals filed by the assessee are directed against the separate orders dated 22.12.2022 of the learned CIT (A)-12 Hyderabad, relating to A.Ys.2016-17 & 2019-20 respectively. Since identical grounds have been raised in both these appeals, for the sake of convenience, both these appeals were heard together and are being disposed of by this common order.

ITA 124/Hyd/2023 – A.Y 2016-17

2. Facts of the case, in brief, are that the assessee is an individual and is in the business of gold & silver ornaments in the

name of M/s. Sri Lakshmi Sai Jewellers. He filed his return of income for the impugned A.Y on 17.10.2016 declaring total income at Rs.6,75,887/-. A survey operation u/s 133A of the I.T. Act was conducted at the business premises of the assessee at Nakrekal, Nalgonda Distt. on 6.5.2019. During the course of survey proceedings, it was found that the assessee was not maintaining books of account properly. To cover up the discrepancies, the assessee agreed to admit Rs.12,97,672/- as additional income for the financial year 2015-16 relevant to the A.Y 2016-17.

3. The Assessing Officer during the course of assessment proceedings, on verification of the impounded material, noted that the assessee has purchased immovable properties during the financial year 2015-16 to the tune of Rs.29,32,320/-. Since the income declared by the assessee is insufficient to meet the investment made for the immovable properties, the Assessing Officer, after recording the reasons, reopened the assessment u/s 147 of the I.T. Act and accordingly notice u/s 148 of the Act dated 29.3.2021 was served on the assessee calling for the return of income. The assessee in response to the same filed his return of income on 28.2.2022 declaring income of Rs.18,39,510/- including the amount of Rs.12,97,672/- declared during the course of survey proceedings. Thereafter, statutory notices u/s 143(2) and 142(1) were issued and served on the assessee to which the assessee responded by filing the requisite details as called for from time to time. After considering the submissions made by the assessee, the Assessing Officer made an addition of Rs.16,34,648/- as unexplained investment and applied the provisions of section 115BBE of the I.T. Act. Thus, the Assessing Officer determined the income of the assessee at Rs.34,74,158/-.

4. 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 upheld the addition made by the Assessing Officer.

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

“1. The learned Commissioner of Income-tax (Appeals), in the facts and circumstances of the case. is not justified in disposing of the appeal, without granting the time requested by the appellant.

2. The learned Commissioner of Income-tax (Appeals), in the facts and circumstances of the case, is not justified in confirming the addition of Rs.16,34,645/- being the alleged undisclosed investment taxed u/s 115BBE, without appreciating the fact that the appellant had sufficient explainable funds in this regard.

3. The learned Commissioner of Income-tax (Appeals) is not justified in not considering the ground that the income admitted at Rs.12,97,672/-, as investment was worked out after detailed discussions with the Authorities during survey operations.

4. The appellant reserves his right to add, amend, delete or substitute any ground or grounds during the course of hearing”.

6. The learned Counsel for the assessee at the outset submitted that the learned CIT (A) has not given proper opportunities to the assessee to substantiate his case. He submitted that the appeals for 3 years pending before the CIT (A) out of which he has decided the appeals for the A.Ys 2016-17 & 2019-20 and appeal for the A.Y 2017-18 is still pending before him. He submitted that in the interest of justice, the assessee should be given one final opportunity to substantiate his case.

7. The learned DR, on the other hand, referring to the order of the CIT (A) submitted that the learned CIT (A) has given as many as six opportunities to the assessee and the assessee was either not appearing or filing the adjournment applications which speaks volumes about the conduct of the assessee. He submitted that since the learned CIT (A) has also decided the appeal on merit, therefore, under these circumstances, no further opportunity should be granted to the assessee and the addition made by the Assessing Officer and confirmed by the CIT (A) should be upheld.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case determined the total income of the assessee at Rs.34,74,158/- as against the returned income of Rs.18,39,510/- by making addition of Rs.16,34,648/- as undisclosed income on the ground that the assessee was unable to explain fully the source of investment of Rs.29,32,320/- since the returned income was Rs.18,39,510/-only. We find the learned CIT (A) upheld the action of the Assessing Officer in absence of any material before him to take a contrary view since the assessee did not appear before him despite a number of opportunities granted. It is the submission of the learned Counsel for the assessee that when the case was last fixed for hearing on 12.12.2022, the assessee sought adjournment and the adjournment application was neither accepted nor rejected and the CIT (A) passed the ex-parte order. 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 learned CIT (A) with a direction to grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT (A) on the appointed day without seeking any adjournment under any pretext failing which the learned 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 125/Hyd/2023 – A.Y 2019-20

10. The grounds raised by the assessee reads as under:

“1. The learned Commissioner of Income-tax (Appeals), in the facts and circumstances of the case, is not justified in disposing of the appeal, without granting the time requested by the appellant.

2. The learned Commissioner of Income tax (Appeals), in the facts and circumstances of the case, is not justified in confirming the addition of Rs.10,00,000/- made by the assessing officer u/s 68.

3. The learned Commissioner of Income tax (Appeals), in the facts and circumstances of the case, is not justified in confirming the addition of Rs.34,97,449/- being the trade payables treated by the Ld. Assessing Officer as unexplained credits u/s 68.

4. The appellant reserves his right to add, amend, delete, or substitute any ground or grounds during the course of hearing”.

11. After hearing both sides, we find the grounds raised by the assessee are identical to the grounds of appeal in ITA No.124/Hyd/2023 for the A.Y 2016-17. We have already decided the issue and the matter has been restored to the file of the

learned CIT (A) for fresh adjudication. Following similar reasonings, the grounds raised by the assessee are allowed for statistical purposes.

12. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 13th April, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 13th April, 2023

Vinodan/sps

Copy to:

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3	Pr.CIT -Central ,Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order