

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

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.36/Hyd/2023		
Assessment Year: 2017-18		
Jai Tulja Bhavani Restaurant & Bar, Ranga Reddy PAN:AALFJ3822A (Appellant)	Vs.	Income Tax Officer Ward 8(1) Hyderabad (Respondent)
Assessee by:	Advocate Smt. S. Sandhya	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	13/04/2023	
Date of pronouncement:	18/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 3/8/2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. There is a delay of 100 days in filing of this appeal by the assessee for which the assessee has filed a condonation application alongwith an affidavit explaining the reasons for the delay according to which the same is due to ill health of the assessee. After considering the contents of the condonation application filed along with the affidavit and after hearing both sides, the delay in filing of this appeal by 100 days is condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that on the basis of data analytics and information gathered during the phase of online verification under “Operation Clean Money”, the Income Tax Deptt. gathered a list of assesseees who had deposited substantial cash in bank account(s) during the demonetization period (9th November 2016 to 30th December, 2016) but have not filed return of income for the A.Y 2017-18. The data revealed that the assessee has deposited cash in the following bank accounts during the demonetization period:

S.No	Name of the bank	Branch	A/c No.	Amount (in Rs.)
1	Andhra Bank	Karwan Branch	83511100001 787	10,39,000
2	Bank of India	Mansurabad Branch	56482011000 0405	1,00,000

4. Since the quantum of deposit made by the assessee the above bank a/c is more than the income chargeable to tax for the A.Y 2017-18 and since the assessee has not filed return of income for the A.Y 2017-18 within the time stipulated u/s 139(1) of the I.T. Act, 1961, the Assessing Officer issued a notice u/s 142(1) on 12.3.2018 calling the assessee to prepare a true and correct return of income for the A.Y 2017-18. The notice u/s 142(1) was duly served on the assessee. However, the assessee failed to furnish any return of income for A.Y 2017-18 in response to notice issued u/s 142(1) of the I.T. Act. The Assessing Officer therefore, proceeded to complete the assessment u/s 144 of the I.T. Act and issued a notice to the assessee proposing the completion of the assessment u/s 144 of the I.T. Act. Since again there was no compliance from the side of the assessee, the Assessing Officer completed the assessment u/s

144 of the I.T.Act by making addition of Rs.1,07,94,050/- to the total income of the assessee u/s 69A.

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

“5. Decision

The appellant in its grounds of appeal has assailed the AO in assessing the income after adding the cash deposited in the bank account to Rs. 1,07,94,050/- u/s 69A of the Act. The assessment in this case had been made u/s 144 of the Act as the assessee did not comply with the notices issued by the AO in course of the assessment proceedings. The AO noted that the assessee had deposited cash in his bank account during the demonetization period in his bank account in Andhra Bank and Bank of India.

5.1 the assessee filed appeal against the order of the AO, however no compliance had been made by the appellant in the appellate proceedings. Taking into account the fact that the assessee did not comply before the AO. The AO is correct in adding the amount of cash deposited in the bank account u/s 69A of the Act. The action of the AO is upheld and the grounds of appeal are dismissed.”

6. 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 of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income-tax (Appeals) erred in deciding the appeal ex-parte without providing proper opportunity to the appellant.

3) The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the amounts deposited into the Indian Bank and Andhra Bank aggregating to Rs. 1,07,94,050/- represent unexplained money under the provisions of section 69A of the I.T. Act and further erred in confirming the action of the Assessing Officer in treating the entire amount as income of the

appellant and taxing the same as per the provisions of section 115BBE of the I.T. Act.

4) The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the AO in charging interest u/s 234A of Rs. 23,34,752/- and section 234B of Rs. 26,68,288/- the I.T. Act.

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

7. The learned Counsel for the assessee submitted that due to non-receipt of notice, the assessee was unable to appear before the learned CIT (A) NFAC. She submitted that given an opportunity, the assessee is in a position to substantiate his case by filing the requisite details before either of the lower authorities. She however, submitted that since the Assessing Officer has passed the order u/s 144 of the I.T. Act therefore, the matter may be restored to the file of the Assessing Officer for fresh adjudication.

8. The learned DR, on the other hand, strongly opposed the above arguments advanced by the learned Counsel for the assessee. He submitted that despite service of notice u/s 142(1), the assessee did not comply to the same. The Assessing Officer, thereafter, had given another opportunity to the assessee to substantiate his case. Even before the learned CIT (A)/NFAC also, despite more than 10 opportunities, the assessee did not appear before him. Under these circumstances, the order of the learned CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) – NFAC and the paper book filed on behalf of the assessee. We find the AO in the instant case made addition of Rs.1,07,94,050/- u/s

69A of the Act on the ground that the assessee could not explain the source of huge cash deposit of Rs.1,07,94,050/-. We find the learned CIT (A) NFAC in the ex-parte order passed by him sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate his case by explaining the source of such cash deposit in the Bank A/c. 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)/NFAC with a direction to grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. At the same time, we levy a cost of Rs.2,000/- on the assessee for his negligence in appearing before the learned CIT (A) NFAC which shall be paid to the Prime Minister's Relief Fund. The assessee is also hereby directed to appear before the CIT (A) NFAC on the appointed day without seeking any adjournment under any pretext failing which the learned CIT (A) NFAC is at liberty to pass appropriate order as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 18th April, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 18th April, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Jai Tulja Bhavani Restaurant & Bar, No.2-88/7 SY No.312 & AMP 342/2, Narsin (V) Rajendranagar (M) Ranga Reddy Distt. 500007
2	Income Tax Officer Ward 8(1) Signature Towers, Kondapur, Hyderabad
3	NFAC Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order