

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 No. 131/Hyd/2023		
Assessment Year: 2019-20		
Shri Gopal Goud Palle Hyderabad PAN: APQPP1344H (Appellant)	Vs.	Dy. CIT Circle 3(3) Hyderabad (Respondent)
Assessee by:	Shri A.V. Raghuram, Advocate	
Revenue by:	Shri B. Yadagiri, DR	
Date of hearing:	13/04/2023	
Date of pronouncement:	20/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 22.08.2022 of the learned CIT (A)-11, Hyderabad relating to A.Y.2019-20.

2. There is a delay of 109 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 non-communication of the appeal order by the previous Counsel. After hearing both the sides and considering the contents of the condonation application filed along with the affidavit, the delay in filing of this

appeal by 109 days is condoned and the appeal is admitted for hearing.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from business and other sources. The assessee filed his return of income on 8.1.2020 declaring total income at Rs.15,31,190/- after claiming deduction under Chapter VIA of Rs.1,60,000/-. The Assessing Officer observed that the assessee was intercepted by the Static Surveillance Team on 15.10.2018 while travelling in a vehicle with Registration No.TS 09 ET 1135 (Fortuner) and was found carrying cash of an amount of Rs.27,35,000/- during the course of observance of Election Code of General Elections in the year 2018 in Telangana State. Since the assessee had not produced any evidence in support of cash of Rs.27,35,000/- in his possession and not explained about the sources for the same, the Returning Officer & Revenue Divisional Officer, 48- Ibrahimpatnam, AC has informed the same to the Income Tax Department vide letter No.E/1634/2018, dtd.15.10.2018. Since the assessee has not produced any documentary evidence and relevant sources to substantiate the cash of Rs.27,35,000/- in his possession, the same was surrendered to Income Tax Department from the Flying Squad nominated by the District Election Officer, for which a warrant u/s 132A of Income Tax Act, 1961 was issued by the Pr.Director of Income Tax (Inv.). Hyderabad and the said cash of Rs.27,35,000/- was seized u/s 132A of Income Tax Act. 1961 on 16 10.2018 for the reason that the assessee, Sri Palle Gopal Goud had failed to produce relevant documentary evidence and failed to Substantiate the sources for the same. The said seized cash of Rs.27,35,000/- was deposited into Personal Deposit Account

No.5055404001 of the Pr.Commissioner of Income TAX (Central), Hyderabad by way of cheque bearing No.341636, dtd.19.10.2018 issued by HDFC Bank, Lakdikapool Branch, Hyderabad, through Form TR-6.

4. Vide Sworn statement, the assessee had stated that the sources for seized cash as withdrawals from bank and sale of plots. However, no details of advances from customers and bank statement were submitted inspite of asking vide u/s 142(1) notice, dated 18.01.2021. The claim by the assessee that the amount was carried by him to hand over the same to the labour contractor but the labour contractor did not turn up is baseless and incoherent. According to the Assessing Officer, a mere provision of layout plan copy would serve no purpose. Also, on comparison of the layout copy and the details of advances received many discrepancies were noticed. From the information submitted, he noticed that the assessee had received Rs.1.25.000/- from Shri G.Nagender Goud for Plot No.28 admeasuring 162 Sq.yds. However as per the layout copy provided by him, Plot No.28 is admeasuring only 133 Sq.vds.. Similarly for plot No.25, it is 221 sq. yards vs. 211 sq yards and for plot No.33, it is 100 sq. yards vs. 143 sq. yards. Also, the assessee had stated that he had to incur expenditure for labour and labour contractors for site development such as excavation work, stone cutting, laying of roads etc. However, on perusal of P&L A/c, the Assessing Officer noticed that no such expenditure has been incurred regarding the same during the entire financial year under consideration. Hence according to the Assessing Officer, all the above stated facts strengthen the point that the cash seized was unaccounted and undisclosed in the books of account and the statements put forth by the assessee are

a mere afterthought. He, therefore, gave a final opportunity to the assessee to produce documentary evidences in support of his claim. Despite the same, the assessee failed to furnish the requisite details.

5. In view of the above and in absence of any material furnished by the assessee to substantiate the source of the seized cash of Rs.27,35,000/- the Assessing Officer completed the assessment u/s 143(3) on 16.4.2021 by making addition of Rs.27,35,000/- to the total income of the assessee.

6. Since the assessee did not appear before the learned CIT (A) despite a number of opportunities granted, the learned CIT (A) in the ex-parte order passed by him sustained the addition made by the Assessing Officer.

7. 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. On the facts and in the circumstances of the case, the order of Id. CIT(A) is erroneous and unsustainable in law apart from being passed in violation of principles of natural justice.

2. The Id. CIT(A) failed to appreciate that none of the notices are served on the Appellant and therefore could not put forth 2. The Id. CIT(A) erred in confirming the addition of Rs.27,35,000 made by the AO u/s.69A of the Act. The Id. CIT(A) failed to appreciate that the appellant filed the necessary information before the AO, which was not accepted by the AO. his case.

8. The learned Counsel for the assessee submitted that due to non-receipt of notices sent by the CIT (A), the assessee could not appear before him for which he has passed the ex-parte order. He

submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case.

9. The learned DR, on the other hand, strongly opposed the submission of the learned Counsel for the assessee. Referring to page 7 of the order of the CIT (A), he submitted that the learned CIT (A) has given as many as 7 opportunities to the assessee to substantiate his case. However, there was no compliance from the side of the assessee for which the learned CIT (A) was constrained to pass the ex-parte order. Further, he has passed a detailed speaking order and therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

10. 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 find the AO in the instant case made addition of Rs.27,35,000/- being the cash seized by the Surveillance Team on the ground that the assessee failed to substantiate the source of the same. We find the learned CIT (A) sustained the addition on the ground that the assessee did not appear before him and there is no other evidence before him to substantiate the source of the cash so found. It is the submission of the learned Counsel for the assessee that the notices were sent through mail as mentioned in Form 35 and since the assessee is not a tech savvy person, he could not go through the mail for which this has happened. 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. 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) which shall be paid to the Prime Minister's Relief Fund. 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 fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 20th April, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 20th 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