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.413/Hyd/2022		
Assessment Year: 2016-17		
Smt. Gonuguntla Nirmala Devi, Anantapur PAN:AIPBD2345Q	Vs.	Asstt. C. I. T. Circle 1 Anantapur
(Appellant)		(Respondent)
Assessee by:	Shri R. Venkata Ramana, CA	
Revenue by:	Shri M. Naveen Kumar, DR	
Date of hearing:	25/04/2023	
Date of pronouncement:	27/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 2.08.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2016-17.

2. Facts of the case, in brief, are that the assessee is a partner in M/s. Nithin Sai Construction. He is also a Director in M/s. Nithin Sai Agrotech (P) Ltd . The assessee filed her return of income declaring total income at Rs.23,89,810/- admitting income from house property, business income and from other sources. The return was processed u/s 143(1) and subsequently

the case was selected for scrutiny. In response to notice u/s 143(2) and 142(1), the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

3. During the course of assessment proceedings, the Assessing Officer observed from the balance sheet as on 31.3.2016 for the A.Y 2016-17 filed by the assessee that the assessee has received loan of Rs.49,00,000/- from M/s. Nithin Sai Agrotech (P) Ltd. Since the assessee holds 51% of the share capital of the said company and the company had reserves of Rs.1,44,80,038/-, the Assessing Officer asked the assessee to explain as to why the provisions of section 2(22)(e) of the I.T. Act should not be applied. Since the assessee did not respond to the query raised by the Assessing Officer on this issue, the Assessing Officer made addition of Rs.49,00,000/- to the total income of the assessee u/s 2(22)(e) of the Act.

4. Similarly, from the details furnished by the assessee, the Assessing Officer noted that the assessee is the owner of the building Nithin Sai Complex having constructed area of 24000 sq. ft consisting of four floors. Out of this, the assessee has let out an area of 9000 sq.ft and declared rental income of Rs.36,00,656/-. The balance area of 15000 sq.ft is vacant. Based on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Housing Finance & Leasing Company Ltd wherein it has been held that the ALV of unoccupied property has to be brought to tax under the head “income from house property”, the

Assessing Officer made addition of Rs.43,56,000/- to the total income of the assessee.

5. The Assessing Officer also disallowed the amount of Rs.86,200/- claimed as deduction towards interest on the ground that the interest pertains to loan taken for purchase of residential property at Vijayawada during Feb. 2016 and therefore, interest cannot be claimed out of rental income from the Nithin Sai Complex. Further, in absence of any satisfactory explanation regarding the cash deposit of Rs.50,00,000/- in the bank a/c maintained by the assessee, the Assessing Officer after considering the details filed, made addition of Rs.43,80,000/-. Similarly, the Assessing Officer also restricted the claim of deduction u/s 80C to Rs.81,421/- as against Rs.1,50,000/- claimed by the assessee in absence of any satisfactory evidence. Thus, the Assessing Officer completed the assessment determining the total income of the assessee at Rs.1,00,59,504/- as against the returned income of Rs.23,80,800/-.

6. In appeal, the learned CIT (A) NFAC dismissed the appeal filed by the assessee.

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 Ld.CIT(A) is not justified in confirming the addition of Rs.49,00,000/- made by the Assessing Officer u/s.2(22)(e) of the Income-tax Act, 1961, towards deemed dividend in respect of sum received by the appellant from the company M/s. Nithin Sai Agrotech Private Limited.

2. The Ld.CIT(A) is not justified in enhancing the addition u/s.2(22)(e) of the Act to Rs.69,00,000/- by making further addition of Rs.20,00,000/- towards deemed dividend in respect of sum paid by M/s. Nithin Sai Agrotech Private Limited to M/s. Nithin Sai Constructions.

3. The Ld.CIT(A) is not justified in confirming the action of the Assessing Officer in determining Annual Lettable Value of vacant portions at Rs.43,56,000/- and consequent addition of Rs.30,49,200/- to the income of the appellant taxable under the head "Income from House Property".

4. The Ld.CIT(A) erred in not appreciating that the addition of Rs.30,49,200/- made by the Assessing Officer was without considering deduction towards vacancy allowance and ignoring the provisions of clause (c) of sub-section (1) of Section 23 of the Act.

5. Without prejudice to Ground Numbers 3 & 4, the Ld.CIT(A) ought to have directed the Assessing Officer to take Municipal Rentable Value as ALV of vacant portions.

6. The Ld.CIT(A) is not justified in confirming the action of the Assessing Officer in treating cash deposits in the bank account to the extent of Rs.14,50,000/- as unexplained.

7. The Ld.CIT(A) is not justified in confirming the addition of Rs.43,80,000/- made by the Assessing Officer towards non-existing liability.

8. The Ld.CIT(A) is not justified in confirming the addition of Rs.35,80,000/- made by the Assessing Officer treating cash withdrawals as undeclared asset u/s.69B of the Act.

7. The learned Counsel for the assessee at the outset submitted that no sufficient opportunity was granted by the CIT (A) NFAC since the notice was issued on 8.1.2021 for furnishing the information on 14.01.2021 on ITB Portal during the covid pandemic. Subsequently, after the 2nd notice was issued on 20.06.2022 for filing the submissions, if any, on or before

5.7.2022. The assessee filed the written submission. However, the learned CIT (A) NFAC not only passed the order but enhanced the dividend income on the basis of the remand report, without affording sufficient opportunity to the assessee to submit his rejoinder. He submitted that in the interest of justice, the matter should be restored to the file of the learned CIT (A) NFAC with a direction to grant one more opportunity to the assessee to substantiate his case.

8. The learned DR, on the other hand, strongly supported the order of the learned CIT (A) NFAC. He submitted that the learned CIT (A) NFAC has given sufficient opportunity to the assessee to submit his reply. However, the assessee did not avail of the opportunity. Therefore, in absence of any sufficient reasons or any evidence to take a contrary view than the view taken by the Assessing Officer/ learned CIT (A) NFAC, the request of the assessee should be rejected 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 have also considered the various decisions cited before us by both sides. We find the AO in in the instant case determined the total income of the assessee at Rs.1,99,03,789/- as against the returned income of Rs.23,89,810/-. We find the learned CIT (A) NFAC not only dismissed the appeal filed by the assessee but enhanced the income on the issue of deemed dividend to Rs.69,00,000/- as against Rs.49,00,000/- made by the Assessing Officer. It is the

submission of the learned Counsel for the assessee that no sufficient opportunity was granted by the learned CIT (A) NFAC to submit various details especially the rejoinder to the remand report of the Assessing Officer. Therefore, it is his submission that one more opportunity should be granted to the assessee to submit the details. We find the learned CIT (A) NFAC has issued the first notice on 8.1.2021 for furnishing the submission on 14.1.2021 on ITB Portal which was during the then prevailing pandemic. Subsequently, the learned CIT (A) NFAC issued notice on 20.06.2022 to make written submission on or before 5.7.2022 and the assessee in compliance to the same notice, filed written submission which has been reproduced by the learned CIT (A) NFAC in the body of the order. We find the learned CIT (A) NFAC called for a remand report from the Assessing Officer and after obtaining the same from the Assessing Officer asked the assessee to give his submission, the assessee sought adjournment and thereafter there was no response. 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 more opportunity to the assessee to substantiate his case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to submit the requisite details before the learned CIT (A) NFAC on the appointed date without seeking any adjournment under any pretext failing which the learned CIT (A) NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the ass 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 27th April, 2023.

Sd/-	**Sd/-**
(LALIET KUMAR) **JUDICIAL MEMBER**	**(R.K. PANDA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 27th April, 2023.
Vinodan/sps

Copy to:

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2	ACIT, Circle 1 Income Tax Office, 3rd Road, New Town, Anantapur 515004 A.P
3	NFAC Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order