

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.43/Bang/2023
Assessment year : 2011-12

Sri Idli Yerriswamy, 26 th Ward, Bellary Road Circle, Near Santosh Brilliant School, Hospet – 583 201. PAN: ACDPY 9259N	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia & Shri S.V. Ravishankar, Advocates
Respondent by	:	Shri Sunil Kumar Singh, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.04.2023
Date of Pronouncement	:	27.04.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order of the CIT(Appeals)-11, Bangalore dated 15.12.2022 for the AY 2011-12 on the following grounds:-

- “1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The learned CIT[A] is not justified in disposing off the appeal restored by the Hon'ble ITAT without allowing sufficient

and effective opportunity to the appellant especially when the appellant was unwell and had also sought for time to some of the notices issued under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the learned CIT[A] ought to have appreciated that there was no valid jurisdiction u/s.142[1] of the Act assumed by the learned A.O. since the transfer of the appellant's case from Hospet to Bangalore, is illegal, as the reason for transfer have not been communicated to the appellant as required by section 127 of the I.T.Act and as per the ratio of the decision of the Hon'ble Supreme Court in the case of AJANTHA INDUSTRIES reported in 102 ITR 281 and consequently, the notice issued U/s.142[1] is bad in law and liable to be cancelled.

4. The learned CIT[A] ought to have appreciated that the assessment was made without giving reasonable and sufficient opportunity to the appellant, who at the relevant time was incarcerated in the prison as an undertrial prisoner and mentally shattered and could not make proper representation before the learned A.O. as well as appellate authority and because of his alleged involvement for which was being charge sheeted by CBI, etc., many professional were not prepared to represent him before the Income-tax authorities consequently, he could not make effective representation in the absence of legal and accounting assistance from the professionals and therefore, the findings of the A.O. as well as the first appellate authority is vitiated resulting in serious miscarriage of Justice to the appellant and consequently, the assessment made requires to be set-aside to be made in accordance with law.

4.1 Without prejudice to the above, the authorities below are not justified in adding a sum of Rs.9,71,94,878/- as unexplained bank credits under the facts and in the circumstances of the appellant's case.

4.2 The authorities below ought to have taken the prior withdrawals and given credit for the subsequent deposits in the bank account and the additions made for the earlier assessment years, in which case, no addition is required to be considered for the assessment year under appeal.

4.3 Without prejudice to the above, the income reported of Rs.49,33,410/- is sufficiently large enough offering a source for the deposits and consequently, no addition is warranted.

4.4 The addition made is purely on suspicion and surmise, assumptions and presumptions and is contrary to the principle of natural justice and deserves to be deleted.

5.1 Without prejudice to the above, the authorities below are not justified in adding sums of Rs.2,96,66,312/- and Rs.8,79,86,303/- as unexplained expenditure under the facts and in the circumstances of the appellant's case.

5.2 The additions made are purely on suspicion and surmise, assumptions and presumptions and is contrary to the principle of natural justice and deserves to be deleted.

6. The authorities below are not justified in assessing the income in the hands of the appellant merely on the ground that the appellant is the key person assisting Mr. Mahesh Kumar and that Mr. Mahesh Kumar is the key person carrying on the business of illegal trading in Iron Ore and on that basis even a declaration is taken of the magnitude of the alleged turnover and on that basis assessing the appellant substantively and at the same time assessing Mr. Mahesh Kumar also substantively and therefore what is assessed substantively in the hands of the appellant offends the rule of double taxation and consequently, the addition made requires to be deleted.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. The brief facts of the case are that there was a search and seizure action u/s. 132 of the Income-tax Act, 1961 [the Act] conducted in the case of assessee on 25.10.2010. Notice u/s. 142(1) was issued to the assessee for filing return of income. The assessee filed return of income dated 4.10.2012 declaring income of Rs.49,33,410 on the total turnover of Rs.15,29,11,092. Notice u/s. 142(1) and 143(2) was issued on 5.10.2012 and other statutory notices were also issued to the assessee. Details were filed by the assessee. The AO assessed income at Rs.21,97,80,907. On appeal, the CIT(Appeals) dismissed the appeal on account of non-payment of tax due on the returned income. On further appeal, this Tribunal in ITA No.1025/Bang/2015 set aside the order of the CIT(Appeals) and remitted the issue to the file of CIT(Appeals) with a direction to verify the payment of tax by the assessee and for decision on merits. The CIT(Appeals) obtained confirmation from the AO about payment of tax on the returned income by the assessee and proceeded to decide the appeal on merits.

3. The CIT(Appeals) fixed the appeal for hearings on 16.9.22, 17.10.22, 4.11.22, 15.11.22 and 14.12.22. Notices of hearings were sent through online system and duly served on the assessee on 8.9.22, 7.10.22, 20.10.22, 1.11.22 and 2.12.2022. The notices were also served through speed post. In response to the first hearing notice, the assessee filed details of tax paid and sought adjournment on a date after first week of October, 2022. The assessee did not respond to second notice of hearing. In response to third notice, the assessee again sought adjournment for a month on medical reasons. The case

was adjourned and assessee was asked to produce medical certificate. However the CIT(Appeals) noted that neither any medical certificate was produced nor the assessee responded to the hearing notice. Another opportunity of hearing was provided on 14.12.2022, to which there was no compliance by the assessee. Since sufficient time and opportunities were already allowed, the CIT(Appeals) proceeded to decide the appeal ex parte on the basis of material available on record and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal in the second round.

4. The Id. AR submitted that the CIT(Appeals) has not given sufficient time for hearing and decided the appeal ex parte. Notices issued were not received by the assessee. He submitted that adjournment application was filed on 17.10.2022 seeking adjournment upto 1.11.2022 and in this regard she referred to page 18 of the PB. Further the assessee sought adjournment by letter 31.10.2022 stating earlier adjournment was sought upto 4.11.22 for gathering material/particulars, however, due to ill-health and advice of Doctor for one month's rest, the same could not be done to prepare written submissions and paperbook. However, the CIT(Appeals) had passed the order ex parte. The Id. AR requested that the matter may be sent back to the AO for re-examination of the case.

5. On the other hand, the Id. DR relied on the order of the CIT(Appeals) and submitted that the CIT(A) had granted ample opportunities in the second round of appeal. The assessee could not

substantiate his case with necessary materials. He submitted that the CIT(Appeals) also gave another opportunity of hearing on 14.12.2022 to which the assessee did not respond and therefore he strongly objected for remitting the case to the lower authorities again.

6. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we notice that the CIT(Appeals) has decided the appeal ex parte for want of appearance of the assessee after providing many opportunities of hearing. From the ground No.4 raised by the assessee, we notice that the assessee was under the scanner of CBI and could not represent his case properly before the authorities below. We also note that several opportunities were provided by the CIT(Appeals) in the second round of appeal. However, in the interest of justice, we are of the view that one more opportunity should be provided to the assessee for proper representation of his case. Accordingly, we remit the appeal to the AO for fresh decision with reasonable opportunity of being heard to the assessee. The assessee is directed to cooperate in the proceedings by furnishing the necessary documents to substantiate his case before the AO for early disposal of the appeal without seeking unnecessary adjournments.

7. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 27th day of April, 2023.

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th April, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.