

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

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

ITA No.35/Hyd/2023		
Assessment Year: 2021-22		
Shri Sunil Kumar Jain Hyderabad PAN:ACUPJ4172G (Appellant)	Vs.	Asstt. C. I. T. Central Circle 1(2) Hyderabad (Respondent)
Assessee by:	Shri Harikrishna, CA	
Revenue by:	Dr. Rajendra Kumar, CIT(DR)	
Date of hearing:	07/06/2023	
Date of pronouncement:	08/06/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the ex-parte order dated 22.12.2022 of the learned CIT (A)-11, Hyderabad, relating to A.Y.2021-22.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of electronic spare parts. He filed his return of income for the A.Y 2021-22 on 30.12.2021 admitting total income of Rs.54,37,780/-. On 26.8.2020 information was received that the assessee with the help of a close associate is trying to purchase immovable property and is carrying unaccounted cash which could be between Rs.15.00 lakhs to Rs.1.00 crore. On 26.8.2010 at around 12.00

pm, it was noticed that the assessee arrived at a Jewellery shop with a small bag. On verification it was found that there are certain loose sheets along with cash of Rs.33.00lakhs. When asked about the source, the assessee could not produce any documentary evidence in support of the cash of Rs.33.00 lakhs. Accordingly, the entire amount was seized in the hands of the assessee.

2.1 Consequent upon the search, the case was centralized. Since the search & seizure operation was initiated during the financial year 2021 this case was taken up for scrutiny in the A.Y 2021-22 being the specified year. Accordingly statutory notices u/s 143(2) & 142(1) were issued to the assessee to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details from time to time. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the source of cash seized of Rs.33.00 lakhs. It was explained by the assessee that the said amount is out of business income and some part of it was rental income. In absence of any documentary evidence produced before him to substantiate the above contention, the Assessing Officer rejected the explanation given by the assessee and made addition of Rs.33.00 lakhs to the total income of the assessee u/s 69A r.w.s. 115BBE of the I.T. Act.

3. 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 sustained the addition made by the Assessing Officer.

4. 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 circumstances of the case, order passed by the Ld.CIT(A) is erroneous both on facts and in law to the extent which is prejudicial to the interest of the appellant.

2. The Ld. CIT(A) erred in dismissing the appeal

3. a) The Ld. CIT(A) ought to have annulled the assessment.

b) The Ld. CIT(A) ought to have appreciated that the assessment order passed u/s 143(3) of the Act for the year under consideration is invalid ab initio.

c) The Ld. CIT(A) ought to have appreciated that since the date of search u/s 132 of the Act is 26.08.2020, the Assessing Officer ought to have issued a notice u/s 153A of the Act and ought to have completed the assessment u/s 143(3) r.w.s. 153A of the Act.

d) The Ld. CIT(A) ought to have appreciated that the issuance of notice u/s 143(2) and 142(1) of the Act and the completion of the assessment u/s 143(3) of the Act for the assessment year 2021-22 which is related to the previous year in which search has taken place is in violation of the Provisions of section 153A of the Act.

e) The Ld. CIT(A) ought to have appreciated that the Assessing Officer is under obligation to issue a notice u/s 153A of the Act, as per the amended provisions of section 153A of the Act which are effective from 01.04.2017.

4(a) Without prejudice to other grounds, the Ld. CIT(A) has erred in observing that no evidence has been filed to show that the cash admitted in the return is out of cash available from the books of account of the c) assessee.

b) Without prejudice to other grounds, the Ld. CIT(A) has erred in observing that the cash found is not recorded in books of account of the assessee though admitted as "business income" in the return of income.

c) Without prejudice to other grounds, the Ld. CIT(A) has erred in holding that section 69A of the Act has been rightly invoked by the Assessing Officer and that the Assessing Officer has rightly taxed the cash found u/s 115BBE(1)(b) of the Act.

d) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the admitted cash of Rs. 33,00,000/- would not attract the provisions of section 115BBE of the Act.

5. The appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

5. The learned Counsel for the assessee submitted that the assessee is suffering from chronic disease for which he could not brief his Counsel for which the learned Counsel for the assessee was seeking adjournment from time to time and did not appear on certain dates before the CIT (A) for which the learned CIT (A) was constrained to pass the ex-parte order. He submitted that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the learned CIT (A) regarding the source of the cash of Rs.33.00 lakhs. He accordingly submitted that one more opportunity should be granted to the assessee to represent his case before the learned CIT (A).

6. The learned DR, on the other hand, referring to page 7 of the order of the CIT (A) drew the attention of the Bench to Para 6.1 and submitted that despite number of opportunities granted, there was complete non-compliance by the assessee for which the learned CIT (A) was constrained to pass the ex-parte order. He accordingly submitted that since the learned CIT (A) has passed the order on merit also, the same should be upheld and the grounds raised by the assessee should be dismissed.

7. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that despite six opportunities granted by the learned CIT (A), there was non-compliance from the side of the assessee for which the learned

CIT (A) had no other alternative option but to pass the ex-parte order on the basis of material available on record. It is the submission of the learned Counsel for the assessee that due to chronic disease/health problem of the assessee, he could not brief his Counsel for which the matter remained unrepresented before the learned CIT (A). It is also his submission that given an opportunity, the assessee is in a position to explain the source of cash of Rs.33.00 lakhs 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 by filing the necessary evidence. The learned CIT (A) shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the learned CIT (A) on the appointed date 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.

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

Order pronounced in the Open Court on 8th June, 2023.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 8th June, 2023.

Vinodan/sps

Copy to:

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

By Order