IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.463/Bang/2023
Assessment year : 2011-12

Shri K.J. Rama Reddy, No.1227, Surya Villa, HMT Layout, 2nd Cross, 5th Block, Nagasandra, Bengaluru – 560 073. **PAN: AGVPR 2700F**	Vs.	The Income Tax Officer, Ward 6(2)(5), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.S. Prashanth, CA
Respondent by	:	Shri Ganesh R Ghale, Standing Counsel.

Date of hearing	:	25.07.2023
Date of Pronouncement	:	31.07.2023

O R D E R

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2022-23/1052506994(1) dated 01.05.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2011-12.

2. The brief facts of the case are that the assessee is an individual and did not file return of income. As per data available with the department, the AO noted that the assessee has made transaction amounting to Rs.2,22,98,500/- with commodity exchanges and

accordingly issued a notice u/s. 148 on 30.03.2018 after obtaining approval from the competent authority was issued to the assessee with 30 days time to file the return, but the assessee did not file the return. There was no response to another letter dated 22.11.2018 and subsequent notices u/s. 142(1) from the AO. The AO obtained information u/s. 133(6) from Multi Commodity Exchange Trading of India Ltd. and observed that the assessee has made transaction of Rs.8,59,88,355 in trading in commodities without taking delivery. The AO made an estimated addition of Rs.22,83,222 treating it as unexplained investment u/s. 69 of the Act and completed the assessment u/s. 144 of the Act.

3. The assessee filed appeal before the CIT(Appeals) and filed some additional evidences which were sent to the AO. The AO submitted a remand report stating that the assessee has not furnished any details in support of grounds of appeal and statement of facts. The CIT(Appeals) dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

4. The ld. AR submitted that during the assessment proceedings the assessee had genuine hardship for not complying with the notice of AO which is clear from the statement of facts submitted before the CIT(Appeals). He further submitted that during the appellate proceedings additional evidence filed by the assessee were sent to the AO calling for remand report, but the assessee did not receive any notice from the AO on the additional evidence during the remand

proceedings and the contents of the remand report was not known to the assessee. Accordingly, he requested that the assessee should get a chance for substantiating his case before the revenue authorities.

5. The ld. DR objected to the request of the ld. AR for another opportunity and submitted that the assessee had not filed return of income in spite of opportunities granted by the AO and therefore the orders of lower authorities should be upheld.

6. Considering the rival submissions and perusing the material on record, it is noted that the assessee did not comply to the notice u/s. 148 and other notices issued by the AO. The assessee submitted additional evidence before the CIT(Appeals) stating the same could not be furnished during assessment proceedings due to family problems which is clear from the statement of facts. A remand report was called for on the additional evidence and the AO submitted the remand report stating that the assessee has not furnished any details in support of grounds of appeal and statement of facts. The submission of the ld. AR is that the AO has not issued any notice to the assessee regarding the remand proceedings and therefore the assessee was unaware of the remand proceedings and the remand report filed by the AO and hence the assessee must be provided opportunity to support its claim. Considering the entire facts, in the interest of justice, I remit the matter to the AO for fresh consideration and decision in accordance with law, after giving reasonable opportunity of being heard to the assessee. The assessee is directed to produce all the relevant documents to

substantiate his case and avoid seeking unnecessary adjournment for early disposal of the case .

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

Pronounced in the open court on this 31st day of July, 2023.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 31st July, 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.