

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 365/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Smt. Durga Bhavani Duscharla, Vs. Income Tax Officer,
Miryalguda Ward-1,
[PAN No. CHAPD0222J] Nalgonda
अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Vinod, AR
राजस्व द्वारा/Revenue by: Shri Suresh Anubham, DR

सुनवाई की तारीख/Date of hearing: 03/08/2023
घोषणा की तारीख/Pronouncement on: 03/08/2023

आदेश / ORDER

Aggrieved by the order dated 30/06/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Durga Bhavani Duscharla ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual. An amount of Rs. 12.37 lakhs said to have been deposited in the bank account of assessee during the demonetization of specified notes between 08/11/2016 to 30/12/2016. According to the learned Assessing Officer, in spite of repeated demands, the assessee failed to produce any evidences and, therefore, he concluded that the total deposits to the tune of Rs. 23.90 lakhs remained 'un-explained' and added it to the income of the

assessee. Apart from this, learned Assessing Officer added a sum of Rs. 94,000/- towards 'income from other sources.

3. Aggrieved thereby, assessee preferred appeal before the learned CIT(A). According to the assessee, assessee submitted all the relevant documents before the learned CIT(A) like the confirmation letters in the form of affidavits from the father of the assessee by name Shri Venkata Ramaiah, mother Smt. Satyavathi and husband of the assessee Shri Madhusudhan Rao, along with their bank statements to substantiate that such persons deposited the amount in the bank account of the assessee in her OD A/c.

4. The order passed by the learned CIT(A) says that the assessee was given an opportunity to put forth her case, but she failed to produce any evidence what-so-ever. Learned CIT(A) accordingly dismissed the appeal in limine, without referring to either the facts or the grounds or to the merits of the case.

5. Assessee is, therefore, before me in this appeal, contending that the order of learned CIT(A) is not in compliance with section 250(6) of the Income Tax Act, 1961 (for short "the Act"), because even in the absence of any material produced by the assessee, nothing prevented the learned CIT(A) from disposing-of the appeal by way of a speaking order, so as to render assistance to the higher fora. Learned CIT(A)'s order is so cryptic that it does not throw any light as to the reasons considered by the learned CIT(A) to dismiss the appeal.

6. Apart from this, it is contended by the learned AR that as evidenced by the e-proceedings response acknowledgement dated 08/06/2023 and 26/06/2023, the assessee submitted paper book containing 34 pages, but the learned CIT(A) did not refer to the same. In these circumstances, he prays that given an opportunity, assessee is ready to put forth and

prosecute her case diligently before the authorities. In the same breath, learned AR submits that since factual verification is necessary in this matter, it would be convenient if the matter is restored to the file of learned Assessing Officer, because even if it is sent to learned CIT(A), the factual verification cannot be possible in view of the National Faceless Appeal Proceedings and the procedures.

7. Learned DR vehemently contended that several opportunities were granted to the assessee by the learned Assessing Officer, but assessee failed to avail the same and, therefore, the assessee cannot complain that sufficient opportunity was not granted to her. He also submits that learned CIT(A) extracted the entire facts in the assessment order and, therefore, it cannot be said that the first appellate order is not in compliance with the provisions of law.

8. I have gone through the record in the light of the submissions made on either side. At the outset, it appears from the impugned order that neither the facts were extracted nor any reference is made to the relevant issues in the order of learned CIT(A), the mind of the learned CIT(A) is not reflected therein. What all the learned CIT(A) recorded is that, three opportunities were afforded to the assessee, but she failed to avail the same. Learned CIT(A) did not frame any point for consideration nor did he discuss the merits of the case with reference to grounds raised in the appeal.

9. When the assessee is aggrieved by the findings of the learned Assessing Officer and the reasoning, it is for the learned CIT(A) to say whether such reasoning is acceptable or not to him, basing on record. Such an exercise is not undertaken and, therefore, the first appellate order is in contravention with section 250(6) of the Act. On this score, the matter has to go back to the lower authorities. Now the question is whether it should

be remitted to the file of learned CIT(A) or to the file of learned Assessing Officer?

10. As pleaded by the assessee and the documents that were uploaded during the first appellate stage, a factual verification is necessary in this matter. Such facts were not available before the learned Assessing Officer and even if this matter remitted to the file of learned CIT(A) for factual verification, again remand report has to be called for. To obviate all these procedural bottlenecks, I deem it just and proper to restore the issue to the file of learned Assessing Officer so that the learned Assessing Officer will have firsthand enquiry and to take a call, basing the order on merits of the case.

11. With this view of the matter, I set aside the impugned order and restore the issue to the file of learned Assessing Officer to afford an opportunity to the assessee to produce all the evidences and to take a view accordingly. It is made clear that assessee shall prosecute her case diligently before the learned Assessing Officer, failing which no further opportunity would be available to her. Grounds are accordingly treated as allowed for statistical purposes.

12. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 3rd day of August, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 03/08/2023

TNMM

Copy forwarded to:

1. Smt. Durga Bhavani Duscharla, C/o. Flat No. 610, 6th Floor, Babukhan Estate, Basheerbagh, Hyderabad.
2. Income Tax Officer, Ward-1, Nalgonda.
3. Pr.CIT
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD