

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.655/Bang/2023
Assessment Year : 2017-18

Mrs. Khanapur Maralingappa Jayashree, No.135/A, Ganganagar, Bengaluru – 560 032. PAN : ABIPJ 6465 F	Vs.	ITO, Ward – 6(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri. Ganesh R Ghale, Advocate, Standing Counsel for Revenue.

Date of hearing	:	05.10.2023
Date of Pronouncement	:	05.10.2023

ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 20.07.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The grounds raised read as follows:

1. *The impugned Order u/s. 250 of the Act dated: 20-07-2023 passed by the NFAC, Delhi is opposed to law, facts and circumstances of the case.*
2. *The Ld. CIT(A) has erred in holding that though non issue of Notice u/s. 143(2) of the Act is a flaw, the same can never efface or erase liability to pay taxes, where such liability was created by distinct substantive provisions, without appreciating the fact that the issue of Notice u/s. 143(2) was a mandatory requirement of law without which the assessment would not survive.*

3. *The Ld. CIT(A) has erred in placing reliance on the decision of the Hon'ble Kerala High Court in the case of Padinjarekara Agencies Pvt Ltd (2017) 398 ITR 381 (KER) which was distinguishable on facts and circumstances of the case.*
4. *The Ld. CIT(A) has erred in confirming the addition of Rs. 10,00,000/- merely on the ground of non response to the Notices dtd: 19-03-2020, 14-01-2021, 27-09-2022 and 04-11- 2022 issued by the AO without adjudicating the addition on merits of the case.*
5. *The Ld. CIT(A) has erred in dismissing the ground urged as o the non issue of Notice u/s. 143(2) of the Act without appreciating the fact that the alleged Notice was stated to have been issued by ITO Ward — 6(3)(4) whereas the assessment was completed by ITO Ward — 6(3)(1) without appreciating the fact that the AO has completed the assessment upon an alleged notice issued by a different Officer.*

3. Brief facts of the case are as follows:

Assessee, an individual, filed the return of income for Assessment Year 2017-18 on 14.03.2018 declaring total income of Rs.8,80,600/-. The Assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 24.09.2018. The reason for selection of assessment for scrutiny was on account of cash deposits made during the demonetization period. Since there was no response to the notices issued under section 142(1) of the Act, assessment was completed under section 144 of the Act vide order dated 16.12.2019. In the best judgment assessment completed under section 144 of the Act, addition was made of Rs.10 lakhs under section 69A of the Act, being cash deposits made with State Bank of Mysore.

4. Aggrieved by the assessment completed, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, assessee raised legal contentions that no notice under section 143(2) of the Act was issued by the Officer who completed the assessment. The grounds were also raised on merits.

On the legal issue, the CIT(A) dismissed the grounds raised. On merits, since assessee did not file written submissions, the addition made under section 69A of the Act was confirmed.

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. The grounds of appeal Nos.1 and 6 are general in nature and no specific adjudication is called for and hence the same are dismissed. The learned AR did not press the legal grounds viz., grounds 2, 3 and 5. Hence the same are also dismissed. The surviving ground viz., ground No.4 with regard to merits, the learned AR submitted that the assessee, being a senior citizen, was not aware of the notice sent online. Therefore, in the interest of justice and equity, one more opportunity may be granted to the assessee to furnish the necessary evidences / written submissions as regards the source of cash deposits made in State Bank of Mysore.

6. The learned Standing Counsel was duly heard.

7. I have heard the rival submissions and perused the material on record. The CIT(A) has not decided the issue on merits since the assessee has not responded to the notices issued on 19.03.2023, 14.01.2021, 27.09.2022 and 14.11.2022. The assessee is a senior citizen and was not aware of the notices being sent online. In the interest of justice and equity, I am of the view that one more opportunity ought to be granted to the assessee to present her case as regards the source of cash deposits made amounting to Rs.10 lakhs. In the instant case, since the assessment was completed under section 144 of the Act, I deem it appropriate to remit the issue raised on merits to the files of the AO. The AO is directed to afford reasonable opportunity of being heard to the assessee. The assessee is directed to

co-operate with the Revenue and not to seek unnecessary adjournments. With the aforesaid observations, I restore the matter to the files of the AO.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)

Vice President

Bangalore.

Dated: 05.10.2023.

/NS/*

Copy to:

- | | |
|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.