

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B”, HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.437/Hyd/2023		
Assessment Year: 2017-18		
Rajanikar Reddy Kota, 2-5-123, 1 st Floor, G2, Pinninti Nilayam, B.K. Guda, Hanamkonda, Telangana - 506001. PAN : ARZPK8460A.	Vs.	The Income Tax Officer, Ward – 2, Hanamkonda.
(Appellant)		(Respondent)
Assessee by:	Sri V. Srinivas, C.A.	
Revenue by:	Ms. Sheetal Sarin, Sr. AR	
Date of hearing:	05.10.2023	
Date of pronouncement:	09.10.2023	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.03.08.2023 invoking proceedings under section 144 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

“1. On the facts and in the circumstances, the impugned order of the Learned CIT(A) is erroneous and bad in law.

2. On the facts and in the circumstances of the case, the Learned CIT(A) grossly erred in upholding the addition of Rs.1,37,75,467/- u/s.69A of I.T.Act, 1961.

3. The Learned CIT(A) failed to appreciate that the assessee was prevented by genuine reasons for not providing details in response to the notice U/s.142(1) of I.T.Act.

4. The Learned CIT(A) grossly erred in treating the cash deposit in Bank account both during the demonetization period amounting to Rs.20,03,410/- and outside demonetization period amounting to Rs.1,17,72,057/- as unexplained money U/s.69A.

5. The learned CIT(A) further erred in upholding the prejudiced inference drawn by the assessing officer that the bank deposits of Rs.20,03,410/- made during demonetization period represents specified bank notes.

6. The Learned CIT(A) ought to have stepped into the shoe of the Assessing Officer and considered the appellant's detailed explanation of the source for the deposits made in the bank account and immediate application thereof in the normal course of business.

7. The Learned CIT(A) grossly erred in summarily brushing aside the explanation and documentary evidence filed in the course of appeal proceedings, without proper application of mind, ignoring the principles of natural justice and overlooking the basic tenets of appeal proceedings.

8. On the facts and in the circumstances of the case the learned CIT(A) further erred in charging tax U/s.115BBE of I.T Act, 1961.”

3. Facts of the case, in brief, are that on the basis of data analytics and information gathered during the phase of online verification under ‘Operation Clean Money’, the Income Tax Department gathered a list of assessees, who had deposited substantial Cash in bank account(s) during the demonetization period (9th November, 2016 to 30th December, 2016), but has not filed Income tax Return for A.Y.2017-18. The data revealed that the assessee herein has deposited by Cash of Rs.20,03,410/- in his

bank accounts during the demonetization period. As the assessee has not filed his return of income for the A.Y.2017-18, Notice u/s 142(1) of the Income Tax Act, 1961 was issued on 08.01.2018 asking the assessee to furnish the return of income. However, the assessee has failed to furnish return of income for A Y 2017-18 either u/s 139 (on or before 31.03.2018) and failed to furnish Income Tax Return (ITR) in response to notice issued u/s 142(1) of the Act. In view of the provisions of Section 144(1)(b) of the Act, and for the failure on the part of the assessee to furnish the Income Tax Return for AY 2017-18 in response to notice u/s 142(1) of the Act dated 8.1.2018, the Assessing Officer has proceeded with completion of 'best judgement assessment'.

4. During the course of assessment proceedings, on the basis of AIR information available, information was called for u/s 133(6) of the Act from the banks and found some credit transactions totaling to Rs.1,37,75,467/- in various bank accounts of the assessee. The cash deposits during the demonetization period are Rs. 20,03,410/- and the credits other than such cash deposits are Rs.1,17,72,057/-. As the assessee failed to explain the sources of the total credits of Rs.1,37,75,467/- deposited in his Bank accounts which also included the cash deposits during demonetization period, Assessing Officer completed the assessment u/s 69A of the Act interalia making an addition of Rs.1,37,75,467/- to the total income of the assessee.

5. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee by observing as under :

“6.11 I have carefully examined the issue. The submission of the appellant is considered but found not tenable. A genuine transaction must be proved to be genuine in all respect. In the present case, I find that the appellant has failed to discharge its burden of proof and the AO, on the other hand, has proved that the claim of the appellant was incorrect. Each case has got to be decided on the facts and circumstances of that case. The relevant factors to be considered are surrounding circumstances, objective facts, evidences adduced, presumption of facts based on common human experience in life and reasonable conclusions. In the absence of any satisfactory compliance and gross disregard to the law of land by the appellant, the undersigned has no option, but to complete the assessment u/s 144 to the best judgement on the basis of the material available on record.

6.12 Since, the assessee has failed to explain even after several notices u/s 142(1) and show-cause notice issued, these cash deposits made into assessee's account during the demonetization period takes the character of unexplained money within the meaning of section 69A of the Act. Therefore, the provisions of section 69A of the IT Act are clearly applicable in the present facts & circumstances of the case.

6.13 Keeping in view of the above, the AO in his order has explained the reasons for addition made in this case whereas the appellant has not furnished the relevant documentary evidences/details in support of his case, the addition made by the Assessing Officer is hereby confirmed and ground of appeal raised by the appellant (Ground No. 2 & 3) is dismissed.

6. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

7. Before us, ld. AR for the assessee submitted that the order passed by the ld.CIT(A) is without any application of mind as the ld.CIT(A) has failed to appreciate that the assessment order was passed against the assessee u/s 144 of the Act. In the appellate proceedings, the assessee has provided necessary information explaining the sources of cash deposits in the bank accounts. However, contrary to the above, the ld.CIT(A) at Para 6.10 of his order has mentioned that the Assessing Officer has examined the explanation of the assessee and the Assessing Officer was satisfied that the assessee was not able to explain the sources of the total cash deposits made during the demonetization period. It was submitted by the ld. AR that since there was no application of mind by the lower authorities, the matter may be remanded back to the file of Assessing Officer.

8. On the other hand, ld. DR relied upon the orders of lower authorities and submitted that they are in accordance with the law.

9. We have heard the rival submissions and perused the material on record. In the present case, the Assessing Officer had passed assessment order u/s 144 of the Act and in Para 6.3 of his order, it was mentioned that the notice u/s 142(1) of the Act was issued on 08.01.2018 and again notice was issued on 01.11.2019. It was the case of the Assessing Officer that despite the grant of various opportunities, the assessee has failed to provide the explanation / evidence to substantiate his case.

10. Per contra, the claim of the assessee before us is that the assessee has provided the necessary explanation at the appellate stage itself, however, the Id.CIT(A) has failed to examine the same. It was submitted by the assessee in Paras 1.2 and 1.3 and 1.4 of the reply in the appellate proceedings (mentioned at Para 5 of the order of Id.CIT(A)) that the assessee is in the business of mobile recharge and dealer of Vodaphone Mobile Services Limited. In fact, during the said period, the assessee has received money on account of resale of mobile recharge coupons from retail shops like kirana shops, mobile shops, mobile servicing shops, Pan shops etc. and the amounts so received from them were paid to the Vodaphone Mobile Service Limited, after retaining the commission by him. The above said explanation was requested to be examined by the Assessing Officer / Id.CIT(A). However, the above said explanation was not examined by the lower authorities instead they have considered the cash deposits as income of the assessee and made addition in the hands of the assessee. In our view, the above said submissions of the assessee which were vital as it explains the source of cash deposits into the bank account of assessee during the period of demonetization and requires consideration by the Revenue. In light of the above, we deem it appropriate to remand back the matter to the file of Id.CIT(A) with a direction examine the submissions observed by the Id.CIT(A) at Para 5 of his order and after considering the submissions of the assessee and thereafter pass a detailed speaking order. Hence, the appeal of the assessee is remanded back to the file of Id.CIT(A) with a direction to pass a fresh speaking order after giving due opportunity of hearing to the assessee, in accordance with law. The assessee shall be at liberty

to file documents, if any, as required for proving his case and the ld.CIT(A) shall consider such evidences, if any, filed by the assessee. Needless to say the ld.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. Accordingly, the appeal of assessee is allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 9th October, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 9th October, 2023.

TYNM/sps

Copy to:

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2	The Income Tax Officer, Ward - 2, Hanamkonda.
3	PCIT -
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order