

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

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 314/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2018-19)

Vijay Raj Narayan Pershad,  
Hyderabad  
[PAN No. ABUPN9997N] Vs. Income Tax Officer,  
Ward-9(1),  
Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Mohd. Afzal, AR  
राजस्व द्वारा/Revenue by: Shri Rajendra Kumar, CIT-DR

सुनवाई की तारीख/Date of hearing: 30/10/2023  
घोषणा की तारीख/Pronouncement on: 21/11/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 25/05/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Vijay Raj Narayan Pershad ("the assessee") for the assessment year 2018-19, assessee preferred this appeal.

2. According to the assessee, his business is three-fold. One is in the retail trade of petroleum products of Bharat Petroleum Corporation Limited (BPCL), under the name and style of Ratan Filling Station, with a turnover of Rs. 26,13,41,140/- during the financial year 2017-18. Second one is the business of bar and restaurant in the name of M/s. Lake Front Bawarchi Bar and Restaurant, whose turnover is at Rs.2,69,52,014/- during the financial year 2017-18. Apart from these two, during the financial year 2017-18, the assessee was getting commission income by allowing the people to swipe their cards, and receiving the amount in Cash. Assessee filed the return of income for the assessment year 2018-19 declaring an income of Rs. 16,69,750/-. During the scrutiny proceedings, assessee submitted the details of cash withdrawals from the restaurant on paper but not ledger, copy of sales register of the restaurant, ledger of Afroz Baig from Ratan Filling Station, details of cash withdrawal from Ratan Filling station on paper, ledger of Ratan Filling station from Lake Front Restaurant & Bar and sales register of Ratan Filling Station.

3. Learned Assessing Officer, however, looking at the cash withdrawals to the tune of Rs. 18,77,95,700/- vis-à-vis the turnover of the assessee shown at Rs. 3,51,35,816/- felt that there is no justification for such huge withdrawals and therefore, disallowed 75% thereof amounting to Rs. 17,90,11,746/-. Further, on verification of profit and loss account, the learned Assessing Officer noticed that the assessee had debited certain expenditure and since no proof of payments was submitted by the assessee, learned Assessing Officer disallowed a sum of Rs. 48,99,384/-.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the learned CIT(A) and pleaded that though the assessee admitted a net profit of Rs. 16,14,062/- in the return of income, by inadvertence, the turnover and expenditure from the petrol pump was not shown and, therefore, the entire balance sheet and profit and loss account was not correct. According to the assessee, such a lapse was noticed only after the assessment order was passed. Further, case of the assessee was that during the year under consideration, the assessee was also involved in card swiping activity in which the customers swipe their credit cards in the point of sale of the assessee and receive such amount in cash, resulting in such amount being credited to bank account of the assessee. Assessee was getting Rs. 100/- per Rs. 1 lakh in that activity towards commission. According to the assessee, this practice started in view of the huge cash available with the assessee at petrol pump and over a period time, it increased and the assessee started paying cash to the swipers by withdrawing the same from the bank. According to the assessee, the huge cash withdrawals are attributable to this activity and, therefore, any disallowance of the same is not justifiable.

5. In respect of the disallowance of cash expenditure, it was submitted that the learned Assessing Officer, incorrectly assumed that the assessee incurred an expenditure and offered no explanation about the source of such expenditure, and the learned Assessing Officer is aware that the assessee is in the business of retail trade of petroleum products. The deposits of cash in the bank are mostly from the sale of petrol or by way of credits on account of swiping activity. This fact could not be explained to the learned assessing officer by the accountants on account of prevailing

situation at the time of assessment proceedings due to Covid pandemic in the state. It was further submitted that the assessee has not debited Rs. 17,90,11,746/- as expenditure in the profit and loss account and also not claimed such amount as an expenditure incurred, therefore, in the facts and circumstances of the case, the provisions of section 69C of the Act are not attracted. The credits in the bank accounts and the amounts paid towards purchase of petroleum products were not doubted by the learned assessing officer. During the course of assessment proceedings, the learned assessing officer and the assessee have not realised that there is an omission of furnishing of correct details. As the assessee revised financials considering these facts and circumstances, the addition is liable to be deleted.

6. Learned CIT(A), however, did not believe the version of the assessee by stating that the turnover of the assessee and type of business activity does not justify the withdrawal of such huge amounts of cash and there is no evidence to establish the swiping activity or incurring the withdrawals in such transaction. So also, in respect of the disallowance of cash expenditure, the learned CIT(A) held that the learned Assessing Officer found that the assessee debited certain expenditure from the profit and loss account, except producing balance sheet, no proof of payments was submitted. According to the learned CIT(A), though the assessee submitted that the expenditure was incurred to meet the exigency of business purpose based on actual invoices, no such documents are filed. The learned CIT(A), therefore, declined to delete the disallowance also.

7. Assessee is, therefore, before us contending that the authorities below failed to consider the revised financials and revised computation for the purpose of rectification of mistake that was committed inadvertently, resulting in the perpetuation of mistakes. According to the learned AR, for the assessment years 2016-17, 2017-18 and 2018-19, the total turnover of the assessee was Rs. 28,23,33,954/-, Rs. 25,59,23,731/- and Rs. 26,32,22,701/- respectively, with gross profit ratio of 4.41, 5.89 and 4.97 and net profit ratio of 0.65, 0.61 and 0.64 respectively. Basing on this, he submitted that since there is consistency in the turnover, gross profit and net profit ratio over these years, it should have raised a doubt in the minds of the authorities below as to the huge withdrawals falling out of the business receipts. He explained that it is only due to the swiping activity undertaken by the assessee during the year, there were huge withdrawals, but such withdrawals are only routed to the bank account through the swiping activity and, therefore, no additional money is involved or that the all the withdrawn money was spent. He submitted that if the authorities below consider this aspect of withdrawals in the light of the contention of swiping activity, it would make the things clear. He also submitted that the disallowance of the cash expenditure also requires re-consideration, because the authorities below never asked for production of the invoices etc., and as a matter of fact, every expenditure incurred by the assessee is supported by invoices and other relevant documents and the assessee is ready to produce the same.

8. We have gone through the record in the light of the submissions made on either side. According to the assessee, he is engaged in the business of retail trade of petroleum products of BPCL under the name and

style rather than filling station and also running M/s. Lakefront Bawarchi Bar and Restaurant. Assessee's case is that, while filing the return of income, the assessee declared total income at Rs. 16,69,750/-, which is the income from the business of M/s. Lake Front Bawarchi Bar and Restaurant, but by inadvertence did not consider the turnover and net profits from the business of Ratan Filling Station. His further case is that, though he submitted the details of both the businesses before the learned Assessing Officer, and the learned Assessing Officer referred to the business in retail trade in petroleum products in the assessment order, while passing the order learned Assessing Officer failed to verify the turnover from the petroleum products business while observing that, looking to the turnover of the assessee and type of business activity, it is not justifiable to withdrawal of such huge amount of cash.

9. On this aspect, we find that the assessee had taken the plea before the learned CIT(A) that in view of the availability of huge cash in the hands of the assessee, at the end of the day, generated by the retail business in the petroleum products and also the restaurant, he allowed the people to swipe their bank cards and to receive the said amount in cash, for a commission of rupees hundred per every Rs.1 lakh. Grievance of the assessee is that both the authorities failed to consider the consistency in the business turnover of the assessee before appreciating the facts surrounding the huge withdrawals. His particular grievance is that in spite of producing the details relating to the turnover of his business in petroleum products as well as the restaurant for the past three years, with the details like net profit, GP ratio and NP ratio, instead of verifying the

same in the light of the revised financials and other details furnished by the assessee, learned CIT(A) failed to take a pragmatic view.

10. On a perusal of the assessment order, we find that the learned Assessing Officer referred to the business of the assessee in petrol filling station. Learned Assessing Officer, however, referred to the turnover of the assessee at Rs. 3,51,35,816/- and observed that looking at the said turnover and the type of business activity, the withdrawal of such huge amount of cash is not justified. Learned Assessing Officer, therefore, treated the withdrawals as expense, and observing that at the end of the day when the petrol filling station and bar and restaurant, the assessee will be holding cash in his hand, out of which the expense could have been met, and, therefore, 25% of the total turnover may be allowed as cash expense for the year under consideration. On this premise, learned Assessing Officer allowed a sum of Rs. 87,83,954/- and disallowed the rest of Rs. 17,19,11,746/-.

11. We find that before the learned CIT(A), the assessee while filing the revised financials, pleaded that he is into the activity of allowing the swiping of the bank cards by the customers to receive the amount in cash, available in the hands of the assessee from the sales of petrol and the restaurant business, to receive a commission of Rs. 100 for every Rs. 1 lakh. It means that the assessee is routing the cash sales to the bank via swiping activity, though receiving some commission, which he declared at Rs. 1,74,436/- for the swiping activity relating to Rs. 17.44 crores.

12. In view of the figures relating to the turnover of the petrol filling station and also the restaurant for the last three years prior to the year

under consideration wherein the total turnover, GP, net profit, GP ratio and NP ratio or in close proximity, we are of the considered opinion that the learned CIT(A) should have considered this plea taken by the assessee by requiring the material, if any, from the assessee and to take a plausible view. Before making a huge addition to the tune of about Rs. 18 crores, the authorities should have looked at the material as a whole.

13. With this view of the matter, we are of the considered opinion that the plea taken by the assessee, explaining the reason for huge withdrawal of cash, linking it to the swiping activity and commission, requires examination by the learned CIT(A) before whom such a plea was taken for the first time. Learned CIT(A) will take a call on this aspect, after calling for any remand report, if he deems it fit and after affording an opportunity to the assessee of being heard. We accordingly set aside the findings of the authorities on this issue and restore the same to the file of the learned CIT(A) to comply with the above direction. Relevant grounds are accordingly treated as allowed for statistical purpose.

14. Insofar as the cash expenses are concerned, grievance expressed by the assessee before us is that when the assessee expressed his willingness to produce whatever the documents that are required by the learned CIT(A), learned CIT(A) without asking the assessee to produce any such material, recorded that the onus is on the assessee and since the assessee did not file any material, no interference is required on the aspect of disallowance of the cash expenses. We find some strength in this argument. Since we are restoring the issue relating to the disallowance of Rs. 17.90 crores to the file of the learned CIT(A), while deciding the issue

on findings of the learned CIT(A) on cash withdrawals, therefore, we restore the issue relating to cash expenses also to his file for deciding the issue afresh, after calling for any material, if required, and after hearing the assessee. This Ground is also treated as allowed for statistical purposes.

15. In the result, appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on this the 21st day of November, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 21/11/2023

TNMM

Copy forwarded to:

1. Vijay Raj Narayan Pershad, C/o. Mohd. Afzal, Advocate, #402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad.
2. The Income Tax Officer, Ward-9(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD