

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

**BEFORE SHRI GEORGE GEORGE, VICE PRESIDENT AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.707/Bang/2023
Assessment Year : 2015-16

Sri Ramanna Srinivas, Patalamma Temple, Rajappa Layout, Santhe Beedhi, Jigani Hobli, Anekal Taluk, Bengaluru-560 105.  <b>PAN : CPXPS 0321 E</b>	Vs.	The Income Tax Officer, Ward-4(3)(5), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vignesh, CA
Revenue by	:	Shri Parithivel, JCIT (DR)

Date of hearing	:	28.11.2023
Date Pronouncement	of :	28.11.2023

**ORDER**

***Per Laxmi Prasad Sahu, Accountant Member :-***

The appeal filed by the assessee is against the order passed by the NFAC, Delhi dated 19/06/2023 vide DIN No.ITBA/NFAC/S/250/2023-24/1053789898(1) u/s 250 of the Act on the following grounds of appeal:-

*"1. That the order of the learned Commissioner of Income Tax (Appeals) in so far is prejudicial to the interest of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*

***Grounds on Principle of Natural Justice***

*2. That the learned Commissioner of Income Tax (Appeals) and the learned assessing officer erred in law and on facts in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.*

***Grounds on Section 144 of the Act***

*3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the order of the learned Assessing officer on adding a sum of Rs.54,25,500/- on just mere AIR Information.*

*4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the order of the learned Assessing officer without considering the "relevant material" on record before making the assessment u/s 144 of the Act which is illegal, bad and void-ab-initio.*

*5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the order of the learned assessing officer for making the addition of Rs.50,86,899/- without considering the bank statement.*

***Grounds on Cash Deposits***

*6. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the action of learned Assessing Officer in making an addition of Rs.50,86,899/- u/s 68 of the Act and levying tax @ 30% u/s 115BBE of the Act.*

*7. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding only the cash deposits thereby forming an opinion/guess work that the appellate has escaped income amounting to Rs.50,86,899/-.*

*8. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in adding a sum of Rs.50,86,899/- which is from earlier withdrawals and also from the cash receipts from business already offered to tax.*

*9. That the learned Commissioner of Income Tax (Appeals) and the learned assessing officer ought to have considered the peak credit for the FY 2022-23 before making the addition u/s 68 of the Act.*

***Alternative Ground***

*10. Without prejudice to the above-mentioned grounds, the learned Commissioner of Income Tax (Appeals) ought to have at-least taxed the cash deposits as gross receipts from business u/s 44AD on a presumptive basis.*

*Each of the above grounds is without prejudice to one another, the appellant craves the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify all or any of the grounds of appeal either before or at the time of hearing of this appeal."*

2. The brief facts of the case are that the assessee filed return of income on 24/08/2015 declaring an income of Rs.2,95,410/-. The case was selected for scrutiny under CASS with the remark “cash deposited in savings bank account is more than the turnover” and as per AIR information, the case was selected for scrutiny and statutory notices were issued to the assessee and other notices were also issued to the assessee on different dates but the assessee did not respond any of the notices, therefore, the final opportunity was granted to the assessee in spite of that, the assessee did not appear

3. The AO also contacted the assessee over phone and in spite of that assessee did not appear. The AO noted that the assessee has received income from house property of Rs.3,95,920/- and there was cash deposits of Rs.54,25,500/- in savings bank account in Union Bank of India. Since the assessee did not submit any explanation in regard to cash deposits in his bank account, therefore, the AO after giving final opportunity to the assessee added entire cash deposits into the income of the assessee and applied tax rate as per sec.115JBE of the Act.

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A). The CIT(A) also issued various notices on different dates. Before the CIT(A), the assessee also did not comply any of the notices issued by the CIT(A). Accordingly, the CIT(A) dismissed the appeal of the assessee.

5. At the outset of hearing, it was noticed that the appeal filed by the assessee before this Tribunal is delayed by 35 days. The ld.AR of the

assessee submitted that due to wrong email Id and phone number in the portal, the order was not received by the assessee which was issued in the month of August and only when the assessee's consultant logged in for filing return, the order was passed by the CIT(A) came to his knowledge and filed appeal before the ITAT.

6. We have heard the rival submission of both the parties and after pursuing of the materials placed before us and we are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned. We accordingly condone the delay in filing the appeal after relying on the judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (198) 167 ITR 471.

7. We have considered the rival submissions and noted that the assessee's representative did not appear before any of the lower authorities. The ld.AR of the assessee prayed that if a chance is given to the assessee for representing its case before the AO then the assessee will be able to submit the requisite documents to substantiate its case. The ld.AR has also filed paper book, which is placed on record. After considering the submission of the ld.AR, in the interest of justice, we remit this issue to the file of AO for fresh consideration and assessee is directed to produce necessary document for substantiating his case and further directed not to seek unnecessary adjournment for early disposal of the case and the assessee is further directed to update his

correspondence address as well as email.id for communication. The AO is directed to give reasonable opportunity of being heard to the assessee and to decide the issue in accordance with law. Accordingly, the appeal is allowed for statistical purpose.

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

Order pronounced in court on 28<sup>th</sup> November, 2023

Sd/-

**(GEORGE GEORGE)**  
Vice President

Sd/-

**(LAXMI PRASAD SAHU)**  
Accountant Member

Bangalore,  
Dated : 28<sup>th</sup> November, 2023  
/ vms /

Copy to:

Applicant  
Respondent  
CIT  
CIT(A)  
DR, ITAT, Bangalore.  
Guard file

By order

Asst. Registrar, ITAT, Bangalore