

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

BEFORE

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

आ.अपी.सं / **ITA Nos.510/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2013-14)

Vijay Sree Malladi, K.V. Ranga Reddy District, Telangana, 3-40/2, Plot No.294, Road No.5, Prashanthi Hills, Saroornagar, Hyderabad, Telangana – 500097. PAN : APVPM6524R.	Vs.	The Income Tax Officer, Ward 9(1), Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA No.535/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2013-14)

The Income Tax Officer, Ward 9(1), Hyderabad.	Vs.	Vijay Sree Malladi, K.V. Ranga Reddy District, Telangana, 3-40/2, Plot No.294, Road No.5, Prashanthi Hills, Saroornagar, Hyderabad, Telangana – 500097. PAN : APVPM6524R.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri E.S. Ranganath, C.A.
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, Sr.A.R.

सुनवाई की तारीख/Date of hearing: 29/11/2023
घोषणा की तारीख/Pronouncement on: 29/11/2023

आदेश / O R D E R

PER LALIET KUMAR, JM:

These cross appeals filed by the assessee and Revenue are directed against the common order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 28.08.2023 passed u/s 147 of the Income Tax Act, 1961 (in short 'Act') for the assessment year 2013-14.

2. As the facts of the case in the captioned appeals are identical, except the amounts involved, we are reproducing the facts in ITA No.510/Hyd/2023 for A.Y. 2013-14 for the sake of brevity.

2.1. The grounds raised by the assessee in ITA No.510/Hyd/2023 reads as under :

“1.Appeal Order and Assessment Order to the extent against Appellant is contrary to the facts and provisions of the Income Tax Act.

2. The Ld. CIT(Appeals) is not justified in determining Rs.71,87,757/- as explained money to be taxed under Section 69A of IT Act.

3. The Ld. CIT(Appeals) and Assessing Officer failed to consider the contention of the Appellant that all the deposits appearing in the bank account of the Appellant, which is subject matter of these proceedings, have been considered in the return of income of the Appellant's husband for the same assessment year by providing documentary evidence.

4. *The Ld. CIT(Appeals) erred in his observation that the cash deposits in the account of the Appellant have been duly considered by the Appellant's husband in his return of income is completely misleading without providing any reason in support of his observation or the Ld. CIT(Appeal) ought to have called for such information / documentary evidence to its satisfaction that the amounts in consideration have been made part of Appellant husband return of income.*

5. *The Ld. CIT(Appeals) and the Assessing Officer when not satisfied with the documentary details and evidences submitted by the Appellant in establishing that the transactions appearing in the bank account of the Appellant have been considered in the hands of the Appellant's husband they ought to have called for further information along with documentary evidence instead of recording that the Appellant has not put forth strong documentary evidence.*

6. *The Ld. CIT(Appeals) and the Assessing Officer failed to note that the transactions in the subject bank account of the Appellant are in the knowledge of Appellant's husband and have been duly considered by him while preparing his return of income for the relevant assessment year.*

7. *The Ld. CIT(Appeals) and the assessing Officer erred in considering the deposits in the said bank account as unexplained money to be taxed under section 69A of IT Act ignoring the details furnished by the Appellant establishing that the said amounts have been considered by her husband in his return of income and the Appellant can not be taxed once again on the same deposits.”*

2.2. The Revenue has also raised grounds, however, the same are not reproduced for the sake of brevity.

3. The brief facts of the case are that the National Faceless Assessment Centre (NFAC) passed the Assessment Order (AO) dated 31.03.2022 for the assessment year 2013-14 under section 147 read with section 144B of IT Act determining a total income of Rs. 2,46,13,700/- which comprise of income from salary Rs.1,80,000/- and explained money under section 69A of IT Act of

Rs.2,44,33,700/-. The above assessment was done based on notice under section 148 of IT Act dated 31.03.2021.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal which was migrated to Id.CIT(A), NFAC, Delhi, who after examining the facts on record had granted partial relief to the assessee.

5. Feeling aggrieved with the order of Id.CIT(A), assessee and Revenue are now in appeal before us.

5.1. Before us, both the parties has drawn our attention to the order of Id.CIT(A) wherein the Id.CIT(A) at paras 9.1 to 9.7 of his order, has observed as under :

“9.1. The assessment order along with the rival contentions and materials available on record were carefully perused. The moot point is addition of Rs.2,44,33,700/-being sum total of Rs.1,54,66,245/- being cash deposits plus Rs.71,10,000/- being deposits with a Banking Company plus Rs.18,57,455/- being time deposits totalling to Rs.2,44,33,700/-.

9.2. Main contention of the appellant, inter alia, other objections is that actual deposits as per the bank account statements are Rs.61,10,000/- made by the appellant. The difference of Rs.1,83,23,700/- should not have been considered as unexplained money u/s.69A of the Act. Supporting the claim, the appellant has furnished bank account statement from 01-03-2012 to 31-03-2013 pertaining to account No.013210100030725 maintained with Andhra Bank Bagh Amber Pet. A perusal of the said bank account statement reveals that the following cash deposits have been made by the appellant on the following dates.

9.3. In the reply dated 27-07-2023, the appellant categorically stated that the actual deposits made in the account of the appellant was Rs.61,10,000/-. It is further stated that the said amount of Rs.61,10,000/- which the appellant claims to be actual deposits have been accounted in her husband's return of income for the relevant Assessment Year. In support of the claim, the appellant also furnished the copy of ITR-V for the A.Y.2013-14 filed by Sri.Malladi Gopal Krishna. As seen from the computation of income submitted, which is heavily relied upon by the appellant, Sri.Malladi Gopal Krishna has shown gross receipts as follows:-

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9.4. Out of the total gross receipts shown at Rs.17,20,119/- a sum of Rs.2,46,390/-has been deducted towards various overhead expenditures and income from profession is arrived at Rs.14,73,729/- in the case of the appellant's husband.

9.5. The above discussion indicates that the argument of the appellant that the cash deposited in the accounts of the appellant has been duly considered by the appellant's husband in his return of income is completely misleading. The Gross receipts admitted by her husband is Rs.17,20,119/- only. As regards the claim of offering from devotees, as claimed to have been received, cannot help the assessee in the absence of any evidence, in particular, the assessee is not registered under any of the provisions of the Income Tax Act,1961. The evidence on record regarding cash deposits is undisputed and the appellant has not put forth strong documentary evidence in support of her claim.

9.6. The onus which lied on the appellant was to provide to the AO, identity of the contributors and their confirmations along with the genuineness of transactions, has not been dispensed correctly. When it is not fulfilled, donation/contribution will be anonymous and should be treated as unexplained. Giving whatever nomenclature such as unsecured loans or other, will be a misnomer. Where identity of the contributors is not proved, the cash deposits remain unexplained and the AO can very well consider the said deposits as unexplained money taxable u/s 69A of the Act. Having said that, the appellant's argument with regard to the quantum of the addition as held by the AO at Rs.2,44,33,700/- being total sums of Rs.[1,54,66,245/-(cash deposits) + 71,10,000/- (deposit with a banking Company) +18,57,455/- (Time deposits)} whereas the actual deposits are at Rs.61,10,000/- cannot be blindly brushed aside. However, the appellant has also not convincingly established that the actual deposits including cash and time deposits are at only Rs.61,10,000/- either during the assessment proceedings or the appellate proceedings. It is also seen that during the assessment proceedings, the Assessing Officer has also not independently verified the actual cash and other deposits in the bank accounts of the appellant.

9.7. As brought out in Para 9.2 supra, the actual cash deposits are held at Rs. 45,55,415/- which is evident from the bank account statement. Since the appellant has not satisfactorily explained the sources of cash deposits, the sum of Rs.45,55,415/- calls for addition u/s.69A being cash deposits with the bank account. With regard to the time deposits quantified at Rs.18,57,455/-, the Appellant has not come up with any substantiating documentary evidence explaining the source of the such deposits along with any cash flow statement. Therefore, addition of this amount of Rs.18,57,455/- (being part of Rs.2,44,33,700/-) held as Time Deposits by the AO warrants no interference. With regard to the other credits in the bank account, sans cash deposits, it is seen that the total credits are at Rs.53,30,302/- and regarding difference between the cash deposits and the total credits at Rs.53,30,302/- the appellant has not been able to satisfactorily explain the credits to the tune of Rs.7,74,887/- also. The appellant's claim that her income was shown in her husband's Return of

income cannot be accepted as the appellant or her husband has maintained any books of accounts to substantiate her claim. Thus, the credits in the bank account of Rs.7,74,887/- stands unexplained.

The cash deposits in the bank account are Rs.45,55,415 as against the amount of Rs.1,54,66,245 addition made on account of cash deposits. Further, other credits in the bank accounts amounting to Rs.7,74,887/- stands unexplained along with Rs.18,57,455/- unexplained investments in term deposits. To sum up, out of the total addition of Rs.2,44,33,700/- made, the Assessing Officer is directed to delete a sum of Rs.1,72,45,943/- and add only Rs.71,87,757/- being the total of 1) cash deposits of Rs.45,55,415/-, 2) other credits at Rs.7,74,887/- and 3) Time Deposits of Rs.18,57,455/- and bring to tax the same in terms of Section 69A of the Act, 1961. In view of the above, Ground Nos.3,4 and 5 are partly allowed.”

6. Before us, the ld.AR submitted that ld.CIT(A) had failed to taken note of the deposits disclosed by the husband of the assessee in his return of income of which no credit has been given to assessee. It was submitted that the husband of the assessee also filed his return of income and the amount which was shown by the husband of the assessee in his return of income should not be added back to the income of the assessee.

7. Per contra, ld.DR submitted that the above aspect has to be examined in toto. Further, the assessee has submitted that the ld.CIT(A) has passed cryptic and perfunctory order and therefore, the appeal of Revenue is also required to be remanded back to the file of Assessing Officer. Ld.DR further submitted that the above said facts coupled with other facts mentioned in the order of ld.CIT(A) are required to be verified and since they were not verified by the ld.CIT(A) while granting relief to assessee, it was submitted that the matter may be sent back to the Assessing Officer for fresh examination, as the order of ld.CIT(A) was cryptic, non-speaking and perfunctory order.

8. We have heard the rival submissions and perused the material on record. In our view, the foundation facts were required to be examined and appreciated by the revenue authorities. Needful was not done by the Id.CIT(A) before coming to the conclusion that the deposits in the hands of the assessee were considered in her husband's return of income. In view of the above facts, we deem it appropriate to remand the matter back to the file of AO for a de novo assessment in accordance with the law.

In the light of the above, we deem it appropriate to remand back the matter to the file of Assessing Officer for passing a fresh order after granting due opportunity of hearing to the assessee, in accordance with law. The assessee is also directed to produce all the documents / submissions in the light of the grounds raised hereinabove.

9. In the result, both the appeal of assessee in ITA No.510/Hyd/2023 and appeal of Revenue in ITA No.535/Hyd/2023 are allowed for statistical purposes. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 29th November, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2023.
TYNM/SPS

Copy to:

S.No	Addresses
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2	The Income Tax Officer, Ward 9(1), Hyderabad.
3	The PCIT concerned, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order