

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.848/Bang/2023
Assessment Year: 2016-17

Siddartha Girijashankar M/s B.P Basappa Setty & Sons, I.O.C Aldur-577 111. Karnataka  <b>PAN No. - AMTPG 7959 F</b> <b>APPELLANT</b>	<b>Vs.</b>	The Income-tax Officer, Ward-1, Chikamagalur.  <b>RESPONDENT</b>
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<b>Appellant by</b>	:	Shri Siddesh Nagaraj Gaddi, CA
<b>Respondent by</b>	:	Shri Vimalraj P, JCIT (DR)

<b>Date of Hearing</b>	:	20.12.2023
<b>Date of Pronouncement</b>	:	.12.2023

**ORDER**

**PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the NFAC, New Delhi vide order dated 26/10/2023 u/s 250 of the Income-tax Act in DIN No.ITBA/NFAC/S/250/2023-

24/1057354819(1) for the assessment year 2016-17 with the following grounds of appeal.

1. *The order passed by the Learned Assessing Officer (National Faceless Assessment Centre), as upheld by the Commissioner of Income Tax (Appeals) (National Faceless Appeal Centre) is bad in law, in so far as not considering the contention of the Appellant, making the additions and the same is not in accordance with the provisions of the Income-tax Act, 1961 and facts of the case.*

2. *The Learned CIT(A), having condoned the delay in filing the appeal, has erred in not admitting the additional evidence on the same grounds.*

3. *Having noted that the Appellant has responded only once during the assessment proceedings, the CIT(A) has erred in stating that the AO has considered all the facts on records and passed a speaking order.*

4. *The CIT(A) has erred in perversely stating that the Appellant has not submitted any documents pertaining to his hospitalization due to COVID and has further erred in stating that the hospitalization claim during COVID remains unsubstantiated.*

5. *The Learned CIT(A) has erred in not appreciating that sufficient opportunity was not produced during assessment.*

6. *The CIT(A) has erred in stating that the Appellant has furnished additional evidence without any accompanying petition making out a case under any of the four limbs of Rule 46A(1) of the IT Rules.*

7. *The CIT(A) has erred in stating that the Appellant was not prevented by sufficient cause for not submitting details during the assessment proceedings and therefore the basis of rejection of additional evidence is erroneous.*

8. *The Learned CIT(A)/AO have erred in law and on facts in making the addition of Rs.6,18,28,290/- to the total income.*

9. *The Learned AO/CIT(A) have erroneously passed the order considering the cash deposits as unexplained investments in spite of the assessee submitting that all cash deposits made were generated out of the firm business in which he was the partner*

*and were used to pay the firm's vendors only.*

10. *The Learned CIT(A)/AO have erred in summarily dismissing the submissions of the Appellant by stating that there is no reason why the firm's cash is deposited into the Appellant partner's account.*

11. *The Learned AO/CIT(A) have erred in law and on facts in not appreciating that the impugned addition is leading to double taxation as the same has already been offered to tax in the hands of the firm.*

12. *The impugned addition is liable to be quashed as it is high pitched and without understanding the facts of the case, without considering the submissions and is based on assumptions and surmises.*

13. *Without prejudice, the interest levied u/s 234A and 234B of the Act requires to be waived off under the facts and circumstances of the case.*

14. *The Appellant craves leave to add, delete, modify or amend any of the grounds of appeal during the course of the proceedings.*

*(Total tax effect: Rs. 2, 13,97,534/-)*

*On the basis of the above grounds and other grounds which may be urged at the*

*time of hearing with the consent of the Honorable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and the relief sought be granted.”*

2. The brief facts of the case are that as per information available on AIMS module of ITBA, it was noticed that the assessee had undertaken the following transactions during the year.

S. No.	Type of transaction	Amount
1	Deposited cash of Rs 10,00,000/- or more in a saving bank account (Canara Bank)	Rs 5,57,77,060/-
2	Deposited cash of Rs 10,00,000/- or more in a saving bank account (Vijaya Bank)	Rs 60,51,230/-

3. In view of the above information, it was noticed that there was escapement of income and the assessee substantially deposited cash in savings bank account and no return was filed by the assessee, therefore, notice u/s 148 26.03.2021 was issued and served to the assessee. In response, the assessee did not comply the notice issued for filing return within 30 days from the receipt of the notice. Later on, other statutory notices were also issued to the assessee and ample opportunities were also granted to the assessee but assessee did not comply. Accordingly, the AO in the absence of any explanation/supporting documentary evidences, he proposed to complete the assessment u/s 144 of the Act and show cause notice was issued. In response to the show cause notice, the assessee also did not reply. Thereafter, the AO treated the entire cash deposits into bank account as unexplained investments and added u/s 69 of the Act and completed the assessment u/s 144 of the I. T. Act. He also applied tax

rate u/s 115BBE of the Act.

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A) and also filed additional evidences which were not accepted by the CIT(A). The assessee also filed explanation for not complying the notices of the AO and there was sufficient cause for not submitting the same and in this regard Affidavit was also filed. However, the CIT(A) noted at para No.5.2.1 that the assessee has not submitted any documents pertaining to his hospitalization due to COVID and the assessee claimed that he was hospitalized and the assessee was provided sufficient opportunities to submit relevant details called for during the assessment proceedings and he noted the reason furnished for filing additional evidences are outside Rule 46A(1) of the IT Rules and accordingly, dismissed the appeal of the assessee.

5. Aggrieved from the above order, the assessee filed appeal before the Income-tax Appellate Tribunal.

6. The Id.AR filed paper book containing the following particulars:-

Sl. No.	Particulars	Furnished before	Annexure	Page No.
1.	Acknowledgement of filing Written Submission dated 11.10.2023	CIT(A)	1	1 - 4
2.	Written submission filed before CIT	CIT(A)	2	5 - 20
3.	Petition for admission of additional evidence	CIT(A)	3	21 - 24
4.	Annexure 2 Condonation related proof	CIT(A)	4	25 - 30
5.	Rule 46A	NA	5	31

7. The Id. AR submitted that there was COVID period during the proceedings before the assessing officer and further submitted that during the COVID period for the year 2021, the assessee lost his single

parent i.e 'mother' due to COVID and there he was also diagnosed (and hospitalized) with COVID alongwith his sole dependent family member i.e his wife. Due to these reasons, the assessee could not represent before the AO and the case was migrated to National Faceless Scheme and the assessee was not aware of the said proceedings. Accordingly, he requested that the matter may be sent back to the AO for fresh consideration and he undertook that if a chance is given to the assessee, the assessee will comply all the notices in completing the assessment afresh.

8. On the other hand, the Id. DR objected for sending back to the AO because the AO had given ample opportunities to the assessee for complying the notices but the assessee did not comply.

9. After hearing the rival contentions and perusing the entire materials on record and also after going through the orders of the authorities below, we note that there was huge cash deposits by the assessee in the savings bank account and assessee had not filed return of income and he was a partner in the partnership firm M/s BP Basappa Setty and Sons and the firm is into the business of supply of petrol and petroleum products. The assessee had no income except the income received from the partnershipship firm and the assessee did not file return of income even after the issuing notice u/s 147/148 of the Act. The AO gave ample opportunities to the assessee and assessment order was completed on 23/03/2022 u/s 147 r.w.s 144 of the Act. We note from the submission of the Id.AR that there was COVID period during the proceedings before the AO and in this regard,

Page 6 of 7

the assessee filed an Affidavit that he was hospitalized and lost his 'mother'. Therefore, the assessee had sufficient cause for not complying the notices issued by the AO. Before the CIT(A), the assessee also filed additional evidences as per Rule 46A of the Income-tax Rule to which the CIT(A) has not entertained. Considering the totality of the facts and circumstances of the case, we are remitting the issue back to the file of the AO for fresh consideration. The assessee is directed to produce necessary documents in support of his claim and avoid unnecessary adjournments for early disposal of the case. The AO is directed to give reasonable opportunity of being heard and decide the issue as per law. The assessee is also directed to update his communication address, email id and telephone numbers with the department.

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

Order pronounced in the open court on 21<sup>st</sup> December, 2023

**Sd/-**  
**(Madhumita Roy)**  
**Judicial Member**

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

Bangalore,  
Dated 21<sup>st</sup> December, 2023

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Page 7 of 7

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar/ITAT, Bangalore**