

आयकर अपीलीय 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 No.544/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Moramkanti Gopal Reddy and others, Hyderabad. PAN : AAFHM1204H	Vs.	Assistant Commissioner of Income Tax, Circle – 6(1), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms. S. Sandhya, Advocate.
राजस्व द्वारा/Revenue by: Ms. Helen Ruby Jesindha, Sr.AR.

सुनवाई की तारीख/Date of hearing: 26.12.2023
घोषणा की तारीख/Pronouncement on: 27.12.2023

ORDER

PER LALIET KUMAR, J.M.

The captioned appeal is filed by the assessee feeling aggrieved by the order of Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi dt.11.09.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, "the Act") for the A.Y 2017-18.

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

“ 1. *The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*

2. *The learned Commissioner of Income-Tax (Appeals) erred in deciding the appeal ex parte without providing proper opportunity to the appellant.*

3. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in treating the cash deposits into the bank account of Rs.40 lakhs as the income assessable u/s 69A of the I.T. Act.*

4. *The learned Commissioner of Income-Tax (Appeals) ought to have seen that the appellant was in possession of cash which was withdrawn in the immediately earlier past and the same was re-deposited into the bank account.*

5. *The Assessing officer and the learned Commissioner of Income-Tax (Appeals) did not have any data to show that the amount withdrawn was otherwise utilized and was not available for redeposit into the bank account.”*

3. The brief facts of the case are that assessee is an HUF deriving income from House Property and Other Sources. Assessee filed its return of income electronically for A.Y. 2017-18 on 24.07.2017 declaring taxable income of Rs.77,84,290/- after claiming deduction under Chapter-VIA of Rs.1,60,000/-. The case was selected for scrutiny under (CASS) for a "LIMITED" category to examine the issue of "Large value cash deposits during demonetization period". Thereafter, notice u/s.143(2) was generated on 13.08.2018 and served through e-mail on the assessee. In response to the Notice under section 143(2) of the Act, the assessee submitted that all the cash deposits in question i.e., Rs.45,00,000/- were made out of the withdrawals made from the very same Bank Accounts just before the deposit dates. The source of the said cash deposits that an amount of Rs.48,00,000/- was withdrawn from the above said bank

accounts just before demonetization period. The Assessing Officer did not consider the explanations submitted by the assessee and treated the cash deposits as unexplained money u/s 69A of the I.T. Act and taxed the said amount by applying the provisions of Sec. 115BBE of the Income Tax Act. Thus, completed the assessment under Sec.143(3) of the Act and passed assessment order on 28.12.2019.

4. 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 holding as under :

5.1 *The assessee, HUF filed its return of income electronically for the AY 2017-18 on 24.07.2017 declaring returned income at Rs 77,84,290/- after claiming deduction under Chapter-VIA of Rs.1,60,000/-. The case of assessee was selected for scrutiny under CASS to examine the issue of 'Large value cash deposits during demonetization period'. The AC issued various statutory notices. In response, the assessee furnished its reply. The assessee had deposited an amount of Rs. 45,00,000/- during the demonetization period in bank accounts. The source of the cash deposit was sought to be explained from an amount of Rs. 48,00,000/- withdrawn from the very same bank accounts just before the demonetization period. On being asked about the reasons for withdrawal of cash, the assessee replied that the withdrawals were for family requirements. However, no nexus was established between the cash withdrawn and cash deposited. The reply of the assessee was found to be vague by the AO and It did not favour with the AO. The AO, therefore, after considering only the withdrawal of Rs.5,00,000/- made on 07.11.2016 treated the remaining cash deposits of Rs. 40,00,000/- as unexplained money u/s 69A of the Act and taxed same u/s 115BBE of the Act.*

5.2 *During appellate proceedings, no submissions have been uploaded in ITBA portal by the assessee. However, as per the statement of facts filed along with Form No-35, the submission of the assessee is that the appellant Is an HUF deriving income from House Property and Other Sources. The appellant had filed replies before the Assessing officer with detailed explanations and evidences of cash deposits to the notices issued by the Assessing officer. The appellant deposited an amount of Rs.45,00,000/- during the demonetization period in bank accounts. The source of the said cash deposits was an amount of Rs.48,00,000 withdrawn from the very same bank accounts just before the demonetization period.*

5.3 *Having considered the factual matrix of the case, I find that the assessee had deposited an amount of Rs. 45,00,000/- during the demonetization period in bank accounts. The source of the cash deposit was sought to be explained from an amount of Rs. 48,00,000/- withdrawn from the very same bank accounts Just before the demonetization period. On being asked about the reasons for withdrawal of cash, the assessee replied that the withdrawals were for family requirements However, no nexus was established between the cash' withdrawal and cash deposited. The reply of the assessee was found to be vague by the AO and it did not favour with the AO. The AO, therefore, after considering only the withdrawal of Rs.5,00,000/- made on 07.11.2016 treated the remaining cash deposits of Rs. 40,00,000/- as unexplained money u/s 69A of the Act and taxed the same u/s II5BBE of the Act. I also find that even during the appellate proceedings, the assessee has failed to establish the nexus between the cash withdrawn and cash deposited. No reasons for such huge cash withdrawn have been submitted. In the circumstances, I do not see any reason to interfere with the well reasoned and speaking order of the AO. Therefore the addition of Rs.40,00,000/- made by the AO u/s.69 of the Act is confirmed.”*

5. Before us, at the outset, ld. AR has submitted that due to technical reasons, submissions were not uploaded before the ld.CIT(A) in ITBA Portal and the ld.CIT(A) based on the facts of the case and other documents available on record, has decided the issue against the assessee. The findings of the ld.CIT(A) are given in paras 5.1 to 5.3 of the order. Ld. AR further submitted that the matter may kindly be remitted back to the file of ld.CIT(A) with a direction to consider the submissions now filed before us for passing afresh order after granting due opportunity of hearing to the assessee.

6. Per contra, ld. DR has not raised any serious objections for remanding the matter back to the file of ld.CIT(A).

7. We have heard the rival submissions and perused the material on record. Admittedly, in the present case, the notice was generated on 22.01.2021 and thereafter on 10.07.2023, 01.08.2023, 09.08.2023 and 29.08.2023. By notice dt.29.08.2023, the assessee was asked to submit the written submissions on or before 05.09.2023. As the assessee failed to file the written submissions in response to notice dt.05.09.2023, the Id.CIT(A) decided the issue against the assessee as reproduced hereinabove in Para 5.3 of his order.

7.1. From the perusal of the assessment order and the order passed by the Id.CIT(A), it is clear that the assessee has withdrew the amount of Rs.48 lakhs just before the demonetization and thereafter assessee deposited Rs.45 lakhs during the demonetization period. However, the submissions of the assessee withdrawing the amount of Rs.45 lakhs were not considered except withdrawal of 5 lakhs made on 07.11.2016. Thereafter, the Assessing Officer made the addition to the extent of Rs.40 lakhs, which, the Id.CIT(A) confirmed. In the present case, admittedly, the assessee filed bank statements showing the withdrawal of amounts, which can be verified from the bank statements placed before the Id.CIT(A) as well as before us. However, the Id.CIT(A) without verifying the withdrawal of cash in June 2016 and thereafter in October 2016, had confirmed the addition by concluding that cash was not available for deposit in the bank. In our view, the above said documents, more particularly, the bank statements, showing the availability of cash, and other documents filed by the assessee showing the availability of cash and subsequent deposits in the bank account are required to be considered by the Id.CIT(A) before confirming the order passed by the Assessing Officer.

7.2. Since the documents were not considered by the ld.CIT(A) and further the assessee being failed to upload the submissions before the ld.CIT(A), we deem it appropriate to remand back the matter to the file of ld.CIT(A) for passing afresh order after considering the submissions filed by the assessee and after granting due opportunity of hearing to the assessee. Accordingly, the appeal of the assessee is remanded back to the file of ld.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 its 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.

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

Order pronounced in the Open Court on 27th December, 2023.

Sd/-

Sd/-

(R.K. PANDA) VICE PRESIDENT	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 27th December, 2023.

TYNN/sps

Copy to:

S.No	Addresses
1	Moramkanti Gopal Reddy and others, Hyderabad. H.No.6-3-609/24/2, Anand Nagar, Khairatabad, Hyderabad – 500004.
2	Assistant Commissioner of Income Tax, Circle – 6(1), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order