

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

BEFORE

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

आ.अपी.सं / **ITA No.570/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Goldstone Infra, 101 and 102 Alakapoor Township, Puppalguda, Rajendranagar, Telangana – 500030. PAN : AAPFG7696F.	Vs.	The Income Tax Officer, Ward 8(2), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, CA
appeared for Sri A. Srinivas,
CA.
राजस्व द्वारा/Revenue by: Shri K. Madhusudan,
CIT-DR.

सुनवाई की तारीख/Date of hearing: 03.01.2024
घोषणा की तारीख/Pronouncement on: 05.01.2024

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.26.09.2023 invoking proceedings under sections 144 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 Appellate Commissioner is contrary to law, facts and circumstances of the case.*
2. *The Appellate Commissioner erred in not taking additional evidence filed on record, because of absence of an accompanying petition.*
3. *The Appellate Commissioner ought to have given an opportunity to the Appellant for furnishing petition / affidavit for admitting additional evidence.*
4. *The Appellate Commissioner erred in confirming an addition of Rs.10,22,34,790/- u/s.69A of the Income Tax Act.*
5. *The Appellate Commissioner ought to have appreciated that the amounts added under section 69A were part and parcel of the books of accounts and hence outside the purview of section 69A.*
6. *The Appellate Commissioner erred in not taking on record the submissions made with respect to the difference in PAN number, selling of the business as Going Concern and the accounts thereof.”*

3. The brief facts of the case are that assessee, which is a firm, has not filed Income Tax Return for A.Y 2017-18 neither u/s 139 nor in response to notice issued u/s 142(1) of the Act. Though, the assessee was given sufficient opportunities by issuing and service of statutory notices and show cause notices but has failed to comply the same by furnishing details relating to business activities undertaken by the assessee, nature of income earned, details of bank accounts and cash deposits made in its bank accounts etc. Thereafter, notice u/s 133(6) of I.T. Act was issued to banks and called for the bank statements. The assessee has failed to establish source and nature of credit entries appearing in its bank account(s), including cash deposits made during demonetization period. The Income earned during the year has not been offered and taxes due there upon has not been paid. The assessee had failed to prove that the cash deposited during demonetization period are normal business receipts and therefore, Assessing Officer concluded that the deposits made in

the bank accounts including cash deposits during demonetization period represented income from undisclosed sources. Hence, the unexplained total cash deposits amounting to Rs.10,22,34,790/- was deemed as unexplained money u/s 69A of the income Tax Act, 1961 and added to the total income of the assessee and taxed u/s 115 BBE of the I.T.Act, 1961 and thereafter, penally proceedings in respect of unexplained income were initiated separately. Accordingly, Assessing Officer passed assessment order on 06.11.2019 u/s 144 of the Act.

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.

5. Aggrieved with the order of Id.CIT(A), assessee is now in appeal before us on the grounds mentioned hereinabove.

6. Before us, the Id.AR has submitted that the Assessing Officer has passed an exparte order u/s 144 of the Act against the assessee and had made addition of entire cash deposits made in its bank accounts to the tune of Rs.10,22,34,790/-. It was mentioned by the learned Assessing Officer in the assessment order that the service was affected on the assessee through e-mail and also by affixture on the address given in the PAN. Our attention was drawn to para 4 of the assessment order, which is to the following effect :

“4. In view of the provisions of Section 144(1)(b) of the Act, and for the failure on the part of the assessee to furnish the Income Tax Return for AY 2017-18 in response to notice u/s 142(1) of the Act dated 12.03.2018, the Assessing Officer is proceeded with completion of best judgment assessment through E-Proceedings. During the course of scrutiny proceedings, notice u/s 142(1) of Act was issued and served upon the assessee from time to time through Registered e-mail id or address as mentioned in PAN data base or KYC of Bank accounts of the assessee and by way of affixture, but no compliance was made by the assessee.”

6.1. Feeling aggrieved by the order of Assessing Officer, assessee has challenged the order before the Id.CIT(A). Though there was delay in filing the appeal, however, the Id.CIT(A) had condoned the delay. The assessee before the Id.CIT(A) had furnished the details / explanation of the cash credit appearing in the bank accounts. In this regard, the assessee has also filed an application under Rule 46A of the Income Tax Rules, 1962. However, the Id.CIT(A) had not admitted the additional evidence filed by the assessee and had dismissed the application filed under Rule 46A of the Act. Thereafter, the Id.CIT(A) has dismissed the appeal of the assessee and now the assessee is in appeal before us.

7. The Id.AR for the assessee has further submitted that Id.CIT(A) should have been admitted the documents and the evidence filed before him and should have adjudicated the matter on merit.

8. On the other hand, Id.DR submitted that the assessee should have vigilant in prosecuting before the revenue authorities and have participated and furnished the explanation / details to the Assessing Officer as and when called for. Once the opportunity has been missed, the assessee is not entitled for another opportunity.

9. We have heard the rival submissions and perused the material on record. Admittedly, the Id.CIT(A) is having the power conferred on it as per Section 250 r.w.s. 251 of the Act to decide the appeal and to make further enquiries as it thinks fit or direct the Assessing Officer to make such enquiry and to report the same to the Id.CIT(A). This power has been given to the Id.CIT(A) is a sacrosanct power which has been given to ensure the substantial justice to the assessee. The rules and procedures enacted by the

legislature are enabling provision to achieve the end of substantial justice. Further, the rules are not an impediment in achieving the ends of justice. In our considered opinion, it would have been better if the Id.CIT(A) had accepted the fresh evidence filed by the assessee at the appellate stage for the reasons mentioned hereinabove beside that the Id.CIT(A) has a co-terminus power as decided by the Hon'ble Madras High Court in the case of Shapoorji Pallonji Holdings Limited Vs. ITO reported in (2023) 152 Taxmann.com 52. In view of the above, we are of the opinion that it will be in the interests of justice if the matter is remanded back to the file of Id.CIT(A) for fresh adjudication. Therefore, the matter is remanded back to the file of Id.CIT(A) with a direction to pass afresh order after admitting the additional evidence filed by the assessee and decide the matter in accordance with law after granting due opportunity of hearing to the assessee. The assessee also shall be at liberty to file documents, if any, as required for proving its case and the Id.CIT(A) shall consider such evidences, if any, filed by the assessee. Needless to say, the Id.CIT(A) shall examine those documents / evidence filed by the assessee and thereafter pass a detailed speaking order. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 5th January, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 5th January, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Goldstone Infra, 101 and 102 Alakapoor Township, Puppalguda, Rajendranagar, Telangana – 500030.
2	The Income Tax Officer, Ward 8(2), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order