

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / ITA 531/Hyd/2023		
(निर्धारण वर्ष / Assessment Year: 2017-18)		
Shri Sanjay Agarwal Hyderabad PAN:AIIPA0998F (Appellant)	Vs.	ITO Ward 4(4) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:		Shri K.A. Sai Prasad, CA
राजस्व द्वारा/Revenue by::		Smt. Sheetal Sarin, DR
सुनवाई की तारीख/Date of hearing:		09/01/2024
घोषणा की तारीख/Pronouncement:		09/01/2024

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 26.09.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the ex-parte order passed by the learned CIT (A) NFAC confirming the addition of Rs.2,25,86,518/- made by the Assessing Officer u/s 69A of the I.T. Act.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30.10.2017 declaring

taxable income of Rs.5,85,180/- under the head “income from house property” and “income from business”. The case was selected for complete scrutiny under CASS and accordingly statutory notices u/s 143(2) and 142(1) of the I.T. Act, 1961 were issued and served on the assessee calling for certain information to be submitted electronically through his e-filing account. However, despite number of opportunities granted by the Assessing Officer, the assessee did not respond to any of the notices. The Assessing Officer, therefore, proceeded to complete the assessment u/s 144 of the I.T. Act based on the information available with the Department. The Assessing Officer during the course of assessment proceedings noted that the entire credit reflected in all the bank accounts held by the assessee amounted to Rs.2,25,86,518/-. Since the assessee failed to give any explanation about the nature and source of the credits appearing in the Bank Account, the Assessing Officer treated the amount of Rs.2,25,86,518/- as unexplained income u/s 69A of the I.T. Act and added the same to the total income of the assessee. The income so assessed was taxed u/s 115BBE of the I.T. Act @ 60%.

3.1 Since the assessee did not appear before the learned CIT (A) NFAC despite number of opportunities granted, the learned CIT (A) NFAC in the ex-parte order passed by him sustained the addition made by the Assessing Officer by observing as under:

5. **DECISION:** I have very carefully considered the facts of the case, assessment order of the AO the grounds of appeal and the submissions of the assessee as mentioned in Form No.35. The hearing in this case was fixed on a number of occasions as mentioned in the para 1 above but no written submissions were filed by the assessee. From the above discussion and the conduct of the assessee, it appears that the assessee does not wish to pursue appeal filed by him. The appeal being very old, it cannot be kept pending indefinitely. Accordingly, I proceed to pass the order ex-parte on the basis of material available on record.

5.1 The assessee filed his return of income for the A.Y. 2017-18 on 31.10.2017 declaring the total income at Rs. 5,85,180/- . The case of the assessee was selected for scrutiny through CASS. After the issue of statutory notices, the AO began scrutiny proceedings. Various notices issued by the AO were not complied with by the assessee. On perusal of the bank statement, the AO noticed that the assessee had deposited cash amounting to Rs. 2,25,86,518/- deposited in the three different bank accounts during the demonetization period during the A.Y under consideration. The AO issued a show cause to the assessee requiring him to explain the sources for the cash deposits in bank accounts. The assessee did not respond to the show cause notice issued by the AO. Therefore, the AO completed the assessment u/s 144 of the Act and total cash credits of Rs.2,25,86,518/- were treated as unexplained money in the hands of the assessee as per section 69A of the Act and chargeable to tax 60% u/s 115BBE of the Act.

5.2 Having considered the factual matrix of the case, I find that the assessee filed his return of income for the A.Y. 2017-18 on 31.10.2017 declaring the total income at Rs. 5,85,180/- . The case of the assessee was selected for scrutiny through CASS. After the issue of statutory notices, the AO began scrutiny proceedings. Various notices issued by the AO were not complied with by the assessee. On perusal of the bank statement, the AO noticed that the assessee had deposited cash amounting to Rs. 2,25,86,518/- deposited in the three different bank accounts during the demonetization period during the period under consideration. The AO issued a show cause to the assessee requiring him to explain the sources for the cash deposits in bank accounts. The assessee did not respond to the show cause notice issued by the AO. Therefore, the AO completed the assessment u/s 144 of the Act and total cash credits of Rs.2,25,86,518/- were treated as unexplained money in the hands of the assessee as per section 69A of the Act and chargeable to tax 60% u/s 115BBE of the Act. I also find that the assessee did not file any submissions before the AO at all to explain the sources of cash deposited. Nor did the assessee file any submissions supported by proper evidence along with a petition under Rule 46A for admission of evidence in the appellate proceedings. The assessee has not controverted the findings of the AO supported by proper evidence. In the statement of facts, the assessee has stated that due to his wife suffering from cancer and under going chemotherapy and he still recovering from my 2nd heart attack and undergoing treatment at AIG hospital, his daughters broken engagement in the month of December 2019, due to disputes in the family and separation of him and his nephew whose contact details were registered, and his daughter in law was expecting a baby in the month of December who delivered on 04/01/2020 under critical circumstances, he was mentally disturbed and depressed and so was unable to get the details of hearing, so he could not attend the hearing

because of the above mentioned reasons, hence the assessee requested for grant of a fresh hearing. The assessee has also submitted that the bank credits which have been taken as unexplained income have already been declared in the income tax return filed for the respective assessment year, which was audited and duly filed within the prescribed time and all the bank accounts considered are reflecting in the balance sheet filed for the respective financial year. As requested by the assessee, he was provided with fresh opportunities in the appellate proceedings to explain his case. However, the assessee has failed to avail fresh opportunities and offer any evidence to buttress the grounds of appeal and submissions contained in the statement of facts. In the circumstances, I do not see any reason to interfere with the well reasoned and speaking order of the AO. Therefore the additions made on account of cash credits of Rs.2,25,86,518/- treated as unexplained money in the hands of the assessee as per section 69A of the Act and chargeable to tax 60% u/s 115BBE of the Act by the AO is confirmed.

Hence, the grounds of appeal are Dismissed.

4. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee at the outset submitted that at the relevant time the wife of the assessee was suffering from cancer and was undergoing chemotherapy. Further, the assessee was recovering from 2nd heart stroke coupled with the broken engagement of his daughter in the month of Dec. 2019. Therefore, the assessee was unable to attend to the statutory notices issued by the Assessing Officer as well as the learned CIT(A) NFAC. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case by filing the requisite documents. The learned Counsel for the assessee also drew the attention of the Bench to the various medical reports to the effect that his wife was suffering from cancer and that he was undergoing treatment at the AIG Hospital due to heart stroke.

6. The learned DR, on the other hand, submitted that the assessee did not respond to the statutory notices issued by the Assessing Officer as well as by the learned CIT (A) NFAC, therefore, the order of the learned CIT (A) NFAC should be upheld.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the AO in the instant case in the absence of any details filed by the assessee to substantiate the source of deposits in various bank accounts maintained by him, made addition of Rs.2,25,86,518/- u/s 69A of the Act as unexplained money and taxed the same u/s 115BBE of the Act. We find the learned CIT (A) NFAC in the ex-parte order passed by him sustained the addition made by the Assessing Officer the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that due to the suffering of his wife from cancer who was undergoing chemotherapy and since the assessee was undergoing treatment for 2nd heart stroke coupled with broken engagement of his daughter, the assessee was mentally disturbed and depressed for which he could not respond to the statutory notices issued by the Assessing Officer and the learned CIT (A) NFAC. It is also his submission that given an opportunity, the assessee is in a position to substantiate his case with documentary evidences to the satisfaction of either of the lower authorities. Considering the totality of the facts of the case and in the interest of justice and considering the fact that the Assessing Officer has also passed ex-parte order u/s 144 of the I.T. Act, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate his case by filing the requisite details

and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and file the requisite documents as asked by him without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court at the time of hearing itself i.e. on 9th January, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 9th January, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 4(4) IT Towers, AC Guards, Masab Tank Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order