

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.632/Hyd/2023		
Assessment Year: 2017-18		
Habeebulla Shaik, Rajampet, 5/156, A2, Kolimi Street, Rajampet Mandal, Andhra Pradesh. PAN No.DAWPS8670B. (Appellant)	Vs.	The Income Tax Officer, Ward – 1, Kadapa. (Respondent)
Assessee by:		Shri Abhiroop Bhargav, C.A.
Revenue by:		Shri T. Venkanna, Sr.A.R.
Date of hearing:		17/01/2024
Date of pronouncement:		23/01/2024

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.26.10.2023 invoking proceedings under section 144 of the Income Tax Act, 1961 (in short, “the Act”).

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

“ 1. That on facts and circumstances of the case and in law, the Order u/s 144 of the Incometax Act, 1961 ('Act') is bad in law;

2. That on the facts and circumstances of the case, the Ld.AO/CIT(A) erred in carrying out an addition towards unexplained money under Section 69A of the Act amounting to

3. That on the facts and circumstances of the case, the Ld.AO/ CIT(A) erred in carrying out an addition of Rs. 27,058 by estimating of the income of Appellant@ 8% of the business;

4. That on the facts and circumstances of the case, the Ld.AO/ CIT(A) have erred in ignoring the written submission as well as the information filed and carried out the addition amounting to Rs. 10,85,058/-.

5. That on the facts and circumstances of the case, the Ld.AO/CIT(A) have erred in levy of interest under Section 234A and Section 234B of the Act.

3. The brief facts of the case are that assessee had deposited Rs.10,58,000/- in bank account during demonetization period but has not filed any return of income for Assessment Year 2017-18. Hence, a notice u/s 142(1) of the Income-tax Act, 1961 was issued on 22-03-2018 calling for return of income, for which assessee has neither filed any return of income u/s 139(1) nor explained about source for cash deposits and hence, the same were remained unexplained. As the assessee had not complied with the notices, a final Show Cause Notice dated 31-10-2019 was issued to the assessee.

4. During the course of assessment proceedings, on the basis of information available, notice u/s 133(6) of Income Tax Act, 1961 was issued to the Bank concerned and obtained Copies of Bank Account Statement for the Financial Year 2016-17. As the

assessee failed to submit explanation for the sources for the SBNs (Specified Bank Notes) deposited into Bank Account(s), the entire amount of Rs.10,58,000/- was deemed as unexplained money u/s 69A of the Income Tax Act, 1961 which was taxed u/s 115 BBE of the Act at the rate of 60%. It was seen from the KYC particulars furnished by the bank that the assessee's profession was mentioned as 'Real Estate Agent' and the transactions in the bank account relate to exhibition of cinema for the FY 2016-17. As the assessee had failed to submit Cash flow statement / Books of Account, the entire Credits appearing in all the Bank Accounts reduced by Cash Deposits during demonetization in the FY 2016-17 was treated as business turnover of the assessee for AY 2017-18. Accordingly, the income from the business was estimated @ 8% of the turnover i.e. Rs.3,38,228/- which works out to Rs.27,058. Thereafter, penalty proceedings u/s 271 AAC of the Act were initiated. Thus, the Assessing Officer completed the assessment u/s 144 of the Act on 14.12.2019 determining the total income of the assessee at Rs.10,85,058/-.

5. 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.

6. Before me, learned Authorised Representative has submitted that assessee had not filed his return of income for A.Y. 2017-18 as his income was below the taxable limit. The Id. AR further submitted that the notices sent by the department were not responded to as the assessee was unaware of the receipt of the

notices in the email and hence failed to submit the replies from time to time. He further submitted that assessee has a good case to succeed. Hence, prayed that the matter may kindly be remitted back to the file of Assessing Officer for passing a detailed speaking order.

7. On the other hand, Ld. D.R. has submitted that Ld.CIT(A) has not entertained the evidence of assessee as the Ld.CIT(A) was of the opinion that the evidence filed by the assessee was self-serving and not supported by any bills and vouchers and therefore, the evidence was not considered and the addition made by the Assessing Officer was confirmed.

8. I have heard the rival submissions and perused the material on record. On perusal of the impugned order passed by Ld.CIT(A), I found that Ld.CIT(A) passed an ex parte order confirming the action of the Assessing Officer in his assessment framed on 14.12.2019. In fact, the Revenue Authorities are duty bound to pass a detailed speaking order after considering the evidence available on record. Since the detailed finding was not given by the Ld.CIT(A) and even the contentions of the assessee raised were not considered, I feel that the ends of justice will be met if the matter is sent back to the file of Ld.CIT(A) with a direction to decide the issue afresh after affording the opportunities of hearing to the assessee in accordance with law.

9. The assessee shall be at liberty to file documents, if any, as deem appropriate for proving his case and the Ld.CIT(A) shall consider the evidences, if any, filed by the assessee in accordance

with law. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. Since I have not adjudicated the other grounds on merits as I am setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication, therefore, the observation made herein shall not be construed as an expression on the merit of the case. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 23rd January, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 23rd January, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Habeebulla Shaik, Rajampet, 5/156, A2, Kolimi Street, Rajampet Mandal, Andhra Pradesh.
2	The Income Tax Officer, Ward – 1, Kadapa.
3	PCIT, Kurnool.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order