

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

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.12/Hyd/2024		
Assessment Year: 2017-18		
Maheswar Reddy Itikyala, Flat No.102, Urdu Hall Lane, Himayatnagar, House No.3-6-195/B, Telangana.  PAN : APLPR0940L	Vs.	The Income Tax Officer, Ward 9(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri K. Sudhakar Reddy, Advocate, appeared for Shri T. Chaitanya Kumar, Advocate
Revenue by:		Shri Rohit Mujumdar, Sr.A.R.
Date of hearing:		23/01/2024
Date of pronouncement:		24/01/2024

**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.13.06.2023 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. *The order of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law, without giving any further proper opportunity.*

2) *The order of the learned Commissioner of Income-tax (Appeals) is erred dismissing the appeal without giving any proper appreciation is Ex-facie, illegal arbitrary and violative of the principles of natural justice.*

3) *The impugned order passed by the learned Commissioner of Income-tax (Appeals) u/s 250 of the Income Tax Act 1961 in confirming the action of the assessing officer order dated 27/11/2019 passed u/s 144 of the I.T Act is illegal and arbitrary, without assigning any valid reasons, and is totally perverse, highhanded.*

4) *The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer treating the total amount of cash deposits of Rs. 13,96,500/- during the ( F.Y. 2016-17) appellant assessment year 2017-18 in the bank accounts of the appellant is treated as unexplained money U/s 69A r.w.s. 115 BBE of the I.T. Act, 1961 without proper appreciation, is illegal arbitrary, without assigning any valid reasons, and is perverse, highhanded.*

5) *The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the assessing officer in applying the provisions u/s 69A and further erred in applying the provisions u/s 115BBE of the IT Act.*

6) *The order of the learned Commissioner of Income-tax (Appeals) is arbitrary, illegal and contrary to the provisions of law.*

7) *The very approach of the learned Commissioner of Income-tax (Appeals) /NFEAC in passing an order u/s250 ex-party without proper appreciation of the fact that the source for the same cash deposits was explained(cash withdrawn from the bank) withdrawals, therefore in confirming the action of the Assessing Officer in treating the total amount of cash deposits of Rs. 13,96,500/- during the F.Y. 2016-17) appellant assessment year 2017-18 in the bank accounts of the appellant is treated as unexplained money U/s 69A r.w.s. 115 BBE of the I.T. Act, 1961 is illegal arbitrary, without assigning any valid reasons, and is perverse, highhanded is contrary to the provisions law, therefore the order passed by the Learned*

*Commissioner of Income Tax(appeals)NFAC dated 13/06/2023 is illegal ex-facie and violative of principals of natural justice.*

8) *The learned Commissioner of Income-tax (Appeals) erred in charging interest u/s 234A 3,02,036/- and 234B of Rs 3,45,184/-."*

3. The appeal filed by the assessee is barred by limitation by 147 days. He has moved a condonation application explaining reasons thereof. I have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

4. The brief facts of the case are that the assessee had deposited cash of Rs 13,96,500/- during the period 09.11.2016 to 30.12.2016 in his bank account bearing no. 024301006675 with ICICI Bank, Dilsukhnagar, Hyderabad. As the income tax profile of the assessee did not match with the amount of cash deposited and also the assessee had not filed his return of income for relevant A.Y. 2017-18 within due date u/s 139(1) of the Income Tax Act, 1961, the case of the assessee was selected for issuing notice u/s 142(1) of the I.T. Act for A.Y. 2017-18 through AIMS Module of ITBA. Accordingly, notice u/s 142(1)(i) of the I.T. Act dated 12.03.2018 for A.Y. 2017-18 was issued and served to assessee through e-mail. As the assessee did not respond to the notice, bank account statement and other details regarding assessee were called for from the Branch Manager of the concerned bank by issuing notice u/s 133(6) of the I.T. Act dated 28.05.2019.

4.1. In case of non-compliance, the assessee was also asked to explain as to why assessment in his case should not be completed

ex-parte under section 144 of the I.T. Act by treating entire cash deposits in his bank account(s) during the financial year 2016-17 as unexplained and adding to his total income. In the absence of any cooperation extended by the assessee in furnishing the required material evidences, explaining the sources of cash deposits in the bank accounts, the assessing officer is left with no other option but to rely on the evidentiary material gathered from third party in the form of bank accounts and the information available with the Department, for the purpose of completing the assessment. Finally, the Assessing Officer completed the assessment u/s 144 of the Act and passed order on 27.11.2019 interalia making an addition u/s 69A r.w.s. 115BBE towards unexplained money.

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 us, Id.AR submitted that the learned lower authorities have decided the issue without discussing or deliberating the factual matrix of the case and that assessee was not served with any notices for not filing the income tax return for AY 2017-18, calling information or for show cause. The assessee is staying in rented house and during March 2018, he shifted his residence to the new location, thus he could not see any notices, if any sent by income tax department and hence, he was not known any of these assessment proceedings initiated. Ld.AR further submitted that as the assessee has sufficient evidence to substantiate his case, matter

may kindly be remitted back to the authorities below for afresh adjudication.

7. Per contra, the ld.DR has not raised any objection for remanding the matter back to the file of lower authorities.

8. I have heard the rival contentions of both the parties and perused the material available on record. On perusal of the impugned order passed by ld.CIT(A), I found that ld.CIT(A) passed an order confirming the action of the Assessing Officer in his assessment framed on 27.11.2019. The perusal of the order shows that at clause (ii) of Para 5.4 at page 14 of the order of ld.CIT(A) had mentioned the explanation of the assessee to the following effect :

(ii). *The appellant submitted that :*

*“ Whereas, the said cash deposits were made from earlier withdrawals in the same financial year of Rs.12,02,640/- on 24-08-2016 and Rs.4,62,000/- on 10-10-2016 both done within 3 months before demonetisation period from assessee bank accounts. Maximum gap between cash withdrawal and deposit is about 99days. The source for such cash withdrawal is gold loan availed by the assessee and disbursed in the same bank account, such loan proceeds have been withdrawn in cash for personal uses. During the demonetisation period, the assessee had deposited back into the bank the same cash which he withdrew earlier and repaid his outstanding gold loan. All these transactions are categorically and clearly evident in the assessee ICICI Bank account No.024301006675. In this regard, it is requested to consider the relevant case laws below:*

9. The ld.CIT(A) has not considered the above explanation of the assessee on the pretext that it was self-serving and was not supported by any corroborative evidence. It was submitted by the ld.AR before me that the assessee is ready and willing to offer the explanation regarding the gold loan availed by him and withdrawal of

cash thereafter and redepositing the same in his bank account. Since the assessee was not able to demonstrate and file the evidence before the Assessing Officer, the ld.CIT(A) has confirmed the addition in the hands of the assessee. In my view, the assessee cannot be penalized merely on the account of non-furnishing of evidence at the assessment stage. The law is fairly settled by the decision of hon'ble Delhi High Court in the case of Jansampark Digital and Marketing Limited reported in 56 taxman.com 286 whereby the Hon'ble Delhi High Court held that the ld.CIT(A) is having co-terminus power and the ld.CIT(A) can make further enquiries as he deems fit. In case, he deems fit, the power conferred on the ld.CIT(A) is only to give quietus to the controversy as pointed out by the ld.AR before us. In my view, it would have been fair on the part of ld.CIT(A) to seek the remand report on the explanation given by the assessee, in the appellate proceedings, so that true facts can be brought down on the record. However, the needful was not done. Therefore, in my view, the present case is a fit case for remanding back the matter to the file of ld.CIT(A) with a direction to consider the explanation given by the assessee, as reproduced by the ld.CIT(A) vide clause (ii) at page 14 and other places of his order and consider the evidences of gold loan taken by the assessee and the withdrawals made thereafter in the year under consideration / previous year. With the above said directions, the matter is remanded back to the file of ld.CIT(A) for passing the order afresh. However, the above said is subject to payment of Rs.5000/- (Rupees Five Thousand only) to be deposited by the assessee in the account of Prime Minister National Relief Fund which shall be deposited within one month or from the date of receipt of this order or whichever is earlier.

10. The assessee shall be at liberty to file documents, if any, as required for proving his case and the ld.CIT(A) shall consider the 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. After considering the documents filed by the assessee and the submissions made by the assessee, the ld.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. 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 ld.CIT(A) for fresh adjudication. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 24<sup>th</sup> January, 2024.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 24<sup>th</sup> January, 2024.

**TYNM/sps**

Copy to:

S.No	Addresses
1	Maheswar Reddy Itikyala, Flat No.102, Urdu Hall Lane, Himayatnagar, House No.3-6-195/B, Telangana.
2	The Income Tax Officer, Ward-10(1), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*