

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

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.629/Hyd/2023		
Assessment Year: 2017-18		
Mohammed Ashraf Ali, 7-5-115/F/1, Padmavathi Colony, Mahabubnagar District. Telangana. PAN : BRKPA3619P (Appellant)	Vs.	The Income Tax Officer, Ward-1, Mahabubnagar. (Respondent)
Assessee by:		Ms. S. Sandhya, Advocate. (Appeared through virtual mode).
Revenue by:		Shri Aravindakshna, SR.AR
Date of hearing:		30/01/2024
Date of pronouncement:		30/01/2024

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.06.12.2023 invoking proceedings under section 143(3) 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.

2. The Learned Commissioner of Income Tax (Appeals) erred in deciding the appeal ex-parte in spite of the assessee seeking time for filing written submissions

3. The Learned Commissioner of Income Tax (Appeals) ought to have decided each ground of appeal without dismissing the appeal exparte.

4. The Learned Commissioner of Income Tax (Appeals) erred in not allowing relief :

a) Against the addition made by estimating the income at 3% of the deposits made and ought to have considered that no such addition could be made.

b) Addition of Rs. 33,20,510/- representing the deposits made during the demonetization period.”

4. The brief facts of the case are that the assessee is an individual, who filed his return of income for the Asst. Year 2017-18 on 3103-2018 declaring income of Rs.3,40,030/-. The Return was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS to “Large cash deposits during demonetization period and abnormal increase in sales”. Thereafter, a notice u/s.143(2) dated 08-08-2018 and notices u/s.142(1) dated 2909-2018, 23-01-2019, 23-07-2019, 06-09-2019,13-09-2019, 10-10-2019, and show cause notice dated 22-11-2019 were issued calling for information. In response to the notices issued, the assessee uploaded the information through e-assessment proceedings. On verification of the information submitted, the AO noticed that the assessee had made a cash payment amounting to

Rs.18,11,900/- towards Credit Card purchase during the F.Y 2016-17 relevant to A.Y 2017-18. The AO issued a show cause to the assessee requiring him to explain the sources for the cash payment of Rs.18,11,900/- towards credit card purchases during the year under consideration. The submission made by the assessee regarding the source of the cash payment of Rs 18,11,900/- to credit card purchase during the F.Y 2016-17 did not favour the assessee as the AO was of the view that the assessee had failed to furnish satisfactory/proper explanation. Therefore, the AO completed the assessment u/s 143(3) of the Act treating the cash payment of Rs.18,11,900/- 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 and thereby determined the total income at Rs.22,04,380/-.

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 by holding as under :

“5.3 In view of the facts of the appellant under consideration and various judicious decisions cited above, I am of the considered opinion that the appellant is not willing to pursue the appeal and reserve its rights only for mere filing of the memo of the appeal. Since the appellant has chosen not to attend the hearing and does not want to pursue any seriousness, I am left with no option but to decide the appeal on the basis of material available on records.

6. Decision: In view of the above, considering failure of the appellant to make submission in support of its appeal, the action of the AO is upheld. In the result, the appeal is treated as dismissed.”

6. Before me, ld.AR submitted the order passed by the ld.CIT(A) is an exparte order, as the assessee has failed to provide necessary information and appear during the course of appellate proceedings. Hence, the ld. AR requested the Bench to remand the matter back to the file of Assessing Officer.

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 and also the order passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), I found that ld.CIT(A) passed an exparte order confirming the action of the Assessing Officer in his assessment framed on 04.12.2019. The merits of the assessee's appeal before the ld.CIT(A) have neither been discussed nor decided by the ld.CIT(A). From para 5.3 of the order of ld.CIT(A), it is clear that ld.CIT(A) was forced to decide the appeal on the basis of material available on record, as there was no representation on behalf of the assessee. In view of the above reasons, in my view, the ends of justice will be met if the matter is remanded back to the file of ld.CIT(A) with a direction to decide the issue after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law subject to payment of costs of Rs.5,000/- (Rupees Five Thousand only) in favour of Legal Services Authority of Telangana which shall be payable by the assessee within one month or from the date of receipt of this order or whichever is earlier.

9. The assessee shall produce the cash book for earlier financial year along with the return of income and also for the assessment year under consideration and the Id.CIT(A) shall examine all those documents / evidence filed by the assessee and also the other documents available on record. While dealing with the issue, the Id.CIT(A) shall also keep in mind the pattern of deposits prior to the demonetization as well as during the period of demonetization and find out whether there is any possibility of accumulated funds. Based on the above said observation, the Id.CIT(A) shall decide the issue in accordance with law and thereafter 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 Id.CIT(A) for fresh adjudication. Needless to say, I have not adjudicated any other ground, all the grounds are required to be adjudicated by the Id.CIT(A) in the remand proceedings. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 30th January, 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 30th January, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Mohammed Ashraf Ali, 7-5-115/F/1, Padmavathi Colony, Mahabubnagar District. Telangana.
2	The Income Tax Officer, Ward-1, Mahabubnagar.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order