

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

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.630/Hyd/2023		
Assessment Year: 2017-18		
Venkata Ramireddy Kalluru, 87/1281/12-F, Somisetty Nagar, Kurnool, Andhra Pradesh – 518599. PAN : DKWPK3931F	Vs.	The Income Tax Officer, Ward-2, Kurnool.
(Appellant)		(Respondent)
Assessee by:		Shri Sashank Dundu.
Revenue by:		Shri Aravindakshan, 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.21.08.2023 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.. On the facts and in the circumstances of the case the order passed by the National Faceless Appeals Centre(hereinafter referred to as NFAC) is erroneous both on facts and in law.

2. *The First Appellate Authority erred in dismissing the appeal on the assumption of non-prosecution overlooking the legal position that the tax authorities have no power to dismiss the appeals for non-prosecution without going into the merits of the case. This is supported by the judgment of the Honourable Bombay High Court in case of CIT v. Premkumar Arjundas Luthra (HUF) [2017] 297 CTR 614 (Bombay)[25-042016].*

3. *The First Appellate Authority ought to have noticed that the Appellant has no other source of income other than agricultural income and the fact that sale of agriculture produce and receipt of money thereof was deposited in the bank account prior to the demonetisation period, was admitted by the AO as well as the NFAC, in which event, conclusion reached by the NFAC that all the cash deposits were during demonetisation period and application of higher rate of tax by invoking the amended provisions of section 115BBE reflects the capricious approach of the NFAC and thus the order is bad in law.*

4. *The AO as well as the NFAC ought to have followed the ratio laid down by the Privy Council in CIT v. Lakshmi-Narayan Badridas [1937] 5 ITR 170 wherein the Honourable Court observed that limited information furnished by the Assessee should not be a reason for passing an order capriciously and vindictively since even in a best judgment assessment, the correct taxable income and the tax thereon has to be arrived at in accordance with law by following a judicious approach.*

5. *The tax authorities omitted to consider the ratio laid down by the Honourable Madras High Court in the case of CIT vs Indian Express (Madurai) 1983 140 ITR 705 (Mad) (HC) wherein the Court observed that Income-tax proceedings cannot be equated to a lies between two parties since the object is to arrive at the correct taxable income and in this backdrop the tax authorities ought to have taken into consideration the fact that the cash deposits made prior to the demonetisation period are supported by a source and thus invoking provisions of section 69A is bad in law and at any rate, bringing the same to tax at a higher rate u/s 115BBE is also contrary to the provisions of section 294 of the Act.*

3. The brief facts of the case are that assessee, who is an individual, has not filed return of income for A.Y.2017-18. Hence, notice u/s 142(1) dated 14.03.2018 was issued. Even after issuance of said notice, the assessee failed to furnish Income Tax Return. In the present case, as per the information available, Assessing Officer

noticed that assessee had deposited an amount of Rs.12,00,000/- in cash during the demonetization period. However, the bank account statement of the assessee was obtained from Andhra Pragathi Grameena Bank, Betamcherla (Account Nos. 91078562225 and 19054506195). On perusal of bank account statement for the FY.2016-17, it was observed that an amount of Rs.60,000/- only was deposited in cash during demonetization period. The assessee has failed to furnish any details relating to sources of income, details of bank accounts, details of cash deposits made in the bank accounts, sources of cash deposits in the bank account. As there was no response from the assessee, a final show cause notice dated 16.09.2019 was issued proposing best judgment assessment u/s 144 of the Act.

3.1 On verification of the bank accounts of the assessee Assessing Officer observed that assessee has not made any cash deposits during the F.Y. 2015-16, however made cash deposits of Rs.60,000/- during demonetization period and other than demonetization period, assessee made cash deposits to an aggregate amount of Rs. 23,29,000/- and the same were remained unexplained. Accordingly, the same was treated as unexplained money u/s 69A of the Income Tax Act, 1961 and taxed u/s 115 BBE of the Act. Finally, the Assessing Officer passed assessment order on 16.10.2019 u/s 144 of the Act determining the total income at Rs.38,14,870/-.

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 by holding as under :

“5.0. During the appellate proceedings, the appellant has only submitted submission in the form of ‘Statement of Facts’. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at serial No. 4. No reply whatsoever has been submitted by the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”

5. Before me Ld.AR submitted that in the present case, the Id.CIT(A) upheld the order of Assessing Officer and passed ex-parte order. The learned Authorized Representative further submitted that as the lower authorities decided the issue without discussing the factual details of the case, requested that the matter may be sent back to the lower authorities for a fresh review, taking into consideration of the circumstances.

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

7. 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 Id.CIT(A), I found that Id.CIT(A) passed an exparte order confirming the action of the Assessing Officer in his assessment

framed on 16.10.2019. 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 5.0 of the order of ld.CIT(A), it is clear that ld.CIT(A) find no reason to interfere with the order of Assessing Officer, 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) to be deposited by the assessee in the Prime Minister Relief Fund within one month or from the date of receipt of this order or whichever is earlier.

8. 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 ld.CIT(A) shall examine all those documents / evidence filed by the assessee and any other documents which may be filed by the assessee as additional evidence. Based on the above said observation, the ld.CIT(A) shall decide the issue in accordance with law and thereafter pass a detailed speaking order dealing with the contentions of the assessee. Needless to say, I have not adjudicated any other ground, all the grounds are required to be adjudicated by the ld.CIT(A) in the remand proceedings. Accordingly, the appeal of the assessee is allowed for statistical purposes.

9. 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	Venkata Ramireddy Kalluru, 87/1281/12-F, Somisetty Nagar, Kurnool, Andhra Pradesh – 518599.
2	The Income Tax Officer, Ward – 2 Kurnool
3	PCIT, Kurnool
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order