

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1146/Bang/2023
Assessment Year: 2017-18

Thubagere Mudveerappa Enterprises No.9, 5 th Main Road, APMC Yard Yeshwanthpur Bangalore 560 022 Karnataka PAN NO : AAFT3444R	Vs.	ITO Ward-6(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Prathibha R., A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Department.

Date of Hearing	:	24.01.2024
Date of Pronouncement	:	24.01.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 24.11.2023 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds:

- 1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in upholding the order passed under sec. 144 of the Act by the learned assessing authority is opposed to law and not valid and accordingly liable to be cancelled.*
- 2. The ld. CIT(A) ought to have given opportunity to submit the details and allow to give the explanation about the cash deposits were made in Bank. The deposits were made out of the accumulated cash balances relating to his business. Thus, the impugned additions confirmed by the ld. CIT(A) was uncalled for.*
- 3. The ld. CIT(A) ought to have appreciated the fact that there was no unexplained money at all and the credits in Bank account are duly*

explainable since the deposits into the bank were in due course of business explainable sources. Therefore, the provisions of Section 69A of the Act will not applicable to the facts of the case and the addition confirmed ought to be deleted.

4. *The CIT(A) grossly erred in confirming the addition of Rs.44,05,503/- as unexplained cash deposit u/s 69A of the Income tax Act, without giving an opportunity to the appellant to submit the documents and without considering any documents, he ought to have refrained from making such additions on the mere surmise.*
5. *The CIT(A) ought to have appreciated the fact that the appellant had not got any opportunity to appear before the AO to substantiate, why the additions are not leviable.*
6. *On the facts and circumstances of the case, the impugned additions as confirmed by the learned CIT(A) under section 69A ad 69C and levying the tax u/s 115BBE are opposed to law.*
7. *Without prejudice, the disallowance as made in excessive and arbitrary and liable to be deleted.*
8. *For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.*

2. Facts of the case are that the assessee has challenged the addition amounting to Rs. 37,85,000/- on account of unexplained income which are the main issue in this case. Other grounds of appeal are general in nature. Several opportunities have been allowed to the assessee in terms of the notices fixed for hearing of the appeal under section 250 of the Act issued to the assessee to represent before NFAC. But no compliance has been made by the assessee before NFAC. The details of the opportunities allowed to the assessee to represent in this case are tabulated as under:-

DIN No.	Date of Notice	Date of hearing fixed	Remarks
1049359914	02.02.2023	17.02.2023	No reply
1053097501	23.05.2023	07.06.2023	No reply
1056802550	05.10.2023	20.10.2023	No reply
1057653219	03.11.2023	20.11.2023	No reply

2.1. The aforesaid non compliances revealed beyond doubt that the assessee has nothing to say in the matter of present appeal before NFAC. Thus, since it appeared that the assessee is not interested in prosecution of the present appeal, the NFAC observed that the same is liable to be dismissed on this ground itself. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known dictum "VIGILATIBUS; NON DORMENTIBUS, JURA SUBVENIUNT. Considering the facts and relying on the decision of the Hon'ble Delhi Bench, in the case of CIT Vs Multiplan India Ltd. reported in 38-ITD-320 and the judgement of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukoji Rao Holker Vs. CWT (1997) reported in 223-ITR-480, NFAC observed that the present appeal is liable to be dismissed. The NFAC further observed that it is settled law that u/s 69A of IT. Act, onus is on Assessee to peruse the source of money as in the case of Roshan Di Hatti v. CIT [1992] 2 SCC 378 (SC), Hon'ble Supreme Court held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee. He further observed that on similar lines, the Hon'ble Supreme Court in the case of Smt Srilekha Banerjee and others vs CIT, Bihar & Orissa, reported in 1964 AIR 697, dated 27.03.1963, held that the source of money not having been satisfactorily proved, the Department was justified in holding it to be assessable income of the assessee from some undisclosed source and in the case of Smt. S. Sakunthala Sivam (Madras High Court) (2022) - Source of cash deposits could not be satisfactorily explained by the assessee, hence the appeal was dismissed. In view thereof, NFAC observed that assessee has not disclosed its onus thus AO's decision needs to be confirmed and NFAC dismissed the grounds raised by the assessee. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. In our opinion, the assessment order was passed u/s 144 of the Act and also there was no proper reply before NFAC. Hence, the addition has been sustained by the Id. CIT(A). However, the Id. D.R. relied on the order of Raipur Bench in the case of Adim Jati Sahkari Samiti Maryadit in ITA No.50/RPR/2023 dated 18.9.2023, wherein held as under and submitted that the issue not be remitted back to the file of Id. AO for fresh consideration:

“15. Apropos, the claim of the Ld. A.R. that the matter in all fairness be restored to the file of the A.O. for fresh adjudication, the same does not favor us. As observed by us herein above, the grounds based on which the order of the CIT(Appeals) has been assailed before us are devoid and bereft of any merit; therefore, the appeal is liable to be dismissed on the said count itself. Apart from that, we are of a firm conviction that the right vested with an appellant to approach the tribunal by preferring an appeal before it is for a limited purpose, i.e. a grievance that the assessment framed by the AO, or for that matter, order of the CIT(Appeal) were not according to law. In no case can the Tribunal be taken as a forum for an appellant who, as per his volition, had either adopted an evasive or lackadaisical approach before the lower authorities and not participated in the assessment or appellate proceedings to come up with its case for the first time before the Tribunal and, as a matter of right seek restoring of the impugned order to the file of the lower authorities for fresh adjudication.”

3.1 In our opinion, by non-representing before lower authorities, assessee has not derived any benefit otherwise the assessee suffered in view of the dragged litigations. In our opinion, the assessee was deprived of proper advice after filing the return of income. As such, assessee has failed to represent before Id. AO as well as before NFAC to give proper reply before NFAC and the assessee has not derived any benefit by not representing before lower authorities. Being so, in our opinion, it is appropriate to remit the issues in dispute to the file of Id. AO for fresh consideration to see whether cash deposits is made out of business receipts/sales receipts and if it is from business receipts/sales receipts, there should not be double addition, one in

the form of estimation of income on sales and another by way of unexplained income u/s 69A of the Act and due telescoping benefit to be given to the assessee, if any additions on this count is sustained. Ordered accordingly.

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

Order pronounced in the open court on 24th Jan, 2024

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 24th Jan, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.