

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

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1127/Bang/2023
Assessment Year: 2017-18

Niamathulla No.43/1, 1 st Floor, MTB Road Near Popular Auto Mobile Kalasipalyam 560 002 Karnataka PAN NO.AHEPN8663K	Vs.	ITO Koramangala Bangalore
ASSESSEE		RESPONDENT

Assessee by	:	Smt. Sheetal, A.R.
Revenue by	:	Dr. Nischal, D.R.

Date of Hearing	:	21.02.2024
Date of Pronouncement	:	21.02.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of NFAC for the assessment year 2017-18 dated 17.11.2023. The assessee has raised following grounds of appeal:

- 1. That on facts and circumstances of the case/the order passed by the Hon'ble CIT (Appeals) u/s 250 is bad both in the eyes of law and on facts.*
- 2. That on facts and circumstances of the case and in law, the learned Hon'ble CIT (Appeals) has erred is not considering the evidences produced by the appellant to support his claim of cash deposits.*
- 3. That the Hon'ble CIT (Appeals) erred in passing the order without giving an opportunity of being heard.*
- 4. That the Appellant craves leave to add / alter any / all Grounds of Appeal before or at the time of hearing of the appeal*

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2. Facts of the case are that the assessee is a vegetable vendor purchasing mostly from farmers directly and selling in local as well as interstate markets. The purchase and sales of vegetable products are mostly in cash and only a small portion is by way of cheques/other banking channels. For the Asst Year in question the assessee did not file his Income Tax return inspite of carrying out high value transactions in the bank. Subsequently notice u/s 148 and 142 (1) of the Income Tax Act, 1961 (in short "The Act") were issued for which there was no response from the assessee as the assessee was not accessible on mail/mobile and had changed his earlier address. Later on, when the assessee got to know of the notices u/s 148 and 142 (1) of the Act and by the time he could gather proper advice on how to proceed, the proceedings were completed ex-parte u/s 147 r.w.s. 144 of the Act. As per assessee he has maintained regular accounts from which income earned can be deduced although the accounts have not been audited for the reason mentioned earlier. All the high value transactions reported to the department are entirely available in the accounts maintained. In respect of purchases mostly self-vouchers are maintained as the purchases are mostly in cash from the farmers. In respect of sales, sale bills are available. The assessment was completed ex-parte in the absence of any response/information from the assessee by assessing the income @ Rs.1,49,79,050/- being the entire cash deposited in the bank accounts.

3. Before Id. CIT(A) the assessee has not put forth any verifiable evidences to support his claims of the deposits being from sale of agricultural products. In response to notice u/s 250 of the Act the assessee has filed some unverified profit & loss account and bank statements. The bank ledgers do not show any details of creditors/debtors and as per his own admission the assessee's vouchers are all self-made and transactions are in cash. These evidences could also not be admitted since no request for the admission under Rule 46A

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was made. The large transactions above Rs.50,000/- have also not been explained. The assessee is a trader and not an agriculturist, therefore, his income from trading in goods was to be reflected in a return of income. However, no such return of income was filed inspite of the assessee having high value of transactions. Thus, the Id. CIT(A) upheld the assessment made by the AO u/s 147 r.w.s. 144 of the Act and dismissed the appeal.

4. We have heard the rival submissions and perused the materials available on record. Admittedly, in this case, assessment order has been passed by Id. AO ex-parte u/s 144 of the Act without participation of assessee and before NFAC also the assessee has not filed any details or documentary evidences explaining the source of deposits and the documents filed by the assessee were unverifiable. Before us, the Id. A.R. has filed following documents in support of assessee's claim.

- a) Rental Agreement & Certificate
- b) List of Sundry Creditors
- c) Balance Sheet and Profit & Loss account
- d) Kotak Bank statement (A/c No.142010090992)
- e) Kotak Bank account in assessee's book
- f) Canara Bank statement (A/c No.1172101011435)
- g) Canara Bank account in assessee's book
- h) Axis Bank statement. (A/c No.915020060689981)
- i) Axis Bank account in assessee's book

4.1 The assessee has also filed written submissions stating that if the above documents are considered in true spirits, there cannot be any addition towards unexplained deposit into bank account.

4.2. The Id. D.R. submitted that since the orders of the Id. AO was ex-parte and before NFAC, the documents filed by the assessee are unverifiable and also there was no application by assessee to admit those evidences under Rule 46A of I.T. Rules. Thus he submitted that the issue may be remitted back to the file of Id. AO for fresh consideration.

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5. In the present case, the assessee has filed various details as discussed above explaining the source of deposit into bank account. In our opinion, these documents are required to be examined at the end of ld. AO as the order of ld. AO is ex-parte and NFAC also not considered the evidences filed by the assessee on the reason that there was no application by assessee under Rule 46A. Being so, in the interest of justice, it is appropriate to remit the entire issue in dispute to the file of ld. AO for de-novo consideration. Accordingly, we remit the issue in dispute to the file of ld. AO for de-novo consideration.

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

Order pronounced in the open court on 21st Feb, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 21st Feb, 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.