

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

**BEFORE CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI NARENDRA KUMAR CHODHRY, JUDICIAL MEMBER**

ITA No.58/Bang/2024
Assessment Year : 2017-18

Smt. Noor Husna, 572, Central Street, Mandya – 571 401. PAN : AWUPN 3931 D	Vs.	ITO, Ward – 1 and TPS, Mandya.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Tharun Kothari, CA
Revenue by	:	Shri. Ganesh R Ghale, Advocate – Standing Counsel for Revenue.

Date of hearing	:	12.02.2024
Date of Pronouncement	:	12.02.2024

ORDER

Per Bench :

This appeal at the instance of the assessee is directed against NFAC’s order dated 30.11.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2017-18.

2. Assessee has raised the following grounds:

1. *The order of the authorities below in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*
2. *The appellant denies herself liable to be assessed to a total income of Rs.29,79,580/- as against the income returned at 3,17,750/- for the impugned assessment year 2017-18 on the facts and circumstances of the case.*

3. Grounds on principles of natural justice:

- a. *The learned CIT(A) ought to have provided another opportunity of hearing in the interest of natural justice on the facts and circumstances of the case.*
- b. *The learned CIT(A) ought to have called for documents filed during the assessment proceedings and should have disposed the appeal on the merits of the matter on the facts and circumstances of the case.*
- c. *The learned assessing officer has passed the order of assessment without providing opportunity of hearing though it was specifically requested thereby vitiating the principles of natural justice on the facts and circumstances of the case.*
- d. *The learned assessing officer has passed the impugned order without issuing a show cause notice thereby the mandatory checks and balances **to pass an order** of assessment has not been complied with on the facts and circumstances of the appellant's case.*

4. Grounds on Merits of the Matter:

- a. *The learned assessing officer is not justified in making additions of Rs.26,61,830/- under section 69A of the Act on the facts and circumstances of the case.*
 - b. *The teamed assessing officer has failed to appreciate that **the** cash deposits made during the relevant assessment year represents **the** sale proceeds of the appellant's business and that the provisions of section 69A finds no applicability as the nature and source of deposits stands explained under the facts and circumstances of the case.*
 - c. *The learned assessing officer has failed to appreciate that during the relevant assessment year certain purchases and sales invoices were not recorded due to oversight by the tax practitioner as **a result** of which the financial statement did not depict the correct financial position and that the learned assessing officer ought to have considered the revised purchases, revised sales and the revised trading account before passing the impugned order of assessment.*
 - d. *Without prejudice, the learned assessing officer has failed to telescope the income declared at the time of original assessment on the facts and circumstances of the case.*
5. *That it is a settled proposition of law that 'consent cannot confer jurisdiction'.*

6. *The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest, **has been levied are not in accordance with law and further are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.***
 7. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
 8. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity.*
3. Facts of the case are that appeal of the assessee before the CIT(A) has been decided ex-parte. The reason for deciding the appeal ex-parte was that assessee did not respond to the several notices issued from the Office of the CIT(A). The learned AR submitted that assessee had sought for adjournment for the notices issued from the Office of the CIT(A). However, the CIT(A) did not heed to the request of the assessee and passed ex-parte order. It was submitted that in the interest of justice and equity, one more opportunity may be provided to the assessee to represent his case before the CIT(A).
4. The learned Standing Counsel supported the orders of the AO and the CIT(A).
5. We have heard the rival submissions and perused the material on record. The Office of the CIT(A) had issued several notices directing the assessee to file written submissions. Since there was no written submission filed on the part of the assessee, the CIT(A) passed ex-parte order. We strongly deprecate the nonchalant attitude of the assessee in not filing the written submissions on time.

However, in the interest of justice and equity, we are of the view that assessee ought to be provided with one more opportunity to present his case and accordingly the issues are restored to the files of the CIT(A). The CIT(A) shall follow the necessary instruction in case of cash deposits of specified bank notes during the demonetization period. The assessee is directed to co-operate with the Revenue and shall not seek unnecessary adjournment.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(NARENDRA KUMAR CHOUDHRY)
Judicial Member

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore.

Dated: 15.02.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.