आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 44/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Gayatri Jaju, Nizamabad [PAN : AMXPM3085C]	Vs.	Income Tax Officer, Ward-1 Nizamabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Naveen Rander & Shri Nitin Rander, ARs

राजस्व द्वारा/Revenue by: Shri SPG. Mudaliar, DR

सुनवाई की तारीख/Date of hearing: 26/02/2024
घोषणा की तारीख/Pronouncement on: 29/02/2024

आदेश / **ORDER**

Aggrieved by the order dated 24/11/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Gayatri Jaju ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that assessee was a non-filer of income tax returns for the assessment year 2017-18. Basing on the data available on the ITBA system, learned Assessing Officer found that the assessee deposited cash in bank accounts during the demonetization period, but did

not file the return within the time allowed by the learned Assessing Officer, but filed her return of income on 11/11/2019 declaring total income of Rs.3,87,350/-. She also filed a letter explaining the nature of credits to the tune of Rs. 27,70,195/- as against the total credits of Rs. 51,33,416/-. Learned Assessing Officer treated the said return as invalid return, since the same was not filed within the time allowed as per notice under section 142(1) of the Income Tax Act, 1961 ('the Act'). Learned Assessing Officer observed that the assessee failed to substantiate the credits to the tune of Rs. 27,70,195/- with any supporting documentary evidence. According to the learned Assessing Officer, only a sum of Rs. 20,75,000/- alone could be attributable to FFD/Term Deposit credits in account and acceptable. Learned Assessing Officer, therefore brought to tax a sum of Rs. 30,58,420/- under section 69A of the Act on account of unexplained money.

3. Aggrieved by such an order, assessee preferred appeal before the learned CIT(A), contending that during the year under consideration the assessee was engaged in trading business, she made various deposits and withdrawals from the bank accounts held by her, such deposits consist of cash received against the turnover and offered the same as income in her return of income and paid the taxes, but the learned Assessing Officer treated the amount of Rs.30,58,416/- as unexplained money under section 69A of the Act. In respect of the above deposits, the assessee furnished a copy of ITR acknowledgement, copy of return of income and computation of income for the assessment year 2017-18. Further, she submitted that

she maintains all the documents and evidence in respect of the cash deposits made during the year under consideration.

4. On examination of the contention of the assessee, learned CIT(A) observed that the total sales of goods shown in the invalid ITR was Rs. 12,21,719/-, but the credit transactions in the bank account was Rs. 51,33,416/-, the assessee merely made remarks that part of the credits were from sales and some loans have been obtained, all put together were not more than Rs. 25,60,000/- without any adducing evidences to this effect and there were no references on the remaining amount, and therefore, there is no change in the factual situation of the case. Learned CIT(A) accordingly confirmed the addition made by the learned Assessing Officer. Hence this appeal by the assessee.

5. Learned AR submitted that the cash deposit for the year only is Rs. 55,000/- but not Rs. 51,33,416/- and all the balance amounts were through only banking channels representing the interest on deposits, maturity value of the FDRs, advance amount paid by two parties for purchase of property through banking channels, sale proceeds of the agricultural produce etc., in respect of which the assessee has documentary evidence to prove. Learned AR further submitted that all through the proceedings, the learned Assessing Officer was seeking information in respect of Rs. 1,32,53,735/- which does not pertain to the assessee's personal account, but only to the partnership firm. Even in the letter dated 07/12/2019, learned Assessing Officer referred to the notice dated 18/09/2019 which was issued in respect of the above Rs. 1.32 crores, but not in respect of the amount that lies in the personal account of the assessee. If the learned

Assessing Officer was clear in seeking the information, the assessee would have produced all the relevant information and documents, but because of the confusion that had arisen in respect of the information relating to the firm and the personal account, the assessee could not produce the details relating to her personal account. Further, in reply to the notice issued under section 133(6) of the Act, assessee replied that cash deposit was only Rs. 55,000/- and not more, but it was not considered by the learned Assessing Officer. Learned AR further submitted that the return of income submitted by the assessee before the conclusion of assessment proceedings may be considered.

6. Per contra, learned DR submitted that the assessee did not produce the supporting evidence as rightly observed by the Revenue authorities, and, therefore, there is no need to interfere with the findings of the Revenue authorities. He further submitted that since the assessee did not file the return of income within the time allowed by the learned Assessing Officer, he rightly treated it as invalid.

7. I have gone through the record in the light of the submissions made on either side. There is no denial of the fact that the learned Assessing Officer issued the notice dated 09/03/2018 referring to the deposit of Rs. 1,32,53,735/-, but subsequently during the course of assessment proceedings referred to the cash deposits/credits to the tune of Rs. 51,33,416/-. It is also not in dispute that in the notice dated 18/09/2019, he referred to the sum of Rs. 1,32,53,735/-, which does not relate to the deposits/credits in the personal account of the assessee. It is therefore clear that for want of consistency, it created a confusion as to

whether the learned Assessing Officer was referring to the deposits to the tune of Rs. 1.33 crores or to Rs. 51.33 lakhs.

8. In these circumstances, in the interest of justice, I deem it just and proper to set aside the impugned orders and restore the issue to the file of the learned Assessing Officer to take a fresh view, after affording an opportunity to the assessee to substantiate her claim in respect of Rs. 51.33 lakhs.

9. Basing on the decision of the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Ltd., vs. CIT [2016] 68 taxmann.com 298 (Kerala) and the view taken by the Jodhpur Bench of the Tribunal in the case of Onkarlal Kachoria vs. ITO [2004] 1 SOT 476 (Jodh.), learned AR submitted that the return filed pursuant to the notice issued under section 142(1) of the Act, before the conclusion of the assessment proceedings can be accepted and acted upon. Developing on this line, he argued that when once the belated return under section 142(1) of the Act is accepted as a valid one, the assessment order has to be quashed for want of notice under section 143(2) of the Act.

10. On a careful perusal of these two decisions, I am of the considered opinion that for the purpose of computation, the belated returned income of the assessee could be considered. However, it cannot be said that for want of notice under section 143(2) of the Act, the assessment proceedings are bad, because if the assessee files the belated return of income on the last day permissible for assessment, thereby leaving no time in the hands of the learned Assessing Officer to issue notice under section

143(2) of the Act, cannot be permitted to argue that assessment is bad for want of notice under section 143(2) of the Act. It will be a travesty of justice and allowing premium over default. Assessee cannot have the benefit of her own violation of the time stipulation made by the learned Assessing Officer in the notice. I reject this contention.

11. It is brough to the notice of the Bench that by mistake, the assessee paid the appeal fee of Rs. 10,000/- in challan No. 4184, dated 12/01/2024, under the head 'Tax' instead of 'others' and when the learned Assessing Officer was approached for correction, learned Assessing Officer expressed his inability to correct the same as it was not available against the PAN of the assessee for the assessment year 2017-18. Assessee, therefore, paid another Rs. 10,000/- under the head 'others' vide challan No. 14611, dated 09/02/2024. Learned AR, therefore prayed that refund may be ordered. Heard the learned DR.

12. Having considered the issue, I found that in the circumstances stated by the learned AR, there was double payment of Rs. 10,000/- and only one of such payments vide challan No. 14611, dated 09/02/2024 alone is appropriated towards appeal fees and the amount of Rs. 10,000/- paid vide challan No. 4184, dated 12/01/2024 under the head 'Tax' remains unexhausted. I am of the considered opinion that since there cannot be any undue enrichment, in the interest of justice, the learned Assessing Officer may consider adjustment of this amount of Rs. 10,000/- against the demand, if any, for the assessment year 2017-18.

13. With this view of the matter, I set aside the orders of the Revenue authorities, and restore the issue to the file of the learned Assessing Officer to take a fresh view, after affording an opportunity to the assessee to substantiate her claim in respect of Rs. 51.33 lakhs.

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

Order pronounced in the open court on this the 29th day of February, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 29/02/2024

TNMM

Copy forwarded to:

1. Gayatri Jaju, 7-7-2, Kumargalli, Nizamabad.
2. Income Tax Officer, Ward-1, Nizamabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD