

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.13/Bang/2024
Assessment Year : 2010-11

Shri. Mohammadali Thayalepurayil, No.87/88, 5 th Main, Hotel Regency, 1 st Cross, Gandhinagar, Bengaluru – 560 009. PAN : AEAPT 1649 G	Vs.	ITO, Ward – 5(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. Nilanjan Dey, Addl. CIT (DR)(ITAT), Bengaluru.

Date of hearing	:	05.03.2024
Date of Pronouncement	:	05.03.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s Order dated 13.12.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2010-11.

2. The grounds raised read as follows:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law. equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in disposing off the appeal filed without proper application of mind and considering the written submissions and documentary evidence filed before him especially considering that the assessment order was*

passed ex-parte making substantial additions under the facts and in the circumstances of the appellant's case.

3. *The learned CIT[A] ought to have cancelled the order of assessment as there was no valid service of notice u/s.143[2] of the Act on the appellant in time and there was also no valid service of the order and consequently. the order of assessment passed requires to be cancelled.*
4. *Without prejudice to the above, the learned CIT[A] ought not to have upheld the order of assessment passed u/s.144 of the Act, under the facts and in the circumstances of the appellant's case.*
5. *Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition made u/s.68 of the Act of Rs.30,50.000/- as unexplained cash deposits in the bank account without appreciating that the appellant had explained the source of the cash deposits which was from out of the sale proceeds of the property sold during the year and therefore, the provisions of section 68 of the Act have no application at all under the facts and in the circumstances of the appellant's case.*
- 5.1 *Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs.2,88,00.000/- being the alleged consideration on sale of property to the returned income under the facts and in the circumstances of the appellant's case.*
6. *The learned CIT[A] failed to appreciate that the impugned addition was made by the learned A.O. relying upon certain information that was erroneous and that the appellant had explained the transactions entered into by him and filed necessary documentary evidence in support thereof and therefore, the addition made was totally arbitrary and the same ought to have been deleted.*
7. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

8. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

3. Brief facts of the case are as follows:

Assessee, an individual, filed the return of income on 27.07.2010 declaring total income of Rs.1,62,500/-. Assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 26.08.2011. In spite of the notice under section 143(2) of the Act and several notices issued under section 142(1) of the Act, assessee did not appear. Therefore, the AO sent a proposal to complete the assessment under section 144 of the Act. Since there was no response to the said proposal, assessment was completed under section 144 of the Act vide order dated 28.03.2013. In the said Assessment Order, the AO made an addition of Rs.2,88,00,000/- being the sale consideration on sale of property and Rs.30,50,000/- being the cash deposit made in the bank account of the assessee.

4. Aggrieved by the Order of the Assessment, assessee filed a revision before the PCIT under section 264 of the Act. The same was rejected by the PCIT. Thereafter, assessee filed a Writ Petition No.35871/2017 before the Hon'ble High Court of Karnataka. The Hon'ble High Court, vide its judgment dated 3.03.2016, directed the assessee to file appeal before the CIT(A) within 30 days from the date of the judgment of the High Court. On directions of the Hon'ble High Court, assessee filed appeal before the CIT(A).

5. The CIT(A) dismissed the appeal of the assessee by not admitting the additional evidence filed. Therefore, the addition made by the AO on account of sale of property and cash deposits was confirmed by the CIT(A).

6. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book comprising of 193 pages *inter alia* enclosing therein acknowledgement for having filed the return of income along with computation of total income for the Assessment Year 2010-11, copy of sale deeds, copy of written submissions along with annexure filed before CIT(A), etc. The learned AR submitted that assessee in the written submission filed before the CIT(A) had produced the details of the sale deed and furnish the source of cash deposits. It was submitted that there was a specific prayer in Form 35 to admit the additional evidence. However, the CIT(A) has erred in not admitting the additional evidence and dismissing the appeal of the assessee *in limine*.

7. The learned DR strongly supported the orders of the AO and the CIT(A).

8. We have heard the rival submissions and perused the material on record. Assessment in the instant case has been completed under section 144 of the Act, since assessee did not respond to the several notices issued under sections 143(2) and 142(1) of the Act. Assessee in the statement of facts filed before the CIT(A) had detailed the reasons for non-appearance before the AO. For ready reference, the reasons stated for non-appearance before the AO is reproduced below:

1. *The appellant is a NRI residing in Dubai. He is employed in Information Technology Department, H.H.Ruler's Court, DUBAI, U.A.E, for over 30 years. The appellant's passport number is Z2055754 and his Mobile Number is 00971504577091. The appellant hails from S.V.House, Payangadi Village, Kannur District, Kerala and all his family members are residing with him in Dubai and whenever the family members visit native place, they occupy the premises and there is no responsible person to receive the notices, etc. Therefore, the appellant not having any permanent address in Bengaluru to receive the notices therefore requests your*

Honour to kindly send all the notices, orders, etc., to the following address :

***C/o. M/s. S. VENKATESAN & CO.,
Chartered Accountants,
#31-33, II Floor, SNS PLAZA,
Kumara Krupa Road,
BENGALURU - 560 001.***

2. *The appellant is the son of one late Assinar Haji, who died in the year 2004, who was a partner along with his brother by name Mr. Abdul Rahman Haji [since deceased] to carry on the business of running restaurant under the name and style of Hotel Majestic, #10, Tank Bund Road, Subashnagar, Bangalore-560009. Similarly, the appellant fathers's own brother Mr. Abdul Rahman Haji was running a lodging business under the name and style of M/s. Hotel Regency, No.87/88, 5th Main Road. 1st Cross, Gandhinagar, Bangalore-560009. Neither the appellant nor his late father during his lifetime were partners in M/s.Hotel Regency.*
3. *After the death of appellant's father who was a partner carrying on restaurant business under the name and style of M/s. HOTEL MAJESTIC, the business of M/s.Hotel Majestic is being carried on by the sons of the appellant's late father's brother Mr. Abdul Rahman Haji.*
4. *One Mr.Balasubramanyam, CA, was preparing and filing the returns of the appellant's father, his brother and M/s.Hotel Regency, etc., in the past and he also used to file the return of the appellant also, who is a Non-Resident and he is a non-resident for more than 30 years. His passport number is Z2055754. The appellant neither resides in Bangalore nor has a place of business in India and the address of Hotel Majestic 'n Tank Bund Road, in which the appellant's father was a partner alongwith his uncle was given for filing the return. Even the business carried on under the name and style of M/s.Hotel Regency, in Gandhingar, which was the address put in the order is being looked after by the appellant father's deceased brother sons now. The relationship between the appellant and his cousins i.e., appellant father's deceased brothers son are not at all cordial and good. They must have*

received the notices and have neither they informed the appellant nor any other person about the receipt of the notices.

5. *In the absence of any knowledge about such receipt of notices for compliance, the appellant could not comply with the requirements of the notices. The appellant has not authorized Hotel Regency, who are carrying on the business of lodging in Gandhinagar, who after the death of the appellant's father carrying on the business of M/s. Hotel Majestic at Tank Bund Road, to receive notices on behalf of the appellant.*

9. The CIT(A) has dismissed the appeal *in limine* by not admitting the additional evidence filed before him. Assessee has filed the written submissions filed before the CIT(A). Before the CIT(A), Assessee had clearly mentioned the details of the additional evidence filed before him and the prayer to admit the same for proper adjudication of the issue on merits. We are of the view that there is reasonable cause for non-appearance before the AO. Having found that there is reasonable cause for non-appearance before the AO, the CIT(A) ought to have admitted the additional evidence and adjudicated the issue on the merits of the case. In the interest of justice and equity, we are of the view that the matter needs to be examined by the AO (since the assessment has been completed under section 144 of the Act). Accordingly, the issues raised in this appeal are restored to the files of the AO. The assessee's AR has undertaken before the Tribunal that assessee shall co-operate with the Revenue and shall not seek unnecessary adjournment in the matter. With above assurance of the learned AR, the matter is restored to the files of the AO. It is ordered accordingly.

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

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

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 05.03.2024.

/NS/*

Copy to:

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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.