

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

**Before Shri George George K, Vice-President &
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.46/Bang/2024 : Asst.Year 2015-2016

M/s.SMB Constructions #602, VI Floor, Willys Cote Apartment, Opp : SCS Hospital Bendoorwell Mangaluru – 575 002. PAN : ABVFS3579C.	v.	The Income Tax Officer Ward 1(1) Mangaluru.
(Appellant)		(Respondent)

Appellant by : Ms.Sunaina Bhatia, Advocate
Respondent by : Sri.V.Parithivel, JCIT-DR

Date of Hearing : 11.03.2024	Date of Pronouncement : 13.03.2024
-------------------------------------	---

ORDER

Per Laxmi Prasad Sahu, AM :

This appeal filed by the assessee is directed against the order of the CIT(A), NFAC, Delhi, dated 07.11.2023, challenging the order of the Assessing Officer dated 21.03.2022 passed u/s.147 r.w.s. 144 of the Income-tax Act, 1961 ("the Act" hereinafter), for the assessment year 2015-2016, raising following grounds:-

"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 holding that the appellant is not interested in prosecuting the appeal on merits on account of the failure of the appellant to respond to notices issued in appellate proceedings without appreciating that the appellant had not observed the notices sent by email being unaware of the e-

proceedings especially considering the assessment order itself was passed ex-parte and that the appellant had enclosed documents like lease deed, computation of total income and tax paid challans along with the appeal memo, which ought to have been considered before disposal of the appeal under the facts and in the circumstances of the appellant's case.

3. *Without prejudice to the above, the learned CIT(A) is not justified in upholding the addition of a sum of Rs.53,82,000 made by the learned AO being the rental income received by the appellant under the head "Income from House Property" treated as unexplained receipt under the head "Income from Other sources" without noticing that the appellant had provided copy of the lease deed and computation of income along with the appeal memo showing the tax due on the income earned by it and therefore, the assessment of the said income under the head "Other Sources" was unwarranted under the facts and in the circumstances of the appellant's case.*

3.1 *The learned CIT(A) ought to have further appreciated that the appellant had discharged the taxes due on the sum of Rs.53,82,000 received as rent from Alvas Foundation, which sum was also subject to TDS of Rs.5,38,200 u/s.194I(b) of the Act, and therefore, the assessment of the said income under the head "Other Sources" was contrary to law and facts of the appellant's case.*

4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234A, 234B and 234C of the Act, which under the facts and in the circumstances of the case appellant's case deserves to be cancelled.*

5. *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. Briefly stated the facts of the case are that the assessee is a partnership firm deriving income from house property, being rent received from M/s.Alvas Education Foundation, Mangalore. As per the ITS data available with the

Department, the assessee is in respect of rent u/s.194-I(b) of the Act, amounting to Rs.53,82,000 received from M/s.Alvas Education Foundation, Mangalore, who has deducted TDS of Rs.5,38,200 u/s.194-I(b) and it was reported in Form 26AS. Accordingly, the case was reopened u/s.147 of the Act by issuing notice u/s.148 dated 30th March, 2021 and the assessee was asked to file return of income in pursuance of the statutory notices issued to the assessee. However, the assessee did not file the return of income. Further, inspite of various opportunities granted to the assessee and issuances of notices, the assessee neither complied with the notices nor filed the return of income. Therefore, after giving final show cause notice, the case was completed u/s 144 r.w.s. 147 of the Act, and assessed the income at Rs.53,82,000 u/s.144 of the Act, and completed the reassessment proceedings.

4. Aggrieved from the above order, the assessee filed appeal before the first appellate authority. During the course of appellate proceedings, the CIT(A) also issued various notices as per para 4 of his order, but there was no response from the side of the assessee. The assessee has also not filed any written submission to rebut the findings on the reassessment order. Therefore, in the absence of any evidence or submissions from the assessee's side, the CIT(A) dismissed the appeal of the assessee.

5. Aggrieved from the order of the CIT(A), the assessee filed the present appeal before the Tribunal. The learned AR of the assessee submitted that the assessee is a partnership firm

deriving income from house property being rent received from M/s.Alvas Education Foundation, situated in the basement, ground, 1st, 2nd, 3rd and 4th floor, buiding totally measuring 4345 sq.mt. of Puttige Village, Moodbidri, Mangalore. The learned AR further submitted that during the impugned assessment year, the rent received by the assessee is Rs.53,82,000 towards rent on the premises let out. She further submitted that the Revenue Authorities were not justified in treating the rent as income from other sources without noticing that the assessee had provided copy of the lease deed and computation of income along with the appeal memo. The learned AR further submitted that the Revenue Authorities have also not given credit for the tax deducted of Rs.5,38,200 u/s.194-I(b) of the Act. She submitted that the assessee could not file return of income within the due date due to unavoidable circumstances, however, the assessee filed the return manually on 28th March, 2018 and copy of the acknowledgement was enclosed in the appeal memo before the CIT(A). The assessee was also not aware about the notices issued by the Revenue Authorities. Therefore, it was decided *ex parte* at both levels. She further requested that if a chance is given to the assessee and undertook that the assessee will comply with all the notices issued by the Revenue Authorities.

6. The learned Departmental Representative relied on the orders of the authorities below and submitted that the assessee did not file the return of income though the assessee has received handsome amount of rent of Rs.53,82,000 from

the let out immovable property. Both the Revenue Authorities have issued various notices, but the assessee was not bothered to file the return of income. Accordingly, the ld.DR requested that the orders of the lower authorities need to be upheld.

7. Considering the rival submissions and perusing the relevant material on record, we note that the case was reopened u/s.147 / 148 of the Act and the assessee did not file the return of income in response to notice u/s 148 for the impugned assessment year, inspite of it has taxable income. The A.O. also issued various notices to the assessee on different dates. However, the notice was issued u/s. 147 / 148 of the Act on 30th March, 2021 and the assessment was completed u/s.147 r.w.s. 144 of the Act. The CIT(A) also issued various notices, but the assessee did not comply with the notices, who passed an *ex parte* order. We note from the grounds of appeal before the CIT(A) at ground No.3 that the assessee filed return of income on 28th March, 2018 manually but it is beyond the period prescribed in the Act. It is surprisingly to note that how the assessee was able to file return manually beyond the prescribed period of limitation & copy of acknowledgement of return was not produced before us and what is status of the return is also not known. The sole reason for reopening the case is not filing return of income inspite of the huge rent received on the basis of reporting in Form No.26AS and there is also TDS made u/s.194-I(b) of the Act. Therefore, considering the prayer of

the assessee and in the interest of justice and equity, we remit the matter to the file of the A.O. for a fresh consideration. The A.O. is directed to give reasonable opportunity of being heard to the assessee and decide the issue as per law. The assessee is directed to produce necessary documents for substantiating his case and to avoid unnecessary adjournments for early disposal of the case. The assessee is also directed to update the email, mobile number and address for communication.

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

Order pronounced on this 13th day of March, 2024, through virtual hearing.

**Sd/-
(George George K)
VICE-PRESIDENT**

**Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER**

Bangalore; Dated : 13th March, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Bengaluru.
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore