

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K.Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.568/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Shri Lingamurthy Thota Medak PAN:AEFPT7720P (Appellant)	Vs.	Income Tax Officer Ward-1 Siddipet (Respondent)
निर्धारित द्वारा/Assessee by:	Shri A. Srinivas, CA	
राजस्व द्वारा/Revenue by:	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	13/03/2024	
घोषणा की तारीख/Pronouncement:	15/03/2024	

आदेश/ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 21/09/2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the ex-parte order of the learned CIT (A) NFAC in confirming the order of the Assessing Officer determining the taxable income at Rs.1,02,92,967/- as against the income declared at Rs.5,68,350/-.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 12.3.2018 declaring total income of Rs.5,68,350/- after claiming deduction u/s 80C of Chapter VIA at Rs.1,50,000/-. The assessee has also declared agricultural income of Rs.1,54,670/-. The return was selected for scrutiny and statutory notice u/s 143(2) of the Act was issued on 21.9.2018 requiring the assessee to furnish certain information by 25.10.2018. However, there was no compliance from the side of the assessee. The Assessing Officer thereafter issued notices u/s 142(1) on 16.10.2019, 28.10.2019, 09.11.2019, 16.11.2019 and 23.11.2019 respectively requiring the assessee to furnish the requisite information. However, there was no response from the side of the assessee for which the Assessing Officer proceeded to complete the assessment on the basis of material available on record.

4. The Assessing Officer noticed from the information gathered from SBI obtained under the provisions of 133(6) of the I.T. Act, 1961 that the assessee has made cash deposits during the demonetization period aggregating to Rs.24,14,000/- and Rs.8,45,000/- respectively in two bank accounts. Further, the statement so obtained also reflected cash deposits on certain other occasions. In absence of any information filed by the assessee to explain the source of such cash deposits, the Assessing Officer made addition of Rs.32,59,000/- u/s 69A of the Act as unexplained cash deposit.

5. The Assessing Officer further noted that the assessee is into the business of trading in fertilizers & pesticides and retail

trading in cement and steel. The cash deposits made in the Bank Account is to the tune of Rs.2,33,83,190/- and the credits in the Bank Accounts, otherwise than on account of cash deposits made into the Bank Accounts during the period of demonetization aggregating to Rs.8,93,51,859/-. Since he had already made addition of Rs.32,59,000/- being cash deposits during demonetization period, he considered the balance amount of Rs.10,94,76,049/- as gross turnover of the assessee and estimated the profit @ 8% on 2,01,24,190/- and 6% on Rs.8,93,51,859/- and accordingly determined the business income of the assessee at Rs.69,71,047/- by recording as under:

4.1 In the return of income (ITR-3) filed for the assessment year 2017-18, the assessee reported total turnover for the year at Rs.6,89,84,247/- wherefrom gross profit was shown at Rs.19,94,011/- and after claiming expenditure of Rs.12,82,263/-, the net profit was arrived at Rs.7,11,748/-. However, in the course of scrutiny, on the basis of the statements of bank accounts, the turnover for the year was arrived at Rs.10,94,76,049/-. In the absence of books of account and other documents, the financial results reported in the return of income cannot be taken into cognizance. As the assessee has not furnished any information, there is no alternative left but to resort to estimation of income from business, in line with the presumptive provisions enunciated in sec.44AD of the Income Tax Act, 1961.

4.2 Accordingly, the income of the assessee is estimated at Rs.16,09,935/- i.e. @ 8% in respect of the turnover/gross receipts on account of cash [Rs.(2,01,24,190 × 8 ÷ 100 = Rs.16,09,935/-)] and income is estimated at Rs.53,61,112/- i.e. @ 6% of the turnover/gross receipts which is received through banking channels [Rs.(8,93,51,859 × 6 ÷ 100 = Rs.53,61,112)]. Thus, the aggregate income of Rs.69,71,047/- i.e. [Rs.(16,09,935 + 53,61,112 = Rs.69,71,047/-)] estimated from business, is brought to tax.

6. The Assessing Officer further made addition of Rs.1,65,897/- as income from poultry business and Rs.56,323/- as interest income treating the same as “income from other sources”. The Assessing Officer however, deducted an amount of Rs.1,59,300/- being negative income from house property and

accordingly determined the total income of the assessee at Rs.1,02,92,967/-.

7. Since the assessee did not file any submission before the learned CIT (A) NFAC despite 3 opportunities granted, the learned CIT (A) NFAC in the ex-parte order passed by him sustained the additions made by the Assessing Officer and dismissed the appeal filed by the assessee.

8. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

9. The learned Counsel for the assessee submitted that the assessee is a senior citizen and due to bad health could not consult his tax consultant for which the ex-parte orders has been passed by the Assessing Officer and the learned CIT (A) NFAC. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case before the Assessing Officer.

10. The learned DR, on the other hand, strongly opposed the arguments advanced by the learned Counsel for the assessee. He submitted that the assessee neither appeared before the Assessing Officer nor filed any submission before the learned CIT (A) NFAC, therefore, the order of the learned CIT (A) NFAC confirming the addition made by the Assessing Officer should be sustained.

10. We have heard the rival arguments made by both the sides and perused the record. We find the Assessing Officer in the instant case determined the total income of the assessee at Rs. 10,29,967/- as against the income declared at Rs.5,68,350/- by making addition of Rs. Rs.32,59,000/- u/s 69A of the Act as unexplained cash deposit, Rs.1,65,897/- towards income from poultry, Rs.56,323/- as interest income and determining the business income at Rs.69,71.047/- by estimating the same. We find that the Assessing Officer while determining the income at Rs.1,02,92,967/- passed the order u/s 144 of the Act due to continuous non-compliance of the assessee to the various statutory notices. We find due to non-submission of any details by the assessee despite 3 opportunities granted, the learned CIT (A) NFAC sustained the various additions made by the Assessing Officer and thereby dismissing the appeal of the assessee due to non-prosecution. It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to explain the source of such cash deposits to the satisfaction of the Assessing Officer and also the discrepancy in the commission income declared. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate his case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to file his submissions on the date of hearing without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and

direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 15th March, 2024

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 15th March, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 1 Siddipet
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order