

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

आ.अपी.सं / **ITA No.89/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2021-22)

Shri Mohd.Badsha Laskar Secunderabad PAN: ACQPL8311F (Appellant)	Vs.	Asstt. C. I. T. Central Circle 3(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri M.V. Prasad, CA		
राजस्व द्वारा / Revenue by: Shri Shakeer Ahmed, Sr.DR		
सुनवाई की तारीख / Date of hearing: 14/03/2024		
घोषणा की तारीख / Pronouncement: 21/03/2024		

**आदेश/ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 28.07.2023 of the learned CIT (A)-11, Hyderabad relating to A.Y.2021-22.

2. There is a delay of 125 days in filing of this appeal by the assessee for which the assessee has filed a Condonation Petition along with an affidavit explaining the reasons for such delay which is due to ill health of the assessee. The assessee has

also filed the medical certificate to this effect. After considering the contents of the Condonation Petition along with the affidavit and after hearing the learned DR, the delay in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of manufacture of gold ornaments and designer gold balls. He filed his return of income on 21.12.2021 declaring total income of Rs.5,37,370/- which was processed u/s 143(1). In this case the Police authorities found cash of Rs.80 lakhs on 14.11.2020 in the possession of the assessee and in absence of any supporting evidence, the said cash was seized by the Police. A survey operation u/s 133A was also conducted in the case of the assessee on 14.11.2020 by the Income Tax Department. Since the assessee failed to explain the cash so seized, a warrant of authorization u/s 132A of the Act was executed and cash of Rs.80 lakhs was requisitioned.

4. Subsequently, the case was centralized and statutory notices u/s 143(2) dated 21.2.2022 was issued along with notice u/s 142(1) calling for certain information. The assessee filed a revised return of income on 31.03.2022.

5. During the course of assesment proceedings, the Assessing Officer asked the assessee to substantiate the source for the cash so found in his possession on 14.11.2020 with

sufficient evidences. In response to the same, the assessee submitted his reply which has been reproduced by the Assessing Officer in the body of the assessment order and which reads as under:

*“his wife, and elder son were all engaged in same line of business and the cash seized by the Department belongs to all three persons. This cash was generated out of the collections of their regular business activities and which is part of the additional incomes offered by all three persons. The detailed statements of additional incomes offered were also furnished for your kind perusal and consideration. The breakup of the cash generated is as follows:*

<i>S.No</i>	<i>Name of the assessee</i>	
1.	<i>MohdBadshaLaskar</i>	<i>25,00,000</i>
2.	<i>Fathima Begum AlimuddinLaskar</i>	<i>45,00,000</i>
3.	<i>Alimuddin Laskar</i>	<i>10,00,000</i>
	<i>TOTAL</i>	<i>80,00,000”.</i>

6. However, the Assessing Officer noted that except referring to the admission made by them while explaining the excess stock of gold found on the date of survey, the assessee had not furnished any iota of evidence to prove that the cash found on 14.11.2020 belongs to all his members of family and that too for earlier 3 years. Since no evidence for the cash generated for the earlier years was found and the assessee could not explain the source of such cash found by the Police Authorities, the Assessing Officer taxed the same u/s 69A of the Act r.w.s. 115BBE and determined the total income of the assessee at Rs.85,37,370/- as against the returned income of Rs.5,37,370/-.

7. Since the assessee did not appear before the learned CIT (A) despite number of opportunities granted, the learned CIT (A) in the ex parte order passed by him upheld the action of the Assessing Officer. While doing so, he also dismissed the ground challenging the non-issue of notice u/s 143(2) for the revised return of income filed by the assessee.

8. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

1. The learned CIT (Appeals) is erred in facts and law while passing the order.
2. The learned CIT(Appeals) would have appreciated that the main and one and only source of income for the appellant and his family members is from business of jewellery trading and related job works and therefore would have considered that the cash seized has emanated from business only but not from unexplained sources.
3. The learned CIT(Appeals) would have also appreciated that cash seized represents the unaccounted income generated over the last three years in the business of gold and therefore, would not have upheld that decision of the Assessing Officer that it represents unexplained money.
4. The Learned CIT(Appeals) would have considered that the assessment made in absence of issue of proper and valid notice u/s.143(2) of the I.T.Act to be treated as invalid.
5. Without prejudice to the above grounds, the Learned CIT(Appeals) would have appreciated that the cash found has been duly admitted in the hands of the appellant (Rs.10,00,000/-) his wife Fathima Begum (Rs.10,00,000/-) and son Alimuddin Laskar (Rs.10,00,000/-) and therefore would have restricted the addition to 50,00,000/- instead of adding the entire amount of cash seized.
6. The appellant craves to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.

9. The learned Counsel for the assessee submitted that since no notice u/s 143(2) was issued after the revised return was filed on 31.3.2022 and the order has been passed on

4.5.2022, therefore, the order of the learned CIT (A) not quashing the assessment order is erroneous. So far as the merit of the case is concerned, the learned Counsel for the assessee submitted that due to some family problems, the assessee was not able to look after the statutory requirements for which the unfortunate events happened i.e. non submission of any details before the learned CIT (A). He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case before the learned CIT (A).

10. The learned DR, on the other hand, while opposing the submissions made by the learned Counsel for the assessee drew the attention of the Bench to para 10 of the order of the learned CIT (A) and submitted that despite number of opportunities granted, the assessee did not appear before the learned CIT (A) for which he was constrained to pass the ex-parte order.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.80 lakhs u/s 69A r.w.s. 115BBE of the Act on the ground that the assessee could not explain with sufficient documentary evidence to his satisfaction regarding the source of the cash found in his possession by the Police Authorities on 14.11.2020. We find the

learned CIT (A) sustained the addition made by the Assessing Officer on the ground that the assessee did not file any submission despite number of opportunities granted to explain the source of such cash so found. The learned CIT (A) also rejected the ground raised by the assessee before him challenging the validity of the assessment in absence of issue of notice u/s 143(2) against the revised return filed on the ground that the Assessing Officer has already issued notice u/s 143(2) on the basis of the original return filed and no fresh notice u/s 143(2) is required for the revised return filed on 31.3.2022.

11.1 It is the submission of the learned Counsel for the assessee that the Assessing Officer is duty bound to issue notice u/s 143(2) in respect of the revised return filed. It is also his submission that given an opportunity, the assessee is in a position to substantiate his case with evidence to the satisfaction of the learned CIT (A) regarding the source of cash so found by the Police Authorities. 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 learned CIT (A) with a direction to grant one more opportunity to the assessee to substantiate his case with evidence to his satisfaction regarding the availability of source of cash of Rs.80 lakhs found by the Police Authorities from the possession of the assessee on 14.11.2020. The learned CIT (A) shall also decide the issue of validity of the assessment in absence of issue of notice u/s 143(2) in respect of the revised return filed

by the assessee after hearing the arguments on this issue, if any. The assessee is also hereby directed to appear before the learned CIT (A) without seeking any adjournment under any pretext and file the necessary details failing which the learned CIT (A) is at liberty to pass appropriate order as per law. Needless to say the learned CIT (A) shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 21<sup>st</sup> March, 2024.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 21<sup>st</sup> March, 2024

*Vinodan/sps*

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3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*