IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.149/Hyd/2024		
Assessment Year: 2017-18		
Syed Karimulla, Nandalur, Rajampet, D.No.5-98-C, C/o.Shaik Mastan Vali, Near Nandalur Bus Stand, Andhra Pradesh – 516510. PAN : FDDPS8691Q	Vs.	The Income Tax Officer, Ward – 1, Cuddapah
(Appellant)		(Respondent)
Assessee by:	Shri Abhiroop Bhargav, C.A.	
Revenue by:	Shri B. Yadagiri, SR.AR	
Date of hearing:	07.03.2024	
Date of pronouncement:	11.03.2024	

O R D E R

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.21.12.2003 invoking proceedings under section 144 of the Income Tax Act, 1961 (in short, "the Act").

3. The grounds raised by the assessee read as under :

> *" 1. That on facts and circumstances of the case and in law, the Order u/ s 144 of the Income Tax Act, 1961 ('Act') is bad in law;*
>
> *2. That on the facts and circumstances of the case, the Ld.AO/ CIT(A) erred in carrying out an addition towards unexplained money under Section 69A of the Act amounting to*
>
> *3. That on the facts and circumstances of the case, the Ld.AO/ CIT(A) erred in not allowing deduction under Section 80TTA amounting to Rs. 10,000 and Section 80C of the Act amounting to Rs. 75,573;*
>
> *4. That on the facts and circumstances of the case, the Ld.AO/CIT(A) have erred in levy of interest under Section 234A and Section 234B of the Act*
>
> *5. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of appeal."*

4. The brief facts of the case are that as per the information available in ITBA, assessee had deposited cash of Rs.20 lakhs in bank account during demonetization period but has not filed any return of income for Assessment Year 2017-18. As the assessee had not filed any return of income for AY 2017-18, a notice u/s 142(1) of the Income-Tax Act, 1961 (Act) was issued on 13-02-2018 calling for return of income. With respect to the cash deposits, assessee has neither filed any return of income u/s 139(1) nor in response to notice issued u/s 142(1) of the Act, the source for cash deposits made remained unexplained.

4.1. During the course of scrutiny proceedings, letters were issued and served upon the assessee from time to time, requesting the assessee to explain the sources for the deposits. Finally, assessee replied to the show cause notice dt.31.10.2019 that he has been working in Kuwait for the past 25 years. He further submitted that he had deposited Rs.13,00,000/- from the cash he had withdrawn from the bank four months prior to the demonetization and the remaining was deposited from earlier savings. The assessee's submissions were accepted by the Assessing Officer in light of the bank account statements furnished. However, the assessee couldn't produce any documentary evidence with regard to the earlier savings available in the form of cash-in-hand. Therefore, as the assessee failed to submit explanation for the sources for the old SBN (Specified Bank Notes) put into Bank Account, the remaining amount of Rs.7,00,000/- was deemed as unexplained money u/s 69A of the Income Tax Act, 1961 which was taxed u/s 115 BBE of the Act @ 60%. Thus, Assessing Officer completed the assessment interalia making addition of Rs.7,00,000/- to the returned income of the assessee and passed assessment order on 17.12.2019 u/s 144 of the Act.

5. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal before the ld.CIT(A) who dismissed the appeal of assessee as withdrawn in view of assessee’s submission of Form-3 dt.10.02.201 under the Direct Tax Vivad se Vishwas Act, 2020.

6. Before us, ld. AR submitted that the ld.CIT(A) has not decided the issue on merits and was swayed by the non-compliance by the assessee's application under Vivad se Vishwas Act, 2020. It was submitted that though there is a failure on the part of the assessee to resolve the issue under Vivad se Vishwas Act, 2020, however, there is a statutory obligation on the Income Tax Authorities to decide the issue in accordance with law. For the above said purposes, the ld.AR relied upon the judgment of hon'ble Supreme Court in the case of P.M. Paul Vs. The State Tax Officer and others in SLP No.8386/2023 dt.01.09.2023 to buttress the argument that if the assessee fails to comply with the Vivad-se-Vishwas Scheme and has preferred statutory appeal, the appellate authority should have decided the same on its merits.

7. Per contra, the ld.DR relied upon the orders of lower authorities.

8 I have heard both sides and perused the material available on record and also the order passed by the lower authorities. Unfortunately, the assessee failed to comply with the Vivad-se-Vishwas Scheme as he has no funds to deposit due taxes after issuance of Form 3 and the Certificate issued with respect to tax dues. In the present case, the assessee has relied upon the decision of Hon'ble Supreme Court in the case of P.M. Paul Vs. The State Tax Officer and others (supra) wherein the Hon'ble Supreme Court at Page 3 of its order has held as under :

"One of the conditions for- seeking the benefit under the Amnesty scheme is that there should be no pending proceeding and in order to comply with that condition, the appellant had withdrawn his appeal then pending before the appellate, authority. But there is no bar- as such for seeking restoration of the appeal if the assessee is unsuccessful in availing the benefit under the Amnesty Scheme, since the appeal being a statutory remedy-the appellant had availed of such a statutory remedy and withdrawn the same only as a pre-condition for availing the benefit under the Amnesty Scheme. Since the appellant did not avail such a benefit he was entitled to be heard in the appeal on merits. Therefore he sought permission for restoration of the appeal by filing such an application. We find that the appellate authority as well as the High Court ought to have permitted the appellant here-n to. seek restoration of hi appeal before the appellate authority So that the same could have been heard on merits.

Afterall, the appellate authority was seized of the appeal which was in the nature of a statutory appeal and if the appellant was unsuccessful therein he had further remedies in law. In view of the application filed by the appellant being rejected, neither the appeal has been restored nor has he been heard on merits and further remedies have also been foreclosed. On that short ground alone, the orders of the High Court as well as the appellate authority on the application filed by the appellant herein are set aside. The appeal before the KVATA No.174/2019 which was pending before the Joint Commissioner of Appeals is restored on the file of the said authority.

Since both parties are represented by their respective counsel they are directed to appear before the said appellate authority on 04.10.2023 at 11.00 A.M. On that date or on any other date(s), the appeal filed by the appellant shall be heard on merits and disposed of in accordance with law."

9. Considering the submissions made by the assessee as well as the order of Hon'ble Supreme Court in the aforementioned case, I am of the opinion that the ld.CIT(A) should have decided the issue in accordance with law. Further, from the reading of provisions of sections 4 and 5 of the Direct Tax Vivad se Vishwas Act, 2020, it is apparently clear that after issuance of Form III / Certificate of tax demand, the appeal shall be deemed to have been withdrawn on the issuance of such certificate. However, in the present case, the

assessee failed to deposit the required taxes as per the Vivad se Vishwas Scheme because of unavailability of funds. In our view, the assessee cannot be remediless as neither he can file fresh appeal against the original assessment order before the ld.CIT(A) nor he can file the statutory appeal before me. Further, no mechanism is provided to recover the amount after its settlement in Vivad se Viswas Act. In any case, the non-deposit of due taxes by the assessee pursuant to the settlement is nothing but the failure of the settlement, and therefore, it is required to presume that there is no settlement in the eye of the law.

9.1 First and foremost, the Vivad se Viswas Act requires settlement and readiness / willingness to pay the tax dues along with the interest, to the Revenue. In the instant case, the assessee has failed to pay the due taxes as required by law. Therefore, considering the order of the Hon'ble Supreme Court in the case of P.M. Paul Vs. The State Tax Officer and others (supra), I hereby remand the matter to the file of ld.CIT(A) with a direction to adjudicate the appeal on merit. However, this would be subject to payment of the cost of Rs.3,000/-, (Rupees Three Thousand only) in favour of Prime Minister National Relief Fund which shall be payable within one month or from the date of receipt of this order or whichever is earlier. Accordingly, the appeal is allowed for statistical purposes.

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

Order pronounced in the Open Court on 11th March, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 11th March, 2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Syed Karimulla, Nandalur, Rajampet, D.No.5-98-C, C/o.Shaik Mastan Vali, Near Nandalur Bus Stand, Andhra Pradesh – 516510
2	The Income Tax Officer, Ward – 1, Cuddapah.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order