

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

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| ITA No.80/Hyd/2024 | | |
| Assessment Year: 2017-18 | | |
| Ramu Gatati, Hyderabad. Shop No.38, AMC, Market Yard, Secunderabad, Telangana – 500009. PAN : BIWPG0784N | Vs. | The Income Tax Officer, Ward – 10(1), Hyderabad. |
| (Appellant) | | (Respondent) |
| Assessee by: | Shri S.K. Gupta, Advocate. | |
| Revenue by: | Miss. Sheetal Sarin, Sr. AR. | |
| Date of hearing: | 06.03.2024 | |
| Date of pronouncement: | 19.03.2024 | |

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 11.01.2024 for the AY 2017-18 on the following grounds :

2. The grounds raised by the assessee reads as under :

“1. In the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in holding that the assessee did not want to pursue the appeal and dismissing the appeal on that ground.

2. In the facts and in the circumstances of the case, the Ld. CIT(A) ought not to have dismissed the appeal without giving sufficient opportunity.

3. In the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered that the bank deposits constitute the business turnover of the appellant.

4. In the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered that the assessee was doing retail business in the vegetables and the turn over reflected in the P&L account relates to his retail business, the bulk business and commission business on vegetables.

5. In the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered the provisions of 69A are not attracted.”

3. Facts of the case, in brief, are that assessee, who is an individual, had declared turnover of Rs.1,97,24,536/-, whereas it was found that the total cash deposit in banks amount to Rs.5,11,66,005/- thus, there was excess cash deposit of Rs.3,14,41,469/-. Hence, the case was reopened and notice u/s 148 was issued on 26/03/2021. Thereafter, a reminder notice u/s 142(1) was issued on 13/09/2021 fixing compliance date on 28/09/2021 but assessee failed to comply. As the assessee was non responsive, a final opportunity on alternate email was also given to the assessee on 23/12/2021 and 03/01/2022 wherein it was clearly mentioned that in case of non-compliance the

assessment will be completed on ex parte basis u/s 144 of the I.T. Act. Finally, due to non-compliance on part of assessee even after issuance of show cause notice dt.18.01.2022, Assessing Officer has no option but to finalize the order as per show cause notice. As the assessee failed to explain the source of deposit of the cash, the same was being added as unexplained money u/s 69A to be taxed under the special provision of section 115BBE. Thus, Assessing Officer completed the assessment interalia making addition of Rs.3,14,41,469/- u/s 69A of the Act and passed order u/s 147 r.w.s. 144 of the Act on 14.03.2022.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) / NFAC, who dismissed the appeal of assessee on account of non-prosecution and on merits.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. Before us, ld.AR submitted that the assessee has failed to provide necessary information and appear before the lower authorities. Hence, the ld. AR requested the Bench to remand the matter back to the file of Assessing Officer. Ld.AR further submitted that as the assessee has sufficient cause from putting in appearance before the ld.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication.

7. Per contra, the ld.DR has not raised any objection for remanding the matter back to the file of lower authorities.

8 We have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), we found that ld.CIT(A) passed an order confirming the action of the Assessing Officer in his assessment framed on 14.03.2022. The merits of the assessee's appeal before the ld.CIT(A) have neither been discussed nor decided by the ld.CIT(A). From page 10 of the order of ld.CIT(A), it is clear that ld.CIT(A) was forced to decide the appeal on the basis of material available on record, as there was no representation on behalf of the assessee. In view of the above reasons, in our view, the ends of justice will be met if the matter is remanded back to the file of ld.CIT(A) with a direction to decide the issue after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law subject to payment of costs of Rs.5,000/- (Rupees Five 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.

9. The assessee shall be at liberty to file documents, if any, as required for proving his case and the Id.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication. Thus, the grounds of the assessee are 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 19th March, 2024.

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| Sd/- (R.K. PANDA) VICE PRESIDENT | Sd/- (LALIET KUMAR) JUDICIAL MEMBER |
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Hyderabad, dated 19th March, 2024.

TYNN/sps

Copy to:

| S.No | Addresses |
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| 1 | Ramu Gatati, Hyderabad. Shop No.38, AMC, Market Yard, Secunderabad, Telangana – 500009. |
| 2 | The Income Tax Officer, Ward – 10(1), Hyderabad. |
| 3 | Prl.CIT, Hyderabad. |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order