

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, BENGALURU BENCH
BENGALURU**

**BEFORE SHRI N. K. CHOUDHRY, JM &
SHRI LAXMI PRASAD SAHU, AM**

I.T.A. No.238/BANG/2024
(Assessment Year: 2017-18)

Shri Nazeer Ahmed

D.No. 13-3-282

Partner:Boot Bazar, G.H.S. Road
Hampankatta,
Mangaluru – 575001

Vs.

Income Tax Officer,

Ward 2 (1),

Mangaluru

PAN No. **ADTPA6176B**

(Appellant)

:

(Respondent)

**Appellant/Assessee by
Respondent/Department by**

:

Smt. Sheethal Borkar, Ld. Adv
Shri Subramainan S., Ld. JCIT

**Date of Hearing
Date of Pronouncement**

:

14.03.2024
14.03.2024

ORDER

Per N. K. Choudhry, JM:

This appeal has been preferred by the Assessee against the order dated 19.12.2023, impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi/Ld. Commissioner of Income Tax (Appeals) [in short 'Ld. Commissioner'] under section 143(3) of the Income Tax Act 1961 (in short 'the Act') for the Assessment Year (in short 'AY') 2017-18.

2. In the instant case, the Assessing Officer (in short 'AO') vide assessment order dated 5.12.2019 u/s. 143(3) of the Act, made the addition of Rs.14,00,000/- on account of un-explained money u/s. 69 of the Act earned from un-disclosed sources. The Assessee preferred first appeal before the Ld. Commissioner. As it appears from the impugned order, the Id. Commissioner afforded various opportunities to the Assessee, however, the Assessee made no response and therefore in the constrained circumstances, the Id. Commissioner vide impugned order, by dismissing the appeal of the Assessee, affirmed the addition of Rs.14,00,000/- as made by the AO. The Assessee being aggrieved with the impugned order is in appeal before us.

3. Having heard the parties and perused the material available on record, we observe that the Id. Commissioner in its order specifically mentioned that the Assessee has not furnished satisfactory documentary evidences regarding source of cash deposit before the AO as well as during the appellate proceedings, therefore he is not in position to take a divergent view from the findings of the AO, hence the action taken by the AO appears to be in order. We further observe that from the orders passed by the authority below, the conduct of the Assessee seems to be negligent, irresponsible and non-compliant and therefore eth Assessee do not deserve any leniency. However, considering peculiar facts and circumstances, as the issue of un-explained money remained to be adjudicated in its true sense and right perspective, specifically in the absence of cogent evidence, therefore for the just decision of the case and end of substantial justice, we are inclined to remand

the instant case to the file of the Ld. Commissioner. At this stage the Id. Counsel, Ms. Sheethal Borkar, Advocate specifically requested and the Ld. DR not refuted, for leniency and remand of the case to the file of Assessing officer on the grounds that multiple details and documents are required be filed, which the Assessee also failed to file before the AO therefore it would be appropriate to grant an opportunity before the AO. Thus considering the peculiar facts and specific prayer of Ld. Counsel of the Assessee, the case is remanded to the file of assessing Officer accordingly but subject to deposit of Rs.2100/- in the Revenue Department. Suffice to say the AO shall grant reasonable opportunity to the Assessee to substantiate its case. The Assessee is also directed to comply with the notices and co-operate with the assessment proceedings and file the relevant submissions/ documents as would be required before the AO and in case of further default, the Assessee shall not be entitled for any leniency.

4. In the result appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 14.03.2024 during virtual hearing.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(N. K. Choudhry)
Judicial Member

Mini, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai