

**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.262/BANG/2024
(Assessment Year: 2017-18)

Ms. Akthar Fathima
C/o. Mir Abdula Wafa,
Sagar Agencies, Shiya Mohalla,
Holenarasipura, Hassan Dist.,
Karnataka – 573210

Vs.

**Income Tax Officer,
Ward -1 & TPS**
Bengaluru

PAN No.**BHRPA6647N**

(Appellant)	:	(Respondent)
Appellant/Assessee by	:	None
Respondent/Department by	:	Shri Subramanian. S, JCIT
Date of Hearing	:	18.03.2024
Date of Pronouncement	:	18.03.2024

ORDER

Per N. K. Choudhry, JM:

This appeal has been preferred by the Assessee against the order dated 15.12.2023, impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi/Ld. Commissioner of Income Tax (Appeals) [in short 'Ld. Commissioner'] under section 250 of the Income Tax Act 1961 (in short 'the Act') for the Assessment Year (in short 'AY') 2017-18.

2. In the instant case, during the Assessment Year under consideration, the Assessee was carrying out trading business in Mobile currency of M/s. Tata Tele Services Ltd. on commission basis under the trade name M/s. Maa Agencies and could not file its return of income within the due date of filing of return and therefore a notice dated 30.11.2017 u/s. 142(1) of the Act was issued to the Assessee, whereby the Assessee was asked to file its return of income till 30.12.2017. The Assessee preferred not to file any objection or explanation to the said notice dated 30.11.2017 u/s. 142(1) of the Act and therefore assessment of the Assessee was concluded by invoking the provisions of the Section 144 of the Act by the Assessing Officer (in short 'AO') who ultimately by considering the material available on record, computed the net profit at the rate of 8% of the turnover of Rs.2,78,38,404/- made on account of cash sale made by the Assessee. The AO also made the addition of Rs.41,69,700/- on account of money deposited during the demonetization period as un-explained income u/s. 69A of the Act,.

3. The Assessee being aggrieved challenged the said addition before the Id. Commissioner, who though afforded various opportunities to the Assessee, however, the Assessee availed none, and therefore the Id. Commissioner finding no option dismissed the appeal of the Assessee in limine but not on merits. We observe that though the act of the Assessee for non-appearance before the Id. Commission as per available records, do not seems to be explainable/reasonable however it is fact in the instant case, the appeal of the Assessee against the order dated 24.12.2019 u/s. 144

of the Act was instituted on 23.1.2020, but the same was taken into consideration after a long gap of period i.e. in February, 2021, November, 2022 and October and November 2023, which may be probable reason for non-compliance by the Assessee. It is also a fact that the Id. Commissioner did not decide the appeal filed by the Assessee on merits but dismissed the same in limine, hence considering the peculiar facts and circumstances of the case in totality and for the just decision of the case and substantial justice, we are inclined to remand the instant case to the file of the Id. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the Assessee to substantiate its claim.

We are also inclined to direct the Assessee to file the relevant documents before the Id. Commissioner and co-operate with the appellate proceedings before the Id. Commissioner and in case of further default, the Assessee shall not be entitled for any leniency.

Thus, the case is remanded to the file of Id. Commissioner accordingly in the aforesaid terms.

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

Order pronounced in the open court on 18.03.2024 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