

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

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

I.T.A. No.1142/BANG/2023
(Assessment Year: 2015-16)

Shri Ramkumar Muniraju
No.52, 1st Main Road,
Palace Gutthalli,
Bengaluru – 560 003

**Income Tax Officer, Ward
3(3)(1), Bengaluru,**
Vs. HMT Bhavan, Bellary Road,
Bengaluru – 560 032

PAN No. **AWNPR9865P**

(Appellant)

:

(Respondent)

Appellant/Assessee by : Shri Joseph, Advocate
Respondent/Department by : Shri V. Parithivel, JCIT

Date of Hearing : 07.03.2024
Date of Pronouncement : 07.03.2024

ORDER

Per N. K. Choudhry, JM:

This appeal has been preferred by the Assessee against the order dated 29.11.2023, 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') 2015-16.

2. In the instant case, the Assessing Officer (in short 'AO') on the basis of data available with the department to the effect that though the

Assessee has made cash deposits of Rs.1,24,83,000/- in his savings bank account maintained with State Bank of India during the Financial Year 2014-15 relevant to AY 2015-16 however, failed to file his return of income for the year, therefore the source of cash deposits remained undisclosed and unexplained. Consequently, in order to assess the undisclosed and unexplained income, the AO after recording the reasons re-opened the case of the Assessee u/s 147 of the Act and issued the notice dated 29.3.2021 u/s 148 of the Act, in response to which , admittedly the Assessee has not filed his return of income. Thereafter various statutory notices were issued to the Assessee and various opportunities and sufficient time given to the Assessee to file his reply however, the Assessee preferred not to file any details/documents as called for by the AO. Thereafter, the AO by issuing a final show cause notice-cum-draft assessment order dated 12.3.2022 last opportunity was given to the Assessee to show cause as to why the proposed variation as per the draft assessment order should not be made and assessment should not be completed accordingly. The Assessee also failed to respond the said show cause notice-cum-draft assessment order and therefore finding no option, the AO passed the assessment order u/s. 147 r.w.s. 144 and 144B of the Act and ultimately treated the amount of Rs.1,24,83,000/- as un-explained money u/s. 69A r.w.s. 115BBE of the Act and added the same in the income of the Assessee.

3. The Assessee being aggrieved with the Assessment Order though preferred first appeal, but inspite of sending four notices by the Ld. Commissioner, the he neither filed any reply/documents nor substantiated his appeal by any other mode and therefore Ld. Commissioner in the constrained circumstances dismissed the appeal of the Assessee by holding " *that the Assessee has failed to provide any documentary evidences, even a primary or basic evidence about his running of any kind of business. Thus the Assessee has not discharged the primary*

onus of expenditure in this case. The Assessee has not produced any material to controvert the findings of AO. From the above conduct of the Assessee it is clear that the Assessee is not interested in pursuing his appeal. In the event, I have no reason to interfere with the findings of the AO. In view of these facts, I am of the opinion that no interference is called for in AO's assessment order and therefore ground of the appeal are dismissed".

4. The Assessee being aggrieved is in appeal before us and at the outset claimed that Assessee's counsel was suffering from many serious ailments, as it clearly appears from the medical reports filed before the Tribunal and therefore the Assessee failed to substantiate its appeal and made no compliance which was neither deliberate nor malafide but because of the bonafide reasons stated above and therefore lenient view may be taken and by passing an appropriate order, one more opportunity may be given to the Assessee to substantiate his claim.

5. On the contrary, the Ld. Departmental Representative refuted the claim of the Assessee.

6. We have given thoughtful consideration to the facts and circumstances of the case and observe from the medical certificates of the Assessee's counsel, that non-appearance of the Assessee and non filing of the relevant documents and not making compliance to the notices sent, prima facie appears to be bonafide and reasonable as the same is based on medical reasons . However, we also observe, as it appears from the assessment order that AO also afforded various opportunities to the Assessee but the Assessee neither filed any reply nor any documents as well as any return of income in response to the notices issued u/s 148 of the Act. Therefore in the compelling circumstances, the AO by passing the assessment order as ex-parte u/s 144 of the Act, made the addition which is under consideration. Therefore the conduct of the Assessee does

not seem to be reasonable, responsible and compliant, hence as we have pronounced in the open court, thought it appropriate to impose the cost of Rs.11,000/- on the Assessee for negligent and lethargic attitude, however, taking lenient view and considering the peculiar facts and circumstances of the case in totality, as the issue qua addition u/s 69A r.w.s. 115BBE of the Act remained to be adjudicated in its true essence and right perspective, and therefore for the just decision of the case and for the ends of justice, we are inclined to remand the instant case to the file of the AO for decision afresh without imposing cost. Suffice to say, the AO shall grant opportunity to the Assessee to substantiate his case. We clarify, in case of further default, the Assessee shall not be entitled to any leniency. The case is remanded to the file of the AO accordingly.

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

Order pronounced in the open court on 07.03.2024 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