

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.178/Bang/2024
Assessment year : 2017-18

Digambar Rajaram Lonari, 1, Ranna Circle, Lokapur Road, Mudhol, Bagalkot – 587 313. PAN : AARPL 5726F	Vs.	The Assistant Commissioner of Income Tax, Circle 1, Bijapur.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Preethi S. Patel, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	28.02.2024
Date of Pronouncement	:	28.02.2024

ORDER

Per Bench

This appeal is filed by the assessee against the Order dated 05.12.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2017-18.

2. The brief facts of the case are that the assessee filed return of income on 9.11.2017 declaring income at Rs.15,30,740. The case was selected for scrutiny and statutory notices were issued to the assessee and the assessee furnished replies and submitted details of turnover, Gross Profit & Net profit from the business carried on by him. The

AO noted that the assessee is running a petrol pump and two hotels along with retail outlet for sale of liquor. The assessee had deposited a sum of Rs.1,10,51,000 during the demonetization period and the assessee deposited unit wise closing balance as on 08.11.2016, actual cash deposit on 10.11.2016 and 11.11.2016. The assessee himself admitted that he has deposited Rs.8,42,000 in excess of closing balance (cash balance) as on 8.11.2016. As the petrol pump was allowed to collect demonetized currency, Rs.2,20,000 was in excess of the closing cash balance in respect of other business. The cash book was also examined by the AO. Accordingly, the AO after relying on the judgement of Hon'ble Supreme Court in the case of A. Govindrajulu Mudaliar vs CIT, (1958) 34 ITR 807, 810 (SC), Roshan Di Hatti vs. CIT (1977) 107 ITR 938 (SC), Kale Khan Mohammad Hanif vs. CIT (1963) 50 ITR 1 (SC), CIT vs. Devi Prasad Vishwanath Prasad, (1969) 72 ITR 194 (SC) and Cit vs. M. Ganpathi Mudaliar (1964) 53 ITR 623 (SC), Smt. Shrilekha Banerjee and Others Vs. Cit Bihar & Orissa, reported in 19464 AIR 697, dated 27/03/1963 & completed the assessment and made addition u/s. 69A of Rs.16,63,000 and assessed income at Rs.31,93,840. Against this, the assessee filed appeal before the CIT(Appeals).

3. The CIT(Appeals) issued various notices on the two e-mail ids available, but the assessee did not respond to any of the notices. Accordingly, the CIT(Appeals) confirmed the order of the AO. Aggrieved by this order, the assessee is in appeal before the ITAT.

4. The Id. AR submitted that the notices issued by the Id. CIT(Appeals) was not served to the assessee, therefore the assessee could not respond to any of the notices and he submitted that during the course of assessment proceedings the assessee had submitted details as required by the AO from time to time. Therefore, there was no intention to disregard the notices issued by the Id. CIT(Appeals) and he requested that if a chance is given, the assessee will comply with the notices of the CIT(Appeals) and furnish details.

5. On the other hand, the Id. DR made objections for sending back the matter to the CIT(Appeals) because various notices were issued to the assessee as per para 5 of the CIT(Appeals) order. During the course of assessment proceedings also, the assessee was unable to satisfy the requirement of section 69A of the Act and accordingly the AO has made the addition relying on various judgements. Therefore the order of the CIT(A) should be upheld.

6. Considering the rival submissions, we note that the assessee is running petrol pump and hotel with sale of liquor. During the assessment proceedings, the assessee has made compliance to the notices of the AO. However, we note that the CIT(Appeals) has issued 8 notices on two email ids as per para No. 05 of his order, but there was no compliance from the assessee's side. Considering the request of the Id. AR and in the interest of justice, we remit this issue to the CIT(Appeals) for fresh consideration after giving opportunity of being heard to the assessee. The assessee is directed to produce all the

relevant documents to substantiate his claim and avoid seeking unnecessary adjournment for early disposal of the case.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open court through virtual hearing on this 28th day of February, 2024.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th February, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.