

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

BEFORE SMT. BEENA PILLIA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.993/Bang/2023
Assessment year : 2017-18

The Income Tax Officer, Ward 3(2)(1), Bengaluru.	Vs.	Shri Hemantha Raju, 81, 1 st Floor, Krishna Nagar, Kumbalagudu, Bengaluru – 560 074. PAN: ACTPH 9191A
APPELLANT		RESPONDENT

CO No.7/Bang/2024 [in ITA No.993/Bang/2023]
Assessment year : 2017-18

Shri Hemantha Raju, Bengaluru – 560 074. PAN: ACTPH 9191A	Vs.	The Income Tax Officer, Ward 3(2)(1), Bengaluru.
CROSS OBJECTOR		RESPONDENT

Revenue by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.
Assessee by	:	Shri Srinath Rao, CA

Date of hearing	:	27.03.2024
Date of Pronouncement	:	03.04.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

The appeal is filed by the revenue and Cross Objection filed by the assessee against the order dated 05.10.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2017-18.

2. There is a delay of 88 days in filing the CO by the assessee. The assessee has explained the delay that he was not aware of the notices issued through electronic mode and came to know about it when the first appellate order was passed on 31.12.2023. The assessee was misinformed that the First Appellate Authority (FAA) had made NIL demand and did not act further. He was aware about the appeal filed by the department in ITAT when the hearing notice for 18.03.2024 was served on him and he took steps with his AR to represent him in the matter. Due to the above reasons, there was a delay in filing the CO and the ld. AR requested for condonation of delay and relied on the decision of Collector, Land Acquisition v. Mst. Katiji, 167 ITR 471 (SC).

3. After hearing both the parties, from the explanation of the assessee we note that there was sufficient cause for delay in filing the CO and following the decision of the Hon'ble Supreme Court in Mst. Katiji (supra), we condone the delay in filing the CO by the assessee.

4. Briefly stated the facts of the case are that the assessee filed revised return of income on 08.08.2018 declaring total income of Rs.2,88,670. The case was selected for scrutiny for examination of 'high value receipt of cash shown from third parties and cash deposits made during the demonetization period and statutory notices were issued to the assessee. The AO noted that cash is deposited in the bank accounts of the assessee in Corporation Bank and ICICI Bank of Rs.3,76,38,400 during the year 2016-17 and demonetization period.

The assessee did not respond to the notices and the AO after giving final opportunity of hearing completed the assessment u/s. 144 of the Act making addition of Rs.3,76,38,400 u/s. 69A and taxed as per section 115BBE of the Act by order dated 10.12.2019.

5. The assessee filed appeal before the CIT(Appeals). Subsequently the appeal was migrated to NFAC. The assessee was issued various notices, but the assessee did not respond to any of the notices. Therefore the CIT(Appeals) decided the issue ex parte on the basis of material available before him. He noted that in the Statement of Facts, the assessee has submitted that cash deposits pertained to business of money transfer through M-pesa and other mobile wallets and copy of bank statement was filed along with Form 35. As per narration of bank statement transfer of money (debit entries) have been made to India Ideas, Rail Term, Tech Process, Vasavi About Travels, SLV Tours, etc. and about 95% of the payments have been made to Rail Term. The bank account pertains to business done by the assessee and accordingly entire cash deposits cannot be considered as income of assessee and he reasonably estimated net profit @ 10% on the total cash deposits of Rs.3,76,38,400 as turnover of the assessee and partly allowed the appeal of the assessee.

6. Aggrieved by the order of the CIT(Appeals), both the revenue and assessee are in appeal before the ITAT.

7. The Id. DR relied on the order of the AO and submitted that the assessee did not respond to any of the notices issued by the lower

authorities and even before the Tribunal the assessee has not produced any credible evidence in respect of its receipts and payments into bank account. The CIT(Appeals) has decided the issue considering 10% of the entire receipt without any cogent material and therefore the order of the AO should be upheld.

8. On the other hand, the Id. AR submitted that both the authorities below are not justified. The case was taken up for scrutiny on the limited issue of cash deposits during the demonetization period whereas the AO has considered the income u/s. 69A on the total cash receipts into the bank accounts. The assessee is getting commission only for the transactions of payments made as per instructions of cash depositors and therefore the entire cash deposits cannot be considered as income. The income considered by the CIT(Appeals) is on the very higher side and the AO has made a high-pitched assessment. He further submitted that the notices were not served to the assessee, therefore the assessee could not respond since the case was migrated to NFAC. Therefore he requested that opportunity should be given to the assessee for fresh consideration before the AO.

9. After considering the rival contentions for both (Appeal & CO), we note that the assessee is engaged in the business of money transfer through M-Pesa and other mobile wallets. It is evident from the bank statements that the assessee is getting commission for discharging the assigned works. We also note that the case was migrated to NFAC and the notices were not served to the assessee as

per submission of the Id. AR. We find substance in the submission of the Id. AR that the entire receipts cannot be considered as income. Therefore, in the interest of justice, we remit the issue to the AO for fresh consideration and decision as per law after giving reasonable opportunity of hearing to the assessee. The assessee is directed to substantiate its case with necessary evidence and not to seek unnecessary adjournment for early disposal of the case.

10. The Id. AR raised a legal issue that the case was selected for limited scrutiny of cash deposits during demonetization, therefore AO should have examined only those deposits, which is not correct. As per notice issue u/s. 143(2) there is no use of the words 'limited scrutiny'. We further note that as per sl. Nos. 3 to 10 of notice u/s. 142(1), the AO has asked for details on various points. Therefore, we reject these grounds of the assessee.

11. In the result, the appeal of the revenue is allowed for statistical purposes and the CO by the assessee is partly allowed.

Pronounced in the open court on this 03rd day of April, 2024.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 03rd April, 2024.

/Desai S Murthy /

Copy to:

1. Revenue
2. Assessee
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.