

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD
(Through virtual hearing)**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.237/Hyd/2024		
Assessment Year: 2017-18		
Sri Rama Krishna Yezzu, Flat No.108, Orchid Block, Green Meadows, Opp. BSNL Office, Vanasthalipuram, Hyderabad. Telangana. PAN : AASPY5504B.	Vs.	The Income Tax Officer, Ward 13(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri C.A. Bhupal Gowd M	
Revenue by:	Shri Mookambikeyan, Sr.AR	
Date of hearing:	01.04.2024	
Date of pronouncement:	01.04.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.12.01.2024 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. Aggrieved against the order U/sec 250 of the Income Tax Act, passed on 12-01-2024 by the Hon'ble CIT(Appeals)- NFAC, wide Order No ITBA/NFAC/S/250/2023-24/1059677615(1), the appellant is in appeal before the Hon'ble Income Tax Appellate Tribunal- Hyderabad.

2. That the learned CIT (Appeals), has grossly erred in law by not considering the facts and grounds as mentioned in the appeal form 35.

3. That the learned CIT (Appeals), has grossly erred both in law and facts in by treating the cash deposits made during the demonetization period as unexplained money U/sec 69A and taxed U/sec 115BBE which is not valid.

4. That the learned AO, has grossly erred both in law & facts and failed to appreciate the fact that cash deposited was out of appellant past savings/past cash withdrawals and also from appellants spouse past savings given by the appellant to incur household expenses. or from cash gifts given by their children/ Son In Law.

5. Ao has failed to consider the facts that, a person with the credibility of having the service of 40yrs approximately at the executive level, it will be more often to hold the cash in hand of Rs 11,92,500/-, after having paid the taxes for his earnings, and due to demonetization such accumulated cash savings was deposited into the bank.

6. That the learned CIT (Appeals), HYD- has erred both in law and on facts by dismissing the appeal filed before him for non-submission of additional evidence, where as additional evidence “Agreement of sale” is not relevant here as it was entered and cancelled and money was paid back to Mr. Anjaneyulu, and learned AO also failed to consider the fact that cash deposited was out of his past savings and we are taking the plea of past withdrawals, past withdrawals itself were sufficient to prove that cash deposits were made out of past withdrawals and no other additional evidence was required.

7. *That the learned Assessing Officer has erred both in law and on facts in adding Rs, 11,92,500 to the total income of the appellant and levied Rs 7,15,500 tax U/sec 115BBE and surcharge of Rs.1,78,872, as per the Act. which are not leviable on the facts of the instant case.*

3. The brief facts of the case are that assessee is an individual and filed his return of income for the A.Y. 2017-18 on 28.07.2017 admitting total income at Rs.9,00,720/-. Further, the case was selected for scrutiny to verify the cash deposit during the demonetization period and a notice u/s 143(2) dated 24.09.2018 was issued to the assessee. Further, notices u/s 142(1), calling for information and show-cause notice were issued to the assessee. In response to the notices issued, the assessee submitted the information online. During the course of assessment, Assessing Officer noticed that assessee had made cash deposits in various banks totaling to Rs.11,92,500/- during the demonetization period and hence, the Assessing Officer issued notices u/s 142(1) to the assessee and show-cause notice to explain the sources of cash deposits along with relevant supporting documentary evidences. In response, assessee submitted that he had taken loan of Rs. 17,00,000/- from Mr. M. Anjaneylu Goud, (PAN:AKOPA1122D) and submitted a copy of confirmation letter with name M Anjeneyulu Goud.

3.1 When the Assessing Officer asked to furnish the details of occupation and sources of income of Mr. M Anjaneyulu Goud, his sources for lending large amounts to the assessee etc, assessee did not submit the same even after issuance of show-cause notices date 23.11.2019 and 07.12.2019, except filing the same copy of confirmation letter along with another confirmation wherein Mr M. Anjaneyulu Goud. As the assessee's explanation of sources of cash deposit of Rs. 11,92,500/- during the demonetization period was not found satisfactory, the entire amount of Rs.11,92,500/- was treated as unexplained money u/s 69A and was being taxed as per the provisions of the Income Tax Act, 1961. Accordingly, the Assessing Officer completed the assessment and passed order u/s 143(3) of the Act dt.17.12.2019. Thereafter issued penalty notice u/s 271AAC in respect of the income determined u/s 69A.

4. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal before the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee by holding as under :

“5.6 Various opportunities were given to the appellant by issuing statutory notices u/s 142(1) to explain the source of above cash deposit reflected in the bank account of the appellant but no supportive documents was made by the appellant. Before completing the assessment a show cause notice was also issued and served to the appellant. The assessee has failed to furnish any details relating to business activities undertaken by the assessee, nature of Income earned, details of bank accounts, details of cash deposits made in the bank accounts, sources of cash deposits, details of cash deposits made during demonetization period along with sources thereof. As the nature and source of the aforesaid cash deposits into the bank accounts made by the assessee has not been explained by the assessee, the cash deposits into the aforesaid bank accounts amounting to Rs. 11,92,000/- is treated as unexplained money in

assessee's bank accounts and assessed as income of the assessee as per the provisions of section 69A of the Income Tax Act and taxed as per the provisions of section 115BBE of the Income Tax Act by the AO. Apart from this taking plea of admission of additional evidence in terms of agreement to sale however on repeated opportunity did not submit documents in respect of agreement to sale. Nothing has been filed by the appellant to substantiate his ground of appeal and rebut the finding of the A.O. during the course of appellate proceedings also.

5.7 Hence, it is crystal clear that the appellant has failed to discharge the onus to show the source of cash deposit in his bank account amounting to Rs. 11,92,000/-, remain unexplained. Therefore, in view of the elaborate discussion/analysis and conclusion of the A.O. in the Assessment order, and in absence of any response received from the appellant, I find no reason to interfere in the finding of the A.O. Thus the addition of Rs. 11,92,000/-made u/s 69A of the Act is upheld and Ground no. 1, 3 and 4 of the appeal on this issue are dismissed.”

5. Before me, ld.AR submitted that the learned lower authorities have decided the issue without considering the explanation offered by the assessee and that assessee failed to appear due to unavoidable circumstances. Ld.AR further submitted that as the assessee has sufficient cause from putting in appearance before the ld.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication.

6. Per contra, the ld.DR has raised objection for remanding the matter back to the file of lower authorities.

7. I have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by Id.CIT(A), I found that Id.CIT(A) confirmed the order of Assessing Officer as the assessee had failed to discharge the onus to show the source of cash deposits in his bank account amounting to Rs.11,92,000/- even after granting of sufficient opportunities. In para 5.2 of the Id.CIT(A)'s order, it was clearly mentioned the details of various opportunities granted to the assessee. On perusal of the record, I further found that assessee has not filed details of occupation and sources of income of said Mr. Anjaneyulu Goud, his sources for lending large amounts to the assessee etc, as called for by the Assessing Officer to substantiate his case.

7.1. No evidence has been filed either before the Assessing Officer or before the Id.CIT(A) to substantiate the source of cash deposits during the period of demonetization. In light of the above, though, invariably the appeal of the assessee is required to be dismissed on account of non-furnishing of documents as called for, however, considering the totality of the facts and circumstances, one more opportunity is granted to the assessee to appear and contest the case before the Id.CIT(A). Hence, I remand back the appeal to the file of Id.CIT(A) with a liberty to grant one more opportunity to the assessee to prove his case. On the date of hearing fix by the Id.CIT(A), the assessee shall file all the documents in support of his case. In case, the assessee failed to file any documents in support of his case, Id.CIT(A) shall decide the matter in accordance with the law. Accordingly, the appeal of assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 1st April, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 01 April, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Sri Rama Krishna Yezzu, Flat No.108, Orchid Block, Green Meadows, Opp. BSNL Office, Vanasthalipuram, Hyderabad, Telangana.
2	The Income Tax Officer, Ward 13(2), Hyderabad.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order