

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

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 216/Bang/2024
Assessment year : 2017-18

Ghisudas, 3/4, 23 rd Cross, 4 th floor, Cubbonpet, Bangalore – 560 002. PAN: ABGPG 5184L	Vs.	The Income Tax Officer, Ward 5(2)(5), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri A.S. Vishnu Bharath, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	05.03.2024
Date of Pronouncement	:	05.03.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is against the order dated 07.12.2023 of CIT(Appeals), National Faceless Appeal Centre, Delhi (NFAC) for the AY 2017-18 on the following grounds:-

- “1. The learned Appeal Commissioner has grossly erred in upholding a huge addition to the returned income, which was filed u/s 44AD which has no justification in whatever manner. Even though the appellant need not maintain the account, books the appellant has maintained the books to a limited extent.
2. The learned Appeal Commissioner has grossly erred in not serving the notice either by post or electronically for the

second/third time or intimating to my Mobile No or email ID which are there in my IT Portal, he has not made any efforts to reach me and has done the order at the back of me which stands no merit. If he is not satisfied with the facts, he could at best restore to the assessing officer instead of dismissing the appeal.

3. The learned Appeal Commissioner at best, should have restricted my Income to the extent of my Turnover he presumed and limited to the 6% under 44AD and not beyond, the Act allows the small business to declare Income on a presumption basis, without maintaining detailed accounts.

4. The learned Appeal Commissioner has not considered the loans taken by me, the realizations from previous debtors, and the contra entries made for the business adjustments, to borrow and deposited to pass the cheques, etc., recoveries made by me for my old outstanding balances, especially in Nov 2016 when the demonetization was announced and I had realized to the extent of 17,50,000/- the amount deposited by me is also filed as annex to this submissions.

5. The learned Appeal Commissioner has grossly erred in rushing to pass the order for the best reasons known to him and his order is most unfair and lacks with all relevant, to give natural justice.

6. The additions that are made are illogical, and the learned Appeal Commissioner should have appreciated that the appellant is a small trader and not Computer savvy and should have sent the notice by post and one notice sent by electronic mode, the Appeal order is concluded.

7. The Appellant humbly prays that in case the Appeal is not decided in favor of the Appellant on the facts of the case, the Assessment be restored to the Assessing officer for examining the facts and re-do the assessment.”

2. The brief facts of the case are that the assessee filed return of income on 31.03.2018 declaring total income of Rs.3,45,480. Subsequently the case was selected for scrutiny and statutory notices were issued to the assessee calling for various details. The assessee

failed to comply with any of the notices. Bank statement was called for u/s. 133(6) and after receiving the AO issued final show cause notice on 01.11.2019 as to why the amount deposited during the year should not be brought to tax as unexplained income u/s. 69A of the Act and why the deduction claimed under Chapter VIA should not be disallowed in the absence of any proof. In response, the assessee responded on 14.11.2019, 18.11.2019 and 19.11.2019 and submitted only the cash book, bank book and incomplete details in respect of deduction under Chapter VIA. It was noticed that in the 3 bank accounts there is cash deposit of Rs.82,89,074 and in the return of income the assessee has offered turnover of Rs.46,28,300 and computed tax u/s 44AD of the Act. Accordingly the difference of Rs.36,60,774 was treated as unexplained for want of proper explanation and computed income u/s. 69A of the Act by the AO in the assessment completed u/s. 143(3) of the Act. Aggrieved from the assessment order, the assessee filed appeal before the CIT(Appeals).

3. The CIT(Appeals) granted various opportunities to the assessee and the assessee filed written submissions. The CIT(Appeals) dismissed the appeal of the assessee. Against this, the assessee is in appeal before the ITAT.

4. The Id. AR reiterated the submissions made before the lower authorities and submitted that the CIT(A) has not properly appreciated the submissions made by the assessee. It is submitted that the cash deposit is the business receipts of the assessee and he was not required

to maintain books of accounts. The notice issued by the CIT(Appeals) was not served to the assessee therefore he could not respond to the notice. The CIT(A) has not granted time and passed the order. The Id. AR submitted that if a chance is given, he undertook that the assessee will explain the source of cash deposits with evidence before the AO.

5. The Id. DR relied on the order of lower authorities and submitted that both the authorities have given various opportunities, but the assessee did not respond. Therefore, he objected to remitting the issue back to the revenue authorities.

6. Considering the rival submissions, we note that the assessee has computed income u/s. 44AD and filed return declaring turnover of Rs.46,28,300. There was a total cash deposits in 3 bank accounts of Rs.82,89,074. The assessee initially did not respond to the notices of AO, however he submitted reply to the final show cause notice. The AO has treated the difference amount of turnover and cash deposit as unexplained investment u/s. 69A to which the CIT(Appeals) has confirmed. Before the CIT(Appeals) written submissions were made and the assessee did not respond to the subsequent notices. Therefore considering the prayer of the assessee and in the interest of justice, we remit the appeal to file of the Assessing Officer for fresh decision in accordance with law with costs of Rs.10,000/- (Rupees Ten Thousand Only) on the assessee. The assessee will produce proof of payment of costs before the AO and produce all the required evidence without seeking any unnecessary adjournment for early disposal of the case.

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

Order pronounced on the 05th day of March 2024, through virtual hearing.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 05th March, 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.