

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC”, HYDERABAD**

**BEFORE**

**SHRI MANJUNATHA. G.  
Hon’ble ACCOUNTANT MEMBER**

ITA No.333/Hyd/2024		
Assessment Year: 2017-18		
Ms. Swapna Katakam, 2-2-90/10/11B, Turabnagar, Amberpet, Hyderabad – 500013. Telangana  PAN : AQMPK6035D	Vs.	The Income Tax Officer, Ward 4(3), Hyderabad.
(Appellant / Assessee)		(Respondent)
Assessee by:	Ms. Chinmai, Advocate.	
Revenue by:	Ms. Vishnu Priya, Sr.AR.	
Date of hearing:	25.04.2024	
Date of pronouncement:	25.04.2024	

**ORDER**

**PER MANJUNATHA G. A.M:**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi passed on 12.02.2024 for the assessment year 2017-18.

2. The brief facts of the case are that the assessee is an individual filed her return of income for the assessment year 2017-18 on 31.12.2017 declaring total income of Rs.4,98,322/-. The assessment has been completed u/s 144 of the Income Tax Act on 19.12.2019 and determined total income at Rs.39,84,623/- by making additions towards cash deposits into bank account of Rs.25,26,050/- u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961. The Assessing Officer had also estimated business income on gross turnover declared by the assessee @ 8% and made addition of Rs.7,98,427/-. The assessee challenged the assessment order passed by the Assessing Officer before the first appellate authority, but could not succeed. The assessee carried the matter in further appeal before the Tribunal. The ITAT Hyderabad Benches in ITA No.361 of 2023 order dt.03.08.2023 set aside the order passed by the ld.CIT(A) and restored the issue to the file of Assessing Officer for fresh adjudication. In the mean time, the Assessing Officer initiated penalty proceedings u/s 271AAC(1) of the Income Tax Act, 1961, and after considering the submissions of the assessee, passed order imposing penalty of Rs.1,95,136/- u/s 271AAC of the Income Tax Act, 1961. On appeal, the ld.CIT(A) vide order dt.12.02.2024 sustained the penalty levied by the Assessing Officer and dismissed the appeal filed by the assessee.

3. Aggrieved with the order, the assessee is in appeal before me.

4. The learned counsel for the assessee, Ms. Chinmai, submitted that the quantum appeal filed by the assessee on additions made by the Assessing Officer towards cash deposits and estimation of business income has been set aside by the ITAT to the file of Assessing Officer and thus, penalty levied on said additions, which are no longer in existence, cannot survive under the law.

5. The ld. DR, Ms. Vishnu Priya, on the other hand, fairly admitted that since the quantum appeal filed by the assessee has been set aside to the file of Assessing Officer, and the penalty order passed by the Assessing Officer may be restored back to the file of Assessing Officer to reconsider the issue of penalty proceedings after completion of assessment proceedings.

6. I have heard both the parties, perused the materials on record and gone through the orders of the authorities below. The Assessing Officer levied penalty u/s 271AAC of the Income Tax Act, 1961 on additions made towards cash deposits in the bank account u/s 69A r.w.s 115BBE of the Act and estimated addition of net profit on gross turnover. The assessee has challenged additions made by the Assessing Officer towards cash deposit and estimated the net profit on gross turnover before the Tribunal, and

the Tribunal in ITA No.361/Hyd/2023 order dt.03.08.2023 has set aside the order passed by the Id.CIT(A) and restore both the issues to the file of Assessing Officer with a direction to reconsider the issue. Since, the additions on which the penalty levied by the Assessing Officer are no longer in existence, in my considered opinion, the order passed by the Assessing Officer imposing penalty u/s 271AAC of the Income Tax Act, 1961 cannot survive. Thus, I set aside the order passed by the Id.CIT(A) and restore the issue of penalty to the file of Assessing Officer and direct the Assessing Officer to reconsider the penalty proceedings after completing the assessment proceedings in pursuant to the directions given by the ITAT in ITA No.361/Hyd/2023.

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

Order pronounced in the Open Court on 25<sup>th</sup> April, 2024.

Sd/-  
**(MANJUNATHA. G)**  
**ACCOUNTANT MEMBER**

Hyderabad, dated 25<sup>th</sup> April, 2024.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Ms. Swapna Katakam, 2-2-90/10/11B, Turabnagar, Amberpet, Hyderabad – 500013. Telangana
2	The Income Tax Officer, Ward 4(3), Hyderabad.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*