

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MANJUNATHA, G. ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.183/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Sanjay Kumar Tingrikar, Hyderabad PAN: AEPPT8912F (Appellant)	Vs.	Jt. CIT, Range-7 Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:	Advocate S Sandhya	
राजस्व द्वारा/Revenue by:	Shri Kumar Pranav DR appeared for Smt. Sheetal Sarin, Sr. DR	
सुनवाई की तारीख/Date of hearing:	18/04/2024	
घोषणा की तारीख/Pronouncement:	18/04/2024	

आदेश/ORDER

Per MANJUNATHA, G. A.M

This appeal filed by the assessee is directed against the order dated 26.12.2023 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2011-12.

2. Facts of the case, in brief, are that the assessee is an individual engaged in wine business, filed his return of income for the A.Y 2011-12 declaring total income of Rs.2,21,250/-. The

assessment has been completed u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 and determined the total income at Rs.5,88,980/- by estimating 5% net profit on total turnover declared by the assessee. Thereafter, penalty proceedings u/s 271(D) of the I.T. Act, 1961 was initiated for violation of provisions of section 269SS of the I.T. Act. During the course of penalty proceedings, the Assessing Officer noticed that the assessee has received a sum of Rs.12.00 lakhs loans in cash from 4 parties contrary to the provisions of section 269SS of the I.T. Act. Thereafter considering the relevant submission of the assessee, the Assessing Officer levied a penalty of Rs.12.00 lakhs u/s 271D of the Act for contravention of provisions of section 269SS of the I.T. Act. The assessee carried the matter in appeal before the lower authorities, but neither appeared nor filed any details which is evident from para 4.1 of the learned CIT (A)'s order where the appeal has been posted for hearing on 4 occasions. Since there was no compliance from the side of the assessee, the learned CIT (A) thus dismissed the appeal filed by the assessee for non-prosecution.

3. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

4. The learned Counsel for the assessee submitted that the learned CIT (A) has dismissed the appeal filed by the assessee ex-parte for non-appearance. He further submitted that the reasons for non-appearance before the learned CIT (A) is on account of non-service of notices issued by the learned CIT (A) fixing the case for hearing. Therefore, he submitted that the order of the learned

CIT (A) be set aside to the file of the learned CIT (A) to give one more opportunity of hearing to the assessee to justify its case with necessary evidences.

5. The learned DR, on the other hand, supported the order of the learned CIT (A) and submitted that the assessee could not explain as to why it was not able to appear before the learned CIT (A) when the case was fixed for hearing. Although, the Counsel for the assessee claimed that the notices issued by the learned CIT (A) was not received by the assessee, but no evidences has been placed before the Tribunal to justify the argument. Therefore, the learned DR submitted that the order of the learned CIT (A) should be upheld.

6. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A). Admittedly, the first appellate authority has passed ex-parte appellate order for non-appearance of the assessee and dismissed the appeal filed by the assessee. Further, the learned CIT (A) had also discussed the issues on merit without providing reasonable opportunity of being heard to the assessee. The assessee has also explained the reasons for non-appearance before the learned CIT (A) and as per the learned Counsel for the assessee, notices sent by the office of the learned CIT (A) was not received by the assessee. In our considered opinion, the reasons given by the assessee for non-appearance before the learned CIT (A) is bonafide and acceptable. In our considered opinion, the assessee deserves one more opportunity of hearing before the first appellate

authority. Therefore, we set aside the order of the learned CIT (A) and restore the issue back to the file of the learned CIT (A) for fresh adjudication. Further, the assessee is directed to pay a nominal cost of Rs.1000/- for not serious in prosecuting the case before the first appellate authority. The assessee is directed to pay the cost of Rs.1000/- to the State Legal Aid Authorities at the Hon'ble High Court of Telangana and produce necessary challan to the Registry for verification.

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

Order pronounced in the Open Court on 18th April, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (MANJUNATHA, G) ACCOUNTANT MEMBER
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Hyderabad, dated 18th April, 2024

Vinodan/SPS

Copy to:

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order