

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4266/MUM/2023  
(Assessment Year: 2017-18)**

**Johnson Abraham Kolabgathu,**  
A201, Manika Apartment,  
Makali Caves Road, Andheri (East),  
Mumbai - 400093  
[PAN: AFUPK1111R]

..... **Appellant**

**Commissioner of Income Tax  
(Appeals),**  
National Faceless Appeal Centre,  
(NFAC), Delhi

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Ms. Vidhi Punamiya  
For the Respondent/Department : Ms. Rajeshwari Menon

**Date**

Conclusion of hearing : 18.04.2024  
Pronouncement of order : 26.04.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 27/09/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 26/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

"1.0 Ground No. 1

*On the facts and in the circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeal), ('the Ld. CIT(A) has erred in upholding the addition made by learned Income Tax Officer Ward 24(2)(2), Mumbai ('the Ld. AO') in making an addition of Rs 1,84,56,400 to the taxable income of the Appellant towards unexplained money by invoking section 69A of the Act.*

*2.0 Ground No. 2*

*On the facts and in the circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals), ('the Ld. CIT(A) has erred in law by passing an ex-parte order without considering the facts available on record and also, the notices referred in order not being received by the Appellant*

*Both grounds of Appeal is independent and without prejudice to each other. Your appellants crave to leave, after or modify any of the above grounds of appeal before or at the time of hearing in the matter."*

3. The relevant facts in brief are that the Appellant is a resident individual earning salary income from 'Riya-The Travel Expert'. In addition, during the relevant previous year the Appellant was also engaged in facilitating visa applicants in making payment for Kuwait Consulate Fees by providing them Demand Draft in lieu of Cash and through Bank transfers/NEFT. The Original Return of income for Assessment Year 2017-18 was e-filed on 26/03/2018 which was revised on 13/12/2018. In the revised return the Appellant declared total income of INR 5,46,240/- after claiming deduction of INR 1,13,481/- under Chapter VIA of the Act. Subsequently, the case of the Appellant was selected for limited scrutiny for the issue of cash deposit made in the bank account during the relevant previous year. Vide order, dated 26/12/2019, the Assessing Officer completed the assessment under Section 143(3) of the Act after making addition of INR 1,84,56,400/- under Section 69A of the Act

observing, inter alia, that the Appellant had failed to provide reasonable explanation regarding the source of cash deposited in the bank account of the Appellant during the relevant previous year.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the Assessment Order, dated 26/12/2019 after a delay of 42 days. The delay in filing the appeal was condoned by the CIT(A). However, the CIT(A), vide order dated 27/09/2023, dismissed the appeal holding that the Appellant had failed to file any replies/submissions despite having been granted sufficient opportunity and that in absence of any material, there was no need to interfere with the order passed by the Assessing Officer.
5. Being aggrieved by the order dated 27/09/2023, passed by the CIT(A) dismissing the appeal, the Appellant has preferred the present appeal on the grounds reproduced in paragraph 2 above.
6. When the appeal was taken up for hearing, the Ld. Authorised Representative for the Appellant pressed into service Ground No. 2 raised in the present appeal and requested that order passed by the CIT(A), being an ex-parte order, be set aside. It was submitted that the CIT(A) had failed to appreciate that the Appellant was not the owner of money deposited in the bank account and was merely facilitating visa applicants in making payment towards Consulate Fees. In the statement of facts, the Appellant had clearly stated that the Appellant was earning very thin margins which were offered to tax in the return of income. It was submitted that while the CIT(A) had issued notices of hearing, the same were not received by the Appellant. The non-compliance with the notices issued for hearings of appeal was, therefore, not deliberate.

7. Per contra, the Ld. Departmental Representative opposed the submissions made on behalf of the Appellant. It was contended that the Appellant had been non-compliant during the assessment as well as appellate proceedings before CIT(A). The Appellant had failed to respond to the notices issued by Assessing Officer during the assessment proceedings. Even before CIT(A) no documents/submissions were filed. Therefore, the CIT(A) was justified in dismissing the appeal preferred by the Appellant as there was nothing on record to controvert the finding returned by the Assessing Officer.
  
8. We have considered the rival submissions and perused the material on record. We find that during the assessment proceedings no submissions/documents were filed by the Appellant. As a result, in addition of INR 1,84,56,800/- was made in the hands of the Appellant under Section 69A of the Act holding the cash deposited in the bank account of the Appellant as unexplained money owned by the Appellant. We note that while condoning the delay of 42 days in filing the appeal the CIT(A) accepted the explanation of the Appellant that the tax consultant hired by the Appellant did not provide correct legal advice/guidance to the Appellant. In the statement of fact filed before the CIT(A), the Appellant had explained the nature of the activity undertaken by the Appellant as well as the source of cash deposits and had claimed that the Appellant was not the owner of the cash deposited in the bank account in the following manner:

*"1.1 Facts*

*1.1.1 The Assessee was engaged in employment with "Riya-The Travel Expert having salary income. And he was also partly engaged in business of facilitating Visa applicants in making payment for Kuwait Consulate fees by providing them Demand Draft in lieu of Cash & through Bank transfers/ NEFT.*

1.12 xx xx

1.1.1 xx xx

1.1.2 The Assessee is in a business of facilitating the payment of Kuwait Consulate fees via DD where in the normal course of business amount received through cash as well as bank from the Visa Applicants & deposited into bank accounts for the payment of consulate fees on behalf of Visa applicant via DD. During the A.Y. 2017-18 assessee has received Rs.2,29,45,679 (in Cash Rs. 1,84,56,400 details of which given below) for facilitating the services & during the year assessee has paid through DD of Rs.2,24,31,358/-:

Bank Account	Account No.	Amount (INR)
Axis Bank	913020055131082	91,53,000/-
Federal Bank	12850100093016	63,73,100/-
Federal Bank	18050200000664	29,30,300/-
	Total	1,84,56,400/-

1.1.3 The assessee operates business with very thin gross margin of 1% to 2% over and above the consulate fees paid on behalf of client before the administrative overhead & other expenses Which is already declared by assessee in the original Return under the head Income from Business and Profession & taxes on the same has been paid while filing the original Income Tax Return. After perusal of Books of Accounts it is clear that assessee has explained the sources as "Income from professional Services and the Books of accounts & other details would be provided as an when required by you.

2.0 Ground No.2

On the facts and in the circumstances of the case, the learned AO has erred in law and in fact in treated the total cash deposited into the bank during the AY 2017-18 of Rs. 1,84,56,400/-as Special Income U/s 69A of the Income Tax Act under the head Income from Other Sources which is deposited into Bank Account in the normal course of Business.

2.1 Facts

*2.1.1 The Assessee is in business where he received Consulate fees from visa applicants in cash as well as in bank & total deposits in banks utilized to pay consulate fees on behalf of customer with a very thin margin & the taxes on the same has been paid at the time of filing of return which is duly recorded in Books of Accounts and which is to be taxable under heads Income from Business & Profession.*

*2.1.2 The Learned Assessing Officer has added the above mentioned income under the head Income from other Sources treating as a Special Income u/s 69A which says "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

*2.1.3 Since here in our case Assessee having total trails of Cash deposited in bank account & amount paid via Demand Draft duly recorded in books of accounts & learned A.O. has erred in making the addition under the head Income from Other Sources as unexplained Income under Section 69A of the Income Tax act 1961."*

9. On perusal of above, it is clear that the Appellant had set up a case that the money deposited in the bank account belonged to the visa applicants, who were provided Demand Drafts. The Appellant had earned thin margins by facilitating the payment of Consulate Fees by way of Demand Drafts which was offered to tax in the return of income. We note that the Assessing Officer had obtained a copy of the bank statement by issuing notice under Section 133(6) of the Act to Axis Bank and Federal Bank. The aforesaid statements were not examined by the CIT(A) in view of the case set up by the Appellant in the statement of

facts and grounds of appeal filed before the CIT(A). We are in agreement with the Ld. Authorised Representative for the Appellant that the CIT(A) had failed to take into consideration the material available on assessment record. The fact that the Appellant is working for a travel company (i.e. Riya – The Travel Expert) supports the claim of the Appellant. However, this aspect was not taken into consideration by the CIT(A). Further, it has also been claimed on behalf of the Appellant that the notice of hearing issued by CIT(A) were not received by the Appellant. On perusal of Form 35, we find that the e-mail address stated in personal information was different from the e-mail address stated in the address on which notices were to be sent to the Appellant. On perusal of paragraph 6.1 of the order passed by CIT(A), we find that it has been stated that notices were issued to the Appellant through 'ITBA Portal'. Keeping in view the aforesaid facts and circumstances of the case, we deem it appropriate to remand the issue raised in the present appeal pertaining to addition of INR 1,84,56,400/- under Section 69A of the Act in respect of cash deposits in the bank account of the Appellant back to the file of Assessing Officer for denovo adjudication. Accordingly, the order dated 27/09/2023, passed by the CIT(A) is set aside and the issue raised in Ground No. 1 of the present appeal is remanded back to the file of the Assessing Officer for denovo adjudication as per law. The Appellant is directed to file all the relevant documents and details on which the Appellant wishes to place reliance before the Assessing Officer forthwith on getting the notice of hearing. The Appellant is directed to stay vigilant and track the proceedings through ITBA Portal. In terms of the aforesaid, Ground No. 2 raised by the Appellant is allowed while Ground No. 1 raised by the Appellant is treated as allowed for statistical purposes.

10. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 26.04.2024.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 26.04.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai