

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.220/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Income Tax Officer Ward 1 Nandyal (Appellant)	Vs.	Sri Vijayalakshmi Trading Company, Allagadda PAN:AAVFS3193D (Respondent)
राजस्व द्वारा / Revenue by:		Shri Shakeer Ahmed, DR
निर्धारिती द्वारा / Assessee by:		Shri K.A Sai Prasad, CA
सुनवाई की तारीख / Date of hearing:		01/05/2024
घोषणा की तारीख / Pronouncement:		08/05/2024

आदेश/ORDER

Per Madhusudan Sawdia, A.M

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('Id. CIT(A)'), dated 02/01/2024 for the AY 2017-18.

2. The grounds raised by the Revenue reads as under :

1. The order of the Ld.CIT(A) is erroneous both on the facts of the case and in law.
2. The Ld.CIT(A), National Faceless Appeal Center is erred in deleting the addition of Rs.89,22,246/- u/s 68 of the Act when the assessee failed to satisfactorily explain the sum credited in the books of accounts including the credits in the bank account as the assessee failed to furnish any documentary evidence in respect of sundry debtors, PMGKY deposit amount and Cash book in support of his justification during the assessment proceedings. *// TRUE COPY //*
3. On the facts and the circumstances of the case, the Ld. CIT(A) ought to have called for the remand report on the submission made by the assessee during appellate proceedings which was not done.
4. Any other ground that may be urged at the time of hearing.

3. Brief facts of the case are that, Sri Vijaylakshmi Trading Company ('the assessee') is a partnership firm, engaged in retail trade of Fertilizers and pesticides, filed its return of income on 29-10-2017 electronically, admitting an income of Rs.4,67,820/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 ('the Act') and subsequently a notice u/s 148 of the Act was issued by the Assessment Unit, Income Tax Department ("learned AO") on 31-03-2021. The assessment of the assessee was completed by the learned AO u/s 143(3) r.w.s.144B of the Act on 29/03/2022 by making an addition of Rs.1,32,32,223/-. Out of the said total addition of Rs.1,32,32,223/-, the Revenue is in appeal before us for an addition of Rs.89,22,246/- made by the learned AO u/s 68 of the Act, which were deleted by the ld. CIT(A). The learned AO had

made the said addition of Rs.89,22,246/- u/s 68 of the I.T. Act by observing as under:

6.1 On going through the bank statements furnished by the assessee it is found that the total credits in his three bank accounts bank accounts is Rs 9,46,65,830/- whereas the total Turnover is 10,35,88,076/-. The assessee has not furnished the cash book and is unable to give justification in respect of the difference of Rs 89,22,246/ i.e the difference in the total credits in the bank accounts and the turnover.

As per section 68 of the I.T Act :

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year

In this case :

- (a) A sum is found credited in the books of the assessee
- (b) for which the assessee has offered no explanation about the nature and source thereof

Hence the sum so credited may be charged to income tax as income of the assessee in the relevant year.

Since the assessee has failed to offer a satisfactory explanation with respect to an amount of Rs 89,22,246/-, it remains unexplained. Therefore, sum of Rs 89,22,246/- is added to the total income of the assessee u/s 68 of the I.t Act. This attracts Penalty u/s 271AAC of the I.T Act. Therefore penalty u/s 271AAC is initiated.

(Addition : Rs. 89,22,246/-)

4. Feeling aggrieved by the order passed by the learned AO, assessee filed an appeal before the Ld. CIT(A), who allowed the appeal of assessee by holding as under :

7.2 Having considered the factual matrix of the case, I find that the AO has made the addition u/s.68 of the Act of Rs.89,22,246/- when the total turnover was Rs. 10,35,68,078/-and the deposits in the bank accounts were only Rs.9,46,65,630/-. In my considered opinion it does not call for any addition since the deposits in the bank account are less than the turnover. The difference in the figures has been reconciled by the assessee before the AO as well as during the appellate proceedings. Be that as it may, there is no ground for invoking the provisions of section 68 of the Act when the AO has failed to point out the unexplained cash credits in the books of accounts including in the bank account. Had it been a case of deposits in the bank account more than the declared turnover of the assessee, the AO would have been justified in adding the difference to the income of the assessee. But that is not the case here. Therefore, in the facts and the circumstances of the case, there is no case for invoking the provisions of section 68 of the Act or for making addition under any other section of the Act when the assessee has shown more turnover in the Return of income than the bank deposits during the year and that difference has been reconciled by the AO. In view the foregoing, I do not see any justification for an addition u/s.68 of the Act. Therefore, the AO is directed to delete the addition of Rs.89,22,246/-.

Hence, the ground of appeal No.2 is Allowed.

5. Feeling aggrieved with the order of Id.CIT(A), the Revenue is now in appeal before us, contending that before the learned AO the assessee has not explained the nature and source towards the said addition. The learned DR further submitted that on appeal, the Id. CIT(A), without calling for a remand report from the learned AO, arbitrarily deleted the additions made by the learned AO. Therefore, the learned DR pleaded that the matter may be sent back to Id. CIT(A), who should decide the matter as per law after calling a remand report from the learned AO.

6. Per contra, the Ld. AR submitted that all the explanations were submitted before the learned AO during the assessment proceeding. Further, the Ld. AR placed heavy reliance on the orders of the Ld. CIT(A).

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. On perusal of the order of the Ld. CIT(A), we are of the considered opinion that the Ld. CIT(A) ought to have called for a remand report from the learned AO when the learned AO has stated that the assessee has not explained the nature and source of the money during the assessment proceedings. We have also noted from the orders of the learned AO that the assessee has failed to explain the nature and source before the learned AO. However, the assessee has filed various submissions before the Ld. CIT(A). Hence under such circumstance, the Ld. CIT(A) is duty bound to call for a remand report from the learned AO on the submissions made by the assessee. In our considered opinion the Ld. CIT(A) has grossly erred in not calling for the remand report from the learned AO by following the Rule prescribed under Rule-46A of the Income Tax Rules, 1962 and also not following the procedure laid down U/s. 250 of the Act while disposing of the appeals. Under these circumstances, we deem it fit to remit the matter back to the file of the Ld. CIT(A) with a direction to call for a remand report from the learned AO on the explanations submitted by the assessee and decide the

issue in accordance with law. Needless to mention that the assessee may be provided one more opportunity of being heard as per the principles of natural justice. Grounds of appeal are answered accordingly.

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

Order pronounced in the Open Court on 8th May, 2024.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad, dated 8th May, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Income Tax Officer Ward-1 Sanjeeva Nagar, Nandyal (A.P)
2	Sri Vijayalakshmi Trading Co, 7-8-127, T B Road, Allagadda 518543 A.P
3	Pr. CIT - Kurnool
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order