

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.414/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Venkat Rao Paleti Hyderabad PAN:ATAPP8749E (Appellant)	Vs.	Income Tax Officer Ward-2 Nizamabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri K.A. Sai Prasad, CA		
राजस्व द्वारा / Revenue by: Shri Shakeer Ahmed, DR		
सुनवाई की तारीख / Date of hearing: 02/05/2024		
घोषणा की तारीख / Pronouncement: 09/05/2024		

आदेश/ORDER

Per Madhusudan Sawdia, A.M

This appeal is filed by Venkat Rao Paleti (“the assessee”), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Id. CIT(A)”), dated 12/06/2023 for the AY 2017-18.

2. The grounds raised by the assessee reads as under

1. The Learned First Appellate Authority, is not justified in conforming addition to the tune of Rs.44,42,215/- as unexplained money u/s.69A made by the Ld. Assessing Officer.

2. The Learned First Appellate Authority, in the facts and circumstances of the case, is not justified in not appreciating the appellant's claim that the source for credits in the bank account are out of earlier withdrawal from the appellant's bank account and recovery of loans given.

3. The Learned First Appellate Authority, in the facts and circumstances of the case, is not justified in not appreciating the appellant's claim that sum of Rs.3,58,785/- credited in appellant's bank account are proceeds from Provident Fund.

4. The Learned First Appellate Authority ignoring the evidences failed to appreciate the fact that the credits of Rs.19,00,000/- on 06-12-2016 was repayment through banking channels by Smt. Kopparapu Swapna for the loan given to her through banking channels on 18-11-2016.

5. The appellant reserves his right to add, amend, delete or substitute any ground or grounds during the course of the hearing.

3. Brief facts of the case are that the assessee is an individual and is a non-filer of income tax return for the AY 2017-18. Subsequently notice u/s. 142(1) of the Income Tax Act, 1961 ('the Act') was issued by the learned assessing officer('ld.AO') requiring the assessee to file return of his income. However, the assessee did not file the return of his income. Further some more notices were also issued to the assessee, but the assessee did not

respond to all such notices. Finally, the ld. AO completed the assessment u/s 144 of the Act, treating the total deposits in his bank accounts as unexplained, hence making the addition u/s. 69A of the Act to the tune of Rs. 69,22,911/-.The relevant part of the order of the ld.AO is reproduced as under :

7. The assessee was given sufficient opportunities vide issue and service of statutory notices, but the assessee has failed to comply with the notices and failed to furnish details as called for. The material available on record through bank statement shows that the assessee has having taxable income during the financial year 2016-17 relevant to the assessment year 2017-18. But the assessee has not filed ITR, not offered Income for taxation and has not paid taxes due thereon.

7.1 The assessee has failed to furnish any details relating to nature of Income earned, details of bank accounts, details of cash deposits/credits made in the bank accounts, sources of cash deposits/credits. The Assessing Officer is left with no option but to complete the best judgment assessment on the basis of material evidences gathered during the assessment proceedings.

8. During the course of assessment proceedings, on the basis of AIR information available, notice u/s 133(6) of Income Tax Act, 1961 was issued to the Branch Manager, State Bank of India calling for, bank account statement, KYC, details of cash deposits made during the F Y 2016-17. In response thereto, the Branch Manager of bank provided details as called.

9. The data analysis of bank statement reveals various cash deposits/Credits Rs.69,22,911 made during the financial year 2016-17. It is evident from bank statement that the assessee has made cash deposits/credits, but has not filed Income Tax Return, not offered Income from its activities and not paid taxes due on. The assessee has failed to comply with the terms of notices issued by this Office and never responded to the communication sent to the assessee in terms of E-Proceedings. It is evident that assessee failed to establish source and nature of credit entries appearing in Bank account, including Cash deposits made during the F Y 2016-17, relevant to Assessment Year 2017-18.

10. The assessee has made cash deposits/crdits amounting to Rs.69,22,911 appearing in the Bank Accounts of the assessee in the financial year 2016-17 relevant to assessment year 2017-18 remained unexplained. The assessee failed to give any explanation about the nature and source of cash deposits, hence the value of Credit entries, including Cash deposits Rs.69,22,911 is deemed as unexplained money u/s 69A of the Income Tax Act, 1961 and added to the Total Income of the assessee. The Total Income assessed is taxed u/s 115 BBE of the Act.

4. Feeling aggrieved by the order passed by the Id.AO, assessee filed appeal before the Ld. CIT(A). During the appellate proceedings the assessee produced documentary evidences qua additions of Rs.24,74,960/- only and did not produce any documentary evidences qua additions of Rs.44,42,215/-. Consequently the Id.CIT(A) deleted the addition upto an amount of Rs.24,74,960/- and confirmed the additions of Rs. 44,22,215/-. The relevant part of the order of the Id.CIT(A) is reproduced as under :

For the total credits/deposits during the year under consideration, the appellant submitted the table reproduced on page no. 4 and mentioned the source of deposits/credits happened during the year. Further, it was observed that for the following transaction, the appellant has produced the documentary evidences which have been verified and found to be explained satisfactorily:

Sl. No.	Date	Amount (in INR)	Remarks (Source of the transaction)
1.	April 2016 to March 2017	4,34,067/-	Monthly salary from April 2016 to May 2016 and Monthly pension from June, 2016 to March 2017
2.	April 2016 to March 2017	20,23,433/-	Gratuity & Commutation of Pension
3.	April 2016 to March 2017	17,460	Interest on Saving Bank account
Total		24,74,960/-	

But for the following transaction occurred during the said year, the appellant could not explain satisfactorily and also not submitted any documentary evidences for the same and merely made the claim that the following transaction have been done from the earlier withdrawals from his bank account:

Sl. No.	Date	Amount (in INR)	Remarks (Source of the transaction)
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		INR)	transaction)
1.	03.11.2016	1,02,000/-	Out of earlier withdrawals from his account.
2.	13.11.2016	9,00,000/-	Cash out of the withdrawals from his account on 29.06.2016.
3.	18.11.2016	10,00,000/-	Cash out of the withdrawals from his account in June 2016 and amounts recovered from different parties to whom amounts were given through cheques during 29.06.2016 to 16.08.2016.
4.	April 2016 to March 2017	3,58,785/-	Provident fund (Rs. 3,30,715/- + 28,070/- on 16.07.2016.
5.	21.06.2016	1,73,630/-	Amounts recovered from different parties to whom amounts were given out of earlier withdrawals.
6.	03.11.2016	7,800/-	Amounts recovered from different parties to whom amounts were given out of earlier withdrawals.
7.	03.11.2016	50,000/-	Amounts recovered from different parties to whom amounts were given out of earlier withdrawals.
8.	06.12.2016	19,00,000/-	The source of the credit entry of Rs. 19,00,000/- on 06.12.2016 is explained as loan repayment by

			Smt. Kopparapu Swapna. But the appellant didn't offer any explanation for the source of the same amount extended as loan to Smt. Kopparapu Swapna on 18.11.2016.
Total		44,42,215/-	

In this scenario, the perusal of the section 69A is required which is reproduced below:

"Unexplained money, etc.

"69A. 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 Income-tax 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."

As prescribed by the section 69A of the IT Act, 1961, the appellant couldn't explain the sources of the above-mentioned 8 transactions with the documentary evidences satisfactorily, therefore the total transaction of Rs. 44,42,215/- is considered as deemed to be the income of the appellant for the year under consideration.

5. Feeling aggrieved with the order of learned CIT(A), the assessee is now in appeal before us.

6. The learned AR submitted that the assessee was a government teacher and retired during the financial year 2016-17 and he did not file return of income for the financial year 2016-17 relevant to A.Y 2017-18. After retirement, the assessee shifted to another place and could not comply with various notices issued for the A.Y 2017-18 as he could not receive the same. The learned AR further submitted that the authorities erred in declining sufficient opportunity to the assessee in proving his deposits in the banks. The learned AR also submitted that the assessee does not stand to gain by allowing the appeal to be disposed of without any documentary evidence being produced and it is only due to the reasons beyond the control of the assessee, the assessee could not produce the documents. By consolidating all the grounds, he further submitted that given an opportunity, the assessee is now ready to produce all such details and conduct the proceedings diligently and get the matter disposed of on merits.

6. Per contra, learned DR placed heavy reliance on the orders of the authorities below, and submitted that sufficient opportunity has already been given by the authorities, but the assessee failed to avail the same. He opposed the grant of further opportunity to the assessee.

7. We have heard the rival submissions and also gone through the record in the light of the submissions made on either side. It could be seen from the orders of the authorities that the assessee failed to explain the sources for credit in his bank account, which resulted in passing the orders without consideration thereof. It is a fact that the assessee does not stand to gain by not producing such documents. Be that as it may, now that the assessee is ready to produce all such documentary evidence in support of his contentions and get the matter disposed of on merits. The highest that would happen by allowing an opportunity to the assessee is that a cause would be decided on merits. With this view of the matter, we are of the view that fresh opportunity should be given to the assessee and, accordingly, we set aside the impugned order and restore the issue to the file of the Id. CIT(A) for passing a fresh order on merits after affording the opportunity of hearing to the assessee. Grounds of appeal are answered accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 9th May, 2024.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad, dated 9th May, 2024

Vinodan/sps

Copy to:

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3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order