

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE**

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER  
AND  
SHRI MANJUNATHA, G. HON'BLE ACCOUNTANT MEMBER**

ITA No.166/Hyd/2024		
Assessment Year: 2017-18		
Syed Ali Murtuza Hussain, 10-2-289/44, Shanthi Nagar, Masab Tank, Hyderabad – 500028, Telangana.  PAN : ALNPH5637C  (Appellant)	Vs.	The Income Tax Officer, Ward 7(1), Hyderabad.      (Respondent)
Assessee by:	None	
Revenue by:	Shri AVES Madhukar, Sr.A.R.	
Date of hearing:	08.05.2024	
Date of pronouncement:	08.05.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.12.10.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, "the Act").

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

*“1. The Assessee Syed Ali Murtuza Hussain filed an appeal U/Sec. 246(A) against the A.O. under Sec. 143(3) while the Assessing Authority has observed that the assessee has made cash deposit to the tune of Rs. 59,27,000 during the demonetization period and thus brought to tax U/S 69A if IT Act as per the provisions of Sec 115BBE of IT Act w.e.f 1.4.2017.*

*2. The CIT(NFAC) has erred in deciding the appeal without considering the submission of the Assessee that the cash deposits to the tune of Rs. 59,27,000/- during demonetization period are out of the advances received towards sale of property and remaining out of his past savings and thus confirming the action of the AO in rejecting that the said amounts are part from the past savings of the assessee for which no evidence may be furnished.*

*3. That the CIT (A) NFAC has erred in confirming the order of AO ignoring the position of law that provisions of Sec. 68 cannot be applied in respect of income from advances received towards sale of property which were cancelled at a later date and the same was repaid back and further remaining which are one's own past savings, the source for past savings cannot be produced.”*

3. The brief facts of the case are that assessee, who is an individual filed e-return for the assessment year 2017-18 on 05.08.2017 admitting Gross Total Income of Rs.1,26,470/-. The case was selected for limited scrutiny through CASS for the reason “ Large Cash deposit during demonetization period as compared to returned income”. Subsequently, a notice under section 143(2) of the I.T. Act, 1961 was issued on 25.09.2018 through ITBA Portal. Thereafter, notices u/s 142(1) of the IT Act, 1961 requiring the assessee to furnish the details were issued on 17.07.2019, 01.08.2019. In response to the notice u/s 142(1) dated 17.07.2019, the assessee furnished the bank statement, bank ledger and computation sheet. For further verification, again a notice u/s 142(1) of the Act was

issued on 01.8.2019 but there was no response received from the assessee.

3.1 The non-compliance with issued notices implies the assessee's decision not to offer any explanation regarding the cash deposits totaling Rs.59,27,000/- during the demonetization period. Despite multiple opportunities, the assessee failed to provide any documentation or explanation regarding these deposits. Consequently, under section 69A of the IT Act, the deposited amount was taxed at a rate of 60%, as per the provisions of section 115BBE of the Act applicable from 01.04.2017, along with a 25% surcharge. Additionally, as the source of these deposits remains unexplained, actions under sections 115BBE and 271AAC of the IT Act were initiated separately. Thus, the Assessing Officer completed the assessment and passed assessment order dt.27.12.2019 under Section 143(3) of the Act.

4. When the matter was called, neither the assessee nor his counsel was present. Furthermore, it was brought to the attention of the Bench that the notice sent to the assessee was returned unserved with a remark stating, 'Want of Flat number'.

5. Per contra, the ld.DR has not raised any objection for remanding the matter back to the file of lower authorities.

6 We have heard the ld. DR and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), we found that ld.CIT(A) passed an order confirming the action of the

Assessing Officer in his assessment framed on 27.12.2019. The merits of the assessee's appeal before the Id.CIT(A) have neither been discussed nor decided by the Id.CIT(A). On perusal of Paragraph 5 of the order of Id.CIT(A), it is clear that Id.CIT(A) was forced to decide the appeal on the basis of material available on record, as there was no representation on behalf of the assessee. In view of the above reasons, in our view, the ends of justice will be met if the matter is remanded back to the file of Assessing Officer with a direction to decide the issue after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law subject to payment of costs of Rs.3,000/- (Rupees Three Thousand only) in favour of Prime Minister National Relief Fund which shall be payable within one month or from the date of receipt of this order or whichever is earlier.

7. The assessee shall be at liberty to file documents, if any, as required for proving his case and the Assessing Officer shall consider the evidences, if any, filed by the assessee. Needless to say the Assessing Officer shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Assessing Officer shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we set aside the orders passed by the lower authorities to the file of Assessing Officer for fresh adjudication. Thus, the grounds of the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 8<sup>th</sup> May, 2024.

<b>Sd/-</b> <b>(MANJUNATHA. G.)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 8<sup>th</sup> May, 2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Syed Ali Murtuza Hussain, 10-2-289/44, Shanthi Nagar, Masab Tank, Hyderabad – 500028, Telangana.
2	The Income Tax Officer, Ward 7(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File