

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

BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं/ITA No. 123/Hyd/2024
(निर्धारण वर्ष/Assessment Year: 2020-21)

Ramakrishna Chary
Nagula,
Hyderabad
[PAN No. AXTPN4335M]

अपीलार्थी / Appellant

Vs. Deputy Commissioner
of Income Tax,
Central Circle-2(4),
Hyderabad

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा / Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख / Date of hearing: 02/05/2024
घोषणा की तारीख / Pronouncement on: 09/05/2024

आदेश / ORDER

PER MADHUSUDAN SAWDIA, A.M:

The captioned appeal has been filed at the instance of Ramakrishna Chary Nagula ('the assessee'), against the order dated 06/11/2023 passed by the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad, ("Ld. CIT(A)") relating to the assessment year (AY) 2020-21.

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

“1. The Learned First Appellate Authority, is not justified in conforming the addition of Rs.158,62,500/- made u/s.69A as unexplained income.

2. The Learned First Appellate Authority, failed to appreciate the fact that the cash and jewelry seized does not belong to the appellant and he was simply carrying the cash and gold jewellery of others and hence, addition of Rs. 1,58,62,500/- is bad in law and needs to be deleted.

3. 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 2020-21. During the course of vehicle checking on 03/01/2020, the Static Surveillance Team and Police authorities recovered cash of Rs. 1,51,00,000/- and approximately 25 tolas of gold jewellery (6 items) from the possession of the assessee and one Kailash Chand from Bank Street Bus Stop, Koti, Hyderabad. In the absence of any documentary evidence, police authorities seized the cash and gold ornaments.

3.1. Subsequently a 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 his return of income. However, the assessee did not file his return of income. Further summons u/s 131 of the Act and show cause notice 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, making the addition u/s. 69A

of the Act to the tune of Rs. 1,58,62,500/-. The relevant portion of the order of the Ld.AO is reproduced as under :


4. The assessee neither filed the Income Tax Return called for by the notice u/s 142(1) of the Act nor responded to the summon u/s 131 of the Act served upon him. Assessee has also failed to comply with the Show cause notice dated 08.09.2021. In view of the same the assessment for the A.Y. 2020-21 is completed in accordance with the provisions of Section 144 of the Income Tax Act, 1961 as under:

	Income Returned (as non-filer)	NIL
	Income Assessed	Rs. 1,58,62,500
	Tax Thereon (@ 60% u/s 115BBE)	Rs. 95,17,500
Add	Surcharge (@ 25%)	Rs. 23,79,375
Add	Educational Cess (@4%)	Rs. 4,75,875
	Gross Tax Payable	Rs. 1,23,72,750
Add	Interest u/s 234A (for 09 months)	Rs. 11,13,547
Add	Interest u/s 234B (for 18 months)	Rs. 22,27,095
Add	Fee for default in furnishing Return of Income, u/s 234F	Rs. 10,000
	Net Tax Payable	Rs. 1,57,23,390

Demand is to be paid as per notice u/s 156 of the Income Tax Act, 1961.

The assessment order is passed with prior approval of the Addl. Commissioner of Income Tax, Central Range-2, Hyderabad, vide F.No. Addl.CIT-CR-2/153D/CC-2(2)/2021-22 dated 17.09.2021 as per provisions of section 153D of income Tax Act, 1961.

Copy to assessee.



(UPPALURI MEENA)
Dy. Commissioner of Income Tax
Central Circle-2(4), Hyderabad

4. Feeling aggrieved by the order passed by the Ld.AO, assessee filed appeal before the Ld.CIT(A). During the appellate proceedings also the assessee was granted several opportunities to produce documentary evidences in support of sources for seized cash and gold ornaments found from his possession by the Police Authorities. Despite that the assessee failed to avail the opportunities to produce any documentary evidences in support of the grounds of appeal before Ld.CIT(A). Therefore, Ld.CIT(A) found no infirmity in the

assessment order of Ld.AO and accordingly confirmed the same, by dismissing the appeal of the assessee. The relevant portion of the order of the Ld.CIT(A) is reproduced as under :

*“...Even during the appeal proceedings, despite enough opportunities, the appellant has failed to produce any documentary evidences in support of sources for seized cash and gold ornaments found in his possession by the Police Authorities. The appellant in sworn statement has contended that the seized cash and gold ornaments pertain to Sri Praveen Jain, however, no confirmation letter or any other documentary evidence was filed by the appellant in support of this contention. Therefore, in absence of any documentary evidences, the Assessing Officer has rightly treated the seized cash and gold ornaments, belonging to the appellant and has rightly added the amount of Rs. 1,58,62,500/- (Seized cash of Rs. 1,51,00,000/- + value of 18 kts. Gold as on 09.01.2020 taken at Rs.3,050/- per gram-for 250 gms of gold totaling to Rs.7,62,500/- (250 gms * Rs.3,050/- per.gm) as unexplained income in the hands of the appellant. Accordingly, the addition of Rs.1,58,62,500/- is hereby upheld and the grounds related to this appeal are dismissed.”*

5. Feeling aggrieved with the order of Ld.CIT(A), the assessee is now in appeal before us, contending that the authorities erred in declining sufficient opportunity to the assessee in proving the sources for seized cash and gold ornaments found from his possession by the Police Authorities. It is further contended that the Ld. CIT(A) has passed the order without providing proper opportunity. The learned AR further 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 explaining the sources for seized cash and gold ornaments found from his possession by the Police Authorities, which resulted in passing the impugned order . It is a fact that the assessee does not stand to gain by not producing such documents.

7.1. 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. With this view of the matter, we are of the opinion 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 Ld. CIT(A) for passing a fresh order on merits, after affording the opportunity of hearing to the assessee subject to payment of costs of Rs. 5,000/- (Rupees Five Thousand only) in favour of Prime Minister National Relief Fund, which shall

be payable within one month from the date of receipt of this order. Grounds of appeal are answered accordingly.

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

Order pronounced in the open court on 9th day of May, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 09/05/2024

TNMM

Copy forwarded to:

1. Ramakrishna Chary Nagula, C/o. Katrapati & Associates,
1-1-298/2/B/3, Sowbhagya Avenue Apts., 1st Floor,
Ashok Nagar, Street No. 1, Hyderabad.
2. The Deputy Commissioner of Income Tax,
Central Circle-2(4), Hyderabad.
3. Pr.CIT, Central, Hyderabad.
2. DR, ITAT, Hyderabad.
3. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD