

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.693/Bang/2024

Assessment year : 2017-18

Mohammed Niyamath Ulla, No.15, 2 nd Stage, Pillanna Garden, Bengaluru – 560 045. PAN – ADNPN 7990 C	Vs.	The Income Tax Officer, Ward-1(2)(8), Bengaluru.
APPELANT		RESPONDENT

Assessee by	:	Shri Ravishankar & Monish Sowkar, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of hearing	:	20.05.2024
Date of Pronouncement	:	20.05.2024

ORDER

Per Chandra Poojari, Accountant Member

The appeal by the assessee is directed against the order of NFAC, New Delhi both dated 23/02/2024 passed u/s 250 of the Act for the assessment year 2017-18.

2. The grounds raised by the assessee s reproduced as under:-

“1.The appellate order passed by the learned Commissioner of Income-tax [Appeals], passed under Section 250 of the Act dated 23/02/2024, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case, may be quashed.

2. The appellant denies himself liable to be assessed on total income of Rs. 11,10,950/- determined by the learned

assessing officer and upheld by the learned Commissioner of Income-tax [Appeals], as against the income returned and reported by the appellant of Rs. 3,41,150/-, on the facts and circumstances of the case.

3. The *exparte* order passed by the learned Commissioner of Income - tax [Appeals], is in grave violation of principles of natural justice, as the appellant was not afforded reasonable opportunity of being heard, consequently the impugned *exparte* order passed by the learned Commissioner of Income-tax [Appeals] requires to be cancelled in the interest of justice and equity, on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] is not justified in erroneously holding that the appellant is not interested in prosecuting the appeal. The email address to which the hearing notices were sent were that of the employee of the tax consultant [i.e. mohammniya799@gmail.com] and the said hearing notices sent to that e-mail id were not communicated nor responded. Consequently, the notices of hearing sent could not be attended and the said action of the appellant in not responding to the notices are not deliberate or intentional, on the facts and circumstances.

5. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer were not justified in treating the payments made by the appellant towards credit card payments amounting to Rs. 7,69,800/- as unexplained money invoking the provisions of section 69A of the Act, on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax [Appeals] as well as the learned assessing officer were not justified in not appreciating that the Appellant has business income during the impugned assessment year and the said credit card were used by few of his very close relatives for purchases and later were reimbursed to the appellant by them, which were all available as source for making payments towards credit card, on the facts and circumstances of the case.

7. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer failed to appreciate that the source for making credit card payments in the bank account of the appellant are all from known, available and explainable sources and consequently made an erroneous addition under section 69A of the Act by making certain irrelevant observation which . is arbitrary, based on suspicion, surmise and

conjecture without any proper basis, on the facts and circumstances of the case.

8. The addition made by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals], under section 69A of the Act is bad in law as the required conditions and the parameters to invoke the provision of section 69A of the Act have not been complied with and consequently no addition could have been made invoking the provisions of section 69A of the Act, on the facts and circumstances of the case.

9, Without prejudice, the learned Commissioner of Income-tax [Appeals] and the learned Assessing Officer were not justified in taxing the appellant as per special rates of taxes as per the provisions of section 11 5BBE of the Act for the amounts deposited by the appellant during the year from the known, available and explainable sources, on the facts and circumstances of the case.

10. Without prejudice, to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies himself liable to be charged to interest under section 234 B of the Income Tax Act on the facts and circumstances of the case. The appellant contends that the levy of interest under section 234 A tt 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.

11. The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.

12. For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.

3. At the time of hearing, the Id. AR submitted that the Adl.CIT(A) has given notices to the assessee through e.mail, i.e mohammniya799@gmail.com, which belonged to the Tax Consultant and the same was not communicated to the assessee. Hence, it is not deliberate on the part of the assessee for not

responding to the said notices. The notices sent by the NFAC, New Delhi on different dates are as under:-

Sr. No.	Date of Notice Sent	Compliance Date	Remarks
1	09.03.2020	17.03.2020	No response from the appellant
2	28.12.2020	12.01.2021	No response from the appellant
3	06.10.2021	21.10.2021	No response from the appellant
4	08.02.2023	23.02.2023	No response from the appellant
5	14.02.2023	22.02.2023	No response from the appellant

4. In our opinion, there is reasonable cause for not participating in the proceedings before the Addl. CIT(A). Accordingly, we condone the same. It is noticed that the assessment order passed by the AO is ex-parte, as the AO specifically mentioned in page 2 of the assessment order that in spite of giving opportunities, the assessee is neither appeared before him nor responded to the notices. Hence, the AO left with no option but to complete the assessment and pass order u/s 144 of the Act. Hence, in our opinion, it is appropriate to remit the issue in dispute with regard to the addition of Rs.7,69,800/- made by the AO u/s 69 of the Act towards credit card payments to the file of AO for reconsideration. Accordingly, the issue in dispute is remitted to the file of AO for fresh consideration and to decide the same after giving reasonable opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th May, **2024**.

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated, 20th May, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore