

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND**

SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 265/Bang/2024
Assessment Year : 2017-18

Shri Jagadish Sampathlal Bhutada, 753 C/o. KCFC, Chickpet, Bangalore – 560 053. PAN: ABMPB6481D	Vs.	The Income Tax Officer, Ward 2(2)(7), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sudheendra B R, Advocate
Revenue by	:	Shri Parithivel .V, JCIT (DR)

Date of Hearing	:	17-04-2024
Date of Pronouncement	:	09-05-2024

ORDER

PER KESHAV DUBEY, JUDICIAL MEMBER

This appeal at the instance of the assessee is directed against the order passed by the Ld.CIT(A), NFAC vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058843595(1) dated 18.12.2023 passed u/s. 250 of the I.Tax Act,1961 for the A.Y. 2017-18.

The assessee has raised the following grounds of appeal:

“1. General ground:

1.1. The learned Commissioner of Income-tax (Appeals) (hereinafter referred to as CIT (A) for short) has erred in passing the order under section 250 in the manner passed by him. The order so passed is bad in law and liable to be quashed.

2. Addition of Rs. 49,76,000 under section 69A:

2.1. The learned AO has erred in making addition of Rs. 49,76,000 under section 69A as unexplained money.

2.2. The learned AO/ CIT(A) has erred in not appreciating that the cash deposits were made out of opening cash balance and cash withdrawn from bank account.

2.3. The learned AO has erred in passing the assessment order without properly considering the details and documents filed in response to notice issued under section 142(1) dated 2.12.2019 and without providing any opportunity of hearing as required under section 142(3) and 143(3) of the Act.

2.4. The addition of Rs. 49,76,000 under section 69A is based on mere surmises and conjectures and the same is bad in law and liable to be deleted.

3. Dismissal of appeal for non-attendance is bad in law

3.1 The learned CIT(A), NFAC has erred in dismissing the appeal and confirming the impugned addition made by the learned AO amounting to Rs. 49,76,000 under section 69A of the Income tax Act, 1961.

3.2 The learned CIT(A), NFAC has erred in passing an ex-parte appellate order without providing proper opportunity of being heard.

3.3 The learned CIT(A), NFAC has erred in not appreciating that all the notices were sent by email and the same was not noticed by the appellant.

3.4 On facts and circumstances of the case and law applicable, the order passed by the learned CIT(A) NFAC is bad in law and liable to be quashed.

4. Ground relating to incremental interest under section 234A, 234B, 234C and 234D:

4.1. The learned AO/ CIT(A) has erred in levying interest of Rs. 3,10,312, Rs. 12,80,037, Rs. 1,763 and Rs. 95 under section 234A, 234B, 234C and 234 D respectively. Based on the facts and circumstances of the case and law applicable. the appellant denies its liability to pay incremental interest under section 234A, 234B, 234C and 234D.”

2. The brief facts of the case is that the assessee being an individual filed his return of income for assessment year 2017-18 on 29.03.2018 declaring total income of Rs.6,35,930/-. Thereafter the case was selected for limited scrutiny under CASS

for the reason of cash deposits and cash withdrawals during the year. During the course of assessment proceeding, the assessee had submitted that the sources of cash deposits amounting to Rs.49,76,000/- are out of the opening cash in hand amounting to Rs.26,35,302/- as well as withdrawals made from the bank during the year.

3. The Ld. Assessing Officer on the ground that assessee had not furnished any books of account maintained for his business and also on the ground that the Assessee had failed to prove that the cash deposited in the bank account during the demonetisation period are out of his normal course of business or otherwise added the entire cash deposits of Rs.49,76,000/- under the provisions of section 69A of the IT Act, 1961.

Aggrieved by the assessment completed u/s. 143(3) of the IT Act, 1961 vide order dated 24.12.2019, the assessee preferred an appeal before the Ld.CIT(A)/NFAC.

4. Before CIT(A), NFAC the assessee had taken various grounds of Appeal, however the appellant neither submitted any information nor furnished any response / evidence in support of his grounds of appeal and statement of facts. As the appellant had not furnished any response to the notices issued by the Ld.CIT(A), the Ld.CIT(A) felt that the appellant has no valid explanation supported with corroborative evidence and therefore having no option passed an ex-parte order, based on the material available on record, by confirming the additions of Rs.49,76,000/- u/s. 69A of the IT Act.

5. Aggrieved by the order of the Ld.CIT(A)/NFAC, the assessee has filed the present appeal before ITAT.

6. Before us, the assessee filed a paper book comprising 113 pages enclosing therein copy of the following:

- a) Income Tax Return and Acknowledgment in ITR-3 filed for Assessment Year 2017-18
- b) Notice issued u/s. 143(2) dated 09.08.2018
 - i) Cover Letter
 - ii) Bank Statements
 - iii) Acknowledgment
- c) Notice issued u/s. 142(1) dated 02.12.2019
 - i) Cover Letter
 - ii) Analysis of cash deposit
 - iii) Cashbook
 - iv) Acknowledgment

7. Thus the solitary issue that is raised by the AR of the Assessee is whether the Ld.CIT(A) justified in confirming the additions made u/s. 69A of the IT Act amounting to Rs.49,76,000/- without providing reasonable opportunity of being heard which is a gross violations of the Principle of Natural Justice.

8. Further, during the course of hearing on being asked by the us the reason for not availing the opportunities accorded in the form of notices before the Learned CIT(A), the Ld. AR of the Assessee filed a synopsis stating that the appellant's father Shri

Sampathlal Bhutada who is of 78 years of Age had undergone prostate surgery as well as knee surgery and due to his old age had an impact of health condition of appellant's father and for this reason the Appellant had to devote personal attention being the only Son. The appellant was therefore unable to give proper attention to follow up of appeal proceeding. Further, the Ld.AR also submits that the business activity were taken care by appellant's son Shri Karthik Bhutada and as the appellant's son was not aware of the appeal proceeding, he therefore failed to intimate the appellant about the receipt of the notice u/s. 250 in his email. The Ld.AR vehemently further submitted that appellant had while filing the Form No. 35 had indicated "No" to the question as to whether notices / communications can be sent by email & had requested the Ld.CIT(A) to send hardcopy of the notices so that proper attention can be given to the Notices.

The Ld. DR supported the orders of IT authorities below and submits that appellant failed to comply any of the notices issued by the Ld.CIT(A) and further submits that it is the duty of the appellant to respond to the notices issued and file corroborative evidences along with ground wise submissions in support of the grounds of appeal & statement of facts.

9. We have heard the rival submissions and perused the material on record.

10. It is admitted fact that assessee has deposited cash of Rs.49,76,000/- which the assessee has claimed to have deposited

out of opening cash in hand amounting to Rs.26,35,302/- and withdrawals made during the year. Before the Ld.CIT(A), the appellant had submitted that the cash deposits are recorded in the books of accounts however could not get the opportunity to submit the evidences / books of accounts before the Ld.CIT(A) for the aforesaid reasons. Once the assessee has accepted to have deposited cash of Rs.49,76,000/-, the onus is first on the Assessee to explain the sources of cash deposit. In our opinion, as the assessee had not been given reasonable opportunity of being heard before the Learned CIT(A), it is appropriate to remit the issue back to the file of Ld.CIT(A) with a direction to the assessee to furnish full details regarding sources of cash deposits and genuineness of the transactions. Accordingly, the issue is remitted to the file of Ld.CIT(A) for fresh consideration after giving an opportunity of being heard to the assessee and decide accordingly.

We clarify that nothing stated herein above shall be construed as any expression of opinion on the merits of the case.

In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 09th May, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(KESHAV DUBEY)
Judicial Member

Bangalore,
Dated, the 09th May, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore