

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 727/Bang/2024
Assessment Year : 2017-18

Shri Narayana Muralidhar, 31, 4 th Cross, 7 th Block, Jayanagar, Bangalore – 560 082. PAN: ABTPM6865D	Vs.	The Assistant Commissioner of Income Tax, Circle – 7 (2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Mohit Ashok Parmar, CA
Revenue by	:	Shri Subramanian .S, JCIT (DR)

Date of Hearing	:	22-05-2024
Date of Pronouncement	:	06-06-2024

ORDER

PER KESHAV DUBEY, JUDICIAL MEMBER

This appeal at the instance of the assessee is directed against the CIT(A)/NFAC order dated 23.02.2024 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1061414512(1) passed u/s. 250 of the IT Act, 1961 for the A.Y. 2017-18.

2. The assessee has raised the following grounds:

“1. The order of Honourable Commissioner of Income Tax (Appeals), Income Tax Department (hereinafter referred as "CIT(A)" for brevity) is bad and erroneous in law and against the principles of natural justice.

2. The learned CIT(A) erred in not considering the fact that the Assistant Commissioner of Income tax, Circle 7(2)(1), Bangalore (hereinafter referred as "AO" for brevity) has erred in making an addition of Rs.44,71,887/- by treating cash deposits as unexplained money u/s 69 without any basis.

3. The learned CIT(A) has erred confirming the action of the learned AO without appreciating that Additions cannot be made unless all conditions required to invoke Section 69 of the Act has been satisfied.

4. The learned CIT(A) has erred confirming the action of the learned AO without appreciating that the cash deposits are relatable to business transactions and cannot be treated as unexplained money u/s 69 of the Act.

5. The learned CIT(A) has erred confirming the action of the learned AO without appreciating that where there is only rotation of funds the concept of Telescoping or principle of peak credit theory shall be applied.

6. The learned CIT(A) and the learned AO have erred in placing reliance on the judicial decisions which are distinguishable both on facts of the case and provisions of law.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly.”

3. The brief facts of the case are that the appellant in the present case is an individual resident and is in the business of labour contractor and civil contractor. The assessee filed his return of income for the A.Y. 2017-18 on 31.03.2018 declaring total income of Rs. 77,82,080/- u/s. 139(4) of the IT Act, 1961 sources being income from house property, business income and long term capital gains. Thereafter the case was selected for limited scrutiny under CASS. One of the reason for selection of scrutiny was substantial cash deposits in bank accounts during the year. During the course of assessment proceeding, as the assessee is unable to produce complete set of books of accounts, unverifiable and contradictory claims without any valid supporting documents, the Ld.AO relying upon the judgment of High Court of Delhi in the case of Jaya Aggarwal vs. ITO reported in (2018) 92 taxmann.com 108 (Delhi) provided the benefit of cash balance available to the assessee as on 01.09.2016 due to cash withdrawals from bank accounts of Rs.57,28,113/- and the sale proceeds from flat amounting to Rs. 10 Lakhs & added the balance of Rs. 44,71,887/- u/s. 69 of the act out of total cash deposit on 21.09.2016 amounting to Rs.1,12,00,000/-.

4. Aggrieved by the assessment completed u/s. 143(3) dated 23.12.2019, the assessee preferred an appeal before the CIT(A)/NFAC. The Ld.CIT(A) dismissed the appeal with the following observations.

“4.10 The appellant has not produced any material, document or evidence, which he could rely upon, to controvert the finding of the AO. On merit AO's order appears to be logical and as per law. Further, no explanation with corroborative evidence in respect of

disputed cash deposit Rs. 44,71,887/- in the bank account, by the appellant, was provided during this appeal proceeding, too. Having regard to the facts of the case and the law, I do not find any merit to interfere in the assessment made u/s 143(3). Hence, the action of the AO is confirmed. The appeal is decided accordingly.”

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal.

6. Before us, the Ld.AR of the assessee filed petition for adjournment stating that the appellant are in process of collecting necessary details and documents for the preparation of the paper book and prayed for 4 week's time. On being asked by the bench, the reason for not producing / submitting the relevant documents before the Ld.CIT(A) which has dismissed the appeal on the ground of non-production of any material, document, evidence, the Ld.AR of the assessee submitted that the Ld.CIT(A) has passed an order within a very short span of time without hearing the appellant which is a gross violation of the principles of natural justice.

7. We are of the opinion that as the Ld.CIT(A) has dismissed the appeal on the ground of non-submissions / non-production of material, document or evidences and before us the Ld.AR of the assessee requested for the adjournment for submitting necessary details and documents and therefore we are rejecting the adjournment petition filed by the Ld.AR of the assessee and remit the entire issue in dispute to the file of Ld.CIT(A) for fresh consideration & to decide the same in accordance with law after giving reasonable opportunity of being heard to the assessee. The

assessee is directed to produce / submit all the requisite documents / material / evidence before the Ld.CIT(A) as may be called for.

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

Order pronounced in the open court on 06th June, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(KESHAV DUBEY)
Judicial Member

Bangalore,
Dated, the 06th June, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore