

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

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

ITA No.709/Bang/2024
Assessment Year : 2017-18

Shri. Marathi Narayana Sathisha, No.98, 1 st Cross, Near White Park Apartments, Kudulu Village, Bengaluru – 560 068. PAN : BJSPP 3665 K	Vs.	ITO, Ward – 3(3)(5), Bengaluru.
APPELLANT		RESPONDENT

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

Date of hearing	:	21.05.2024
Date of Pronouncement	:	03.06.2024

ORDER

Per Soundararajan K, Judicial Member :

This appeal by the assessee is directed against the order passed by the NFAC under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’) dated 29.11.2023, in respect of Assessment Year 2017-18.

2. Brief facts of the case are that the assessee is an individual and working as a physical instructor in the Cambridge Public School at Bangalore. During the demonetization period, the AO found that the assessee had deposited cash into his bank accounts amounting to Rs.22,53,400/- and therefore issued notices under section 143(2) and 142(1) of the Act for which the assessee had failed to file reply. Thereafter, a show cause notice was also issued to the assessee for which also assessee

not filed any reply and therefore the AO had concluded the assessment under section 144 of the Act by making an addition under section 69A of the Act. The assessee thereafter filed an appeal before the NFAC, Delhi, and contended that the assessee was not able to reply to the various notices since he had shifted his residence to a new address and therefore the notices were returned as unserved. Therefore, the assessee prayed the NFAC to grant one more opportunity to put forth his case before the lower authority. The NFAC also issued hearing notices on 14.01.2021, 18.04.2023 and 10.11.2023 but the assessee had not responded to the above notices and therefore the NFAC had dismissed the appeal ex-parte. Assessee now preferred this appeal before the Tribunal challenging the ex-parte order of the NFAC with a delay of 72 days and prayed to grant one more opportunity.

3. At the time of hearing, the learned AR filed a Paper Book which comprises the details of the amount deposited in the bank account and the invoices raised by the tour operator and submitted that the school has authorized him to collect amounts from the students for taking them to educational Tour and the same was deposited in to his Andhra Bank account and later on given to Crazy Holidays. The learned AR further submitted that the assessee sold one vacant plot and remitted the proceeds in to his Corporation Bank account and contended that the deposits are having proper source and therefore the same could not be treated as unexplained money u/s 69A of the Act. The learned AR further contended that the assessee had shifted his residence and therefore not received any communication from the AO and therefore the AO had passed the order u/s144 of the Act. The learned AR further contended that the assessee is not well versed in the new regime and therefore he has not attended the hearing before the NFAC. The assessee also filed an application to condone the

delay of 72 days in filing the appeal before this Tribunal and narrated the circumstances under which delay has been occurred. The assessee submitted that he is having an aged father in Mysuru and he is not keeping well because of the fall at his house and he was admitted in the hospital and therefore the assessee was pre occupied in attending his father's treatment and therefore the assessee was frequented to Mysuru and therefore he could not concentrate on any work and therefore the delay occurred. The learned AR further contended that the assessment order is an best judgement order and the NFAC order is also an exparte order and therefore prayed to grant one more opportunity to appear before the AO.

4. The learned DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

5. We heard the arguments of both the sides and perused the materials on record. Before proceeding with the appeal on merits, first we have to decide whether the delay occurred in filing the appeal before this Tribunal is a condonable one or not. The assessee had submitted that his father who was in Mysore was not feeling well and therefore for taking medical treatment, the assessee often proceeded to Mysore and thereafter his father was shifted to Bangalore and therefore the assessee was not able to concentrate on any work and hence the delay occurred. The assessee also filed the medical records issued by the hospital to show that his father was under treatment and therefore the delay has been occurred in filing the present appeal. We find that the reasoning given by the assessee is an acceptable one and therefore we condone the delay in filing the appeal.

6. The second issue arose for our consideration is whether the orders of the lower authorities are sustainable or not. As seen from the Assessment

Order, it is an ex-parte best judgment assessment order u/s 144 of the Act and the order of the NFAC is also an ex-parte order and therefore there is no effective opportunity available to the assessee to demonstrate his case that the ex-parte assessment order is not correct. The Paper Book now filed by the learned AR would support the case of the assessee that the school had authorized the assessee to collect the amounts from the students for conducting a tour which was deposited in the bank account and later on given to the Crazy Holidays, who organized the tour. The other documents such as the sale deed would support that the assessee had deposited the amount in his bank account from the known sources and therefore the same could not be treated as an unexplained money under section 69A of the Act. But the documents now filed by the assessee before this Tribunal were not placed before the lower authorities in order to give their findings on them. We, therefore, in the interest of justice, inclined to set aside the orders of the AO and the NFAC and remit the issue to the file of the AO for deciding the issue afresh after considering the documents submitted by the assessee and after granting an opportunity of being heard to the assessee.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(SOUNDARARAJAN K)
Judicial Member

Bangalore,
Dated : 03.06.2024.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.