

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.758/Bang/2024
Assessment Year : 2017-18

Shri. Niduvalesannaiah Chandru, G Hosahalli Gonibeedu, Mudiere – Taluk, Chikamagalur – ist, Mudigere – 577 132. PAN : AGDPC 1378 E	Vs.	ITO, Ward – 1, Chikmagalur.
APPELLANT		RESPONDENT

Assessee by	:	Shri. A Shiva Rao, CA
Revenue by	:	Shri. Ganesh R. Gale, Standing Counsel for Department.

Date of hearing	:	25.06.2024
Date of Pronouncement	:	25.06.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 27.12.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2017-18.

2. The grounds raised read as follows:

“The learned Assessing Officer has erred in treating the cash deposit of sale proceeds of agricultural commodity as unexplained investment under section 69 of the Income Tax Act, 1961 and added to the income of the appellant.”

The first appellate authority has erred in not issuing hearing notices by Postal Service and dismissing the first appeal.

That the Appellant craves permission to add, alter, amend, and to modify, substitute, delete and to rescind all or any of the GROUNDS OF APPEAL on or before the Hearing, if necessary, so arises.”

3. At the very outset, we notice that the appeal of the assessee has been decided ex-parte by the CIT(A) since there was no response to the notices issued from the Office of the CIT(A). The learned AR has filed a brief synopsis stating the reasons for non-representation during the course of appellate proceeding. The same reads as follows:

“The Appellate proceedings before the (NFAC), was an ex-party order. It is submitted that the appellant is an agriculturalist, residing in a remote place, a senior citizen, not well versed with E proceedings. Moreover the appellant is not having good health is suffering from hypertension, diabetes mellitus and ankle bilateral swelling pain, difficult to walk is taking treatment for more than 2 years. Hence, he was not able to reply to the posted on the e-proceedings portal. The first appellate authority has posted the hearing notices in E-proceedings portal only and not by posted services and dismissed the first appeal”.

As a matter of act, while filing the appeal, in the appeal form-35, the appellant has very clearly stated, in response to a query in the said form "whether notices/ communication may be sent on email?", the Answer was-"No" (ANX-4).

The above answer "NO" was because the appellant was an agriculturalist, staying in a remote place, wherein he had no well-versed knowledge of attending the e-proceedings, apart from the fact that he was a senior citizen, did not maintain good health suffering from multiple diseases.”

4. As regards the issue on merits, the learned AR submitted that cash deposits are out of sale receipts of agricultural land and a sum of Rs.64 lakhs was received on 06.07.2016 which was deposited during the demonetization period. The learned AR has placed on record copy of agreement to sell, copies of the sale deed,

etc., in support of his arguments, the cash deposits are out of receipts of sale of agricultural lands. It was submitted that though these sale agreements and sale deeds were placed before the AO, the AO has not taken note of the fact of the said sale agreement at page 8 wherein it has been stated that assessee was in receipt of Rs.64 lakhs on 06.07.2016. It was submitted that in the interest of justice and equity one more opportunity may be granted to the assessee to explain the source of cash deposits.

5. The learned Standing Counsel supported the Orders of the AO and CIT(A).

6. I have heard the rival submissions and perused the material on record. Assessee is a senior citizen. Assessee could not file written submissions during the course of appellate proceedings since he was suffering from various diseases and was taking treatment for more than two years. Assessee is not very computer literate and had specifically sought for physical notices to be issued in Form 35. In the interest of justice and equity, I am of the view that assessee ought to be provided with one more opportunity to explain the source of cash deposit. Since the issue has not been properly considered by the AO, I deem it appropriate to restore the matter to the AO. The AO is directed to afford a reasonable opportunity of hearing to the assessee before a decision is taken in the matter. It is ordered accordingly.

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

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

Sd/-

**(GEORGE GEORGE K)
Vice President**

Bangalore.

Dated: 25.06.2024.

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.