

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.266/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

BSK Agencies Warangal PAN:AAGFB1285Q (Appellant)	Vs.	Income Tax Officer Ward 1 Warangal (Respondent)
निर्धारिती द्वारा / Assessee by:		Advocate S. Sandhya
राजस्व द्वारा / Revenue by:		Smt. Sheetal Sarin DR
सुनवाई की तारीख / Date of hearing:		13/06/2024
घोषणा की तारीख / Pronouncement:		28/06/2024

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 2.12.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. The assessee raised the following grounds:

- 1) The order of the learned CIT (A) is erroneous to the extent it is prejudicial to the appellant;
- 2) The learned CIT (A) erred in not admitting the evidences filed before him and in not considering the explanation submitted;
- 3) The learned CIT (A) erred in confirming the action of the Assessing Officer in treating Rs.2,86,05,500/- as the income assessable u/s 69A of the I.T.Act.
- 4) The learned CIT (A) erred in not admitting the evidences/explanations submitted before him;
- 5) Any other ground/grounds that may be urged at the time of hearing;

3. Facts of the case, in brief, are that the assessee firm is in the business of retail trade in gold and filed the return of income for A.Y. 2017-18 on 08-11-2017 admitting income of Rs. 67,750/-. The case was selected for scrutiny under CASS and notice u/s 143(2) of I.T. Act dated 27-09-2018 was issued and served on the assessee. In response to the notices issued, the assessee furnished information from time to time through e-proceedings. During the course of assessment proceedings, information was called from third parties and as seen from the bank account statement of the assessee, demonetized currency amounting to Rs. 2,86,05,500/- was deposited into the bank accounts.

4. The assessee vide response to the show cause notices dated 03-12-2019 explained that the cash deposits were out of the cash balance available on 09-11-2016 and from the sale proceeds during the period. However, the assessee failed to furnish any cash book or sales register to substantiate the claim. There is no documentary evidence submitted

by the assessee to show the available closing cash balance prior to the day demonetization was announced. The onus is on the assessee to prove that the cash deposited are from explained sources or already offered to tax. Mere claiming of the sources as cash balance without any documentary proof is not sufficient evidence to accept the claim that the cash deposited are from the cash balances and sales. As the assessee has failed to prove this fact that the Cash deposited during demonetization period are from explained sources and therefore, the Assessing Officer held that the assessee has concealed its true income which otherwise is taxable and therefore, the amount of demonetized cash deposited in bank accounts during Demonetization period, represented income of assessee from undisclosed sources and are taxable u/s 69A of the Act, the assessee has been intimated the same by way of show cause notice dated 03-12-2019. Considering these facts, the cash deposited to the tune of Rs. 2,86,05,500/- into bank account is income assessed u/s 69A of the Act and is to be taxed u/s 115 BBE of the Act at the rate of 60%. Thus, the Assessing Officer completed the assessment by making a demand of 2,86,73,250/-.

5. In appeal, the learned CIT (A) NFAC upheld the addition of Rs.2,86,05,500/- made by the Assessing Officer on the ground that the assessee has not furnished evidences and rejected the cash book submitted by the assessee.

6. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

7. The learned AR also relied upon the decision of the Coordinate Bench of the Tribunal in assessee's own case for the A.Y 2017-18 whereby the Tribunal under similar set of facts have remanded back the matter for fresh examination before the authorities below.

8. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A) NFAC.

9. We have heard the rival arguments made by both the sides and perused the material available on record. The learned CIT (A) NFAC rejected the request of the assessee on a hyper technical basis saying that no formal application has been filed by the assessee under Rule 46A demonstrating why the evidence has not been produced by the assessee before the Assessing Officer. In our view, the rules of procedure as enumerated under Rule 46A is a procedure to ensure fair free adjudication of the appeal and is provided under Rules to advance ends of justice and not to be a road blocker in the ends of justice. The rules are handmade tools to achieve the ultimate goal of justice. In our considered view, it is necessary that the evidence filed by the assessee, the learned CIT (A) NFAC should have examined the evidence or should have called for a remand report from the Assessing Officer. Both have not been done by the learned CIT (A) NFAC and the learned CIT (A) NFAC, has dismissed the appeal of the assessee, even without discussing the issue on merit. In view of these facts, the matter is required to be remanded back to the file of the Assessing Officer and the Assessing Officer is directed to examine the documents/ evidences which have been filed before the learned CIT (A) NFAC or the assessee would file before the Assessing Officer as may be called for to prove that no addition can be made in the hands of the assessee. The assessee is hereby directed to appear before the

Assessing Officer at the appointed date and time and furnish the requisite details as called for by the Assessing Officer without seeking any adjournment under any pretext. We hold and direct accordingly.

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

Order pronounced in the Open Court on 28th June, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th June, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Bollam Sampath Kumar Jewellers P Ltd 8-7-159 Sunil Theatre, Station Road, Warangal 506002
2	Income Tax Officer Ward 1 Warangal
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order