

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “B” BENCH, BANGALORE**

**Before Shri Laxmi Prasad Sahu, Accountant Member  
and  
Shri Keshav Dubey, Judicial Member**

<b>ITA No. 750/Bang/2024</b> (Assessment Year: 2012-13)		
Kanala Subramanyam No. 58/1, 8th Cross, 12th Main Raghavendra Block Srinagar, Bengaluru 560050 PAN – BRYPS2091H	vs.	The Income Tax Officer Ward - 5(2)(5), Bengaluru
(Appellant)		(Respondent)
Assessee by:	Shri T. Srinivasa, CA	
Revenue by:	Shri Subramanian S., JCIT-DR	
Date of hearing:	25.06.2024	
Date of pronouncement:	03.07.2024	

**ORDER**

**Per: Keshav Dubey, J.M.**

This appeal at the instance of the assessee is directed against the order of the National Faceless Appeal Centre, Delhi (CIT(A)) vide DIN & order No. ITBA/NFAC/S/250/2003-24/1062689129(1) dated 15.03.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2012-13.

2. The assessee has raised the following grounds of appeal: -
1. *That, in the facts and circumstances of the case, the impugned order passed by the Commissioner of Income Tax (Appeals) NFAC is highly unjust, arbitrary and contrary to law and the principles of natural justice.*
  2. *That in the facts and circumstances of the case, the learned Commissioner is not justified to have passed the impugned order in a mechanical manner and without appreciation of the*

*complete facts of the appellant's activities and thus concluding the proceedings without application of mind.*

3. *That, in the facts and circumstances of the case, the Learned Commissioner has failed to appreciate that the banking transaction of the appellant during F.Y. 2011-12 were in the normal course of the appellant business activities and that the cash deposits to his bank account were out of genuine business receipts as well as the re-deposit of the earlier withdrawals remaining un-utilized;*
4. *That, in the facts and circumstances of the case, the learned Commissioner has erred in law in taking into consideration only the amounts deposited by the appellant to his bank account without considering the amount withdrawn for appellant's business activities and also the amounts re-deposited to his bank account;*
5. *That, in the facts and circumstances of the case, the Learned lower authorities are not justified to have treated the entire volume of trading entered into by the appellant though his brokers M/s Fortune Commodities as appellant's profits from the said activity instead restricting the same to the profits earned therefrom;*
6. *That, in the facts and circumstances of the case, the learned assessing officer is not justified in concluding the proceedings summarily without invoking the provisions of section 133 (6) of the Income Tax Act 1961 against the said broker to ascertain the complete details of the Appellant's activities to determine the taxable earnings if any, during the relevant previous year;*
7. *That, in facts and circumstances of the case, the Learned lower authorities ought to have restricted the additions, if any, warranted, only to the extent of embedded profits earned by the appellant during the relevant point in time;*
8. *That, in facts and circumstances of the case, the Learned lower authorities ought to have restricted the additions towards earnings from the commodities trading activities only to the extent of profit earned there from;*
9. *That in the facts and circumstances of the case, the learned lower authority ought to have been guided by the law declared on the issue in the following cases.*

✓ *Udayam Mahesh Sharma Vs ACITITAT Surat.*

✓ *Manish Kumar Mittal Vs ITO (ITAT-Delhi)*

✓ *Govind Gopal Goyal Vs ITO (ITAT-Surat).*

*For the above grounds and such other grounds that may be urged at the time of hearing with kind permission, the Appellant most humbly pray and submit that the appeal may kindly be allowed in the interest of justice.”*

3. The brief facts of the case are that the assessee is a resident individual and claimed to be in the business of construction & repair services (small houses and repair works) & also dealing with the Futures & options during the FY 2011-12 relevant for AY 2012-13. The assessee case was selected for scrutiny based on the information with the department that there were substantial cash deposits and time deposits in assessee's bank account and the assessee had also entered into share transactions/trading of commodities during the relevant assessment year. It was also found that the assessee had not filed his return of income for AY 2012-23 u/s. 139(1) of the Act. Accordingly the assessee's case was reopened u/s. 147 of the Act and a notice u/s. 148 of the Act dated 28.03.2019 was issued after obtaining prior approval of the Pr. CIT, Bangalore-5 within the statutory time limits. During the course of the Assessment Proceedings even after service of notices u/ss. 148, 142(1) as well as show cause notices u/s. 144 of the Act, the assessee neither filed the return of income nor submitted his reply in response to the said notices. Thus, even after providing ample opportunities by the AO the assessee has failed to comply with any of the notices issued. The ld. AO by applying the provisions of s. 144 of the Act added the entire cash deposits amounting to Rs. 36,76,980/- as well as time deposits amounting to Rs.8,95,500/- in his bank account as unexplained money amounting to Rs.45,72, 480/- u/s. 69A of the Act and further in the absence of any explanation about the sources of investment made in share transactions to the tune of Rs. 46,50,450/- added as unexplained investment amounting to Rs. 46,50,450/- u/s. 69 of the Act & thus completed the Assessment on a total Assessed Income of Rs.92,22,900/- .

4. Aggrieved by the assessment completed U/s 144 r.w.s 147 of the Act, the assessee preferred an appeal before the Id. CIT(A)/NFAC. The Id. CIT(A) confirmed the view taken by the AO and dismissed the appeal by observing as below: -

*“Though, the assessment for A.Y. 2012-13 is a new proceeding, the appellant does not appear to have given any separate point-wise reply and has instead submitted some factual details (veracity not proved) pertaining to the A.Y. 2017-18. There is no iota of evidence, provided by him which can explain the nature and source of the sizeable cash deposit of Rs.36,76,980 and time deposit of Rs.8,95,500 (Total :- Rs. 46,50,450). Only stating that he is into the business of construction and repair services (Ref:- Para 2 of statement of facts) will not suffice, unless supported by credible evidence. The AO rightly invoked Sec.69A of the I.T. Act to add back the full amount of Rs. 45,72,480 in absence of any evidence and books of accounts which were found not maintained (Para 9 of the assessment order)*

*As for the appellant's furnishing proof of the veracity of the share transactions by way of a ledger extract of a certain 'Fortune Commodities', it absolutely proves nothing. The one page 'Fortune Ledger extract shows a closing balance of Rs.1248.89, that too pertaining to a period 10-05-2012 to 24-07-2012, clearly out of the purview of the Assessment Year in question (2012-13). The impugned amount of investment, i.e. Rs. 46,50,450 has clearly remained unexplained from all conceivable angles and therefore, I cannot but agree with the AO when he brought this amount to taxation u/s 69 of the I.T. Act.*

***All the grounds of appeal, raised by the appellant, therefore, stand addressed and they all were dismissed.”***

5. At the outset the Id. A.R. of the assessee drew our attention on the adjournment application dated 24.06.2024 and prayed to adjourn the hearing of the case fixed today by two weeks as the assessee wants to submit necessary paper book relating to the relevant documents/record to be relied upon which are crucial to the issue involved. On being queried by the Bench about the reasons for not appearing before the AO, the Id A.R. submitted that the assessee is not a computer literate and also not aware of the provisions of Income Tax Act. Further, the assessee was neither aware of the proceedings

initiated by the department nor had received any effective notice/communication including the show cause notice. Further, the Id. A.R. vehemently submitted that as no reasonable opportunity of being heard has been provided to the assessee, it is a clear violation of Principles of the natural justice and prayed to grant one more opportunity to substantiate his case.

6. At the time of hearing, both the parties fairly conceded that the issue may be remitted to the file of AO since both the orders passed by the lower Authorities are without providing reasonable opportunity to substantiate his case. Accordingly, we reject the adjournment application as we are of the opinion that in the interest of Justice & fair play it is appropriate to remand the issue in dispute in its entirety to the file of the AO to consider the case afresh. The assessee is directed to cooperate with the proceedings & file all the documents/record before the AO which he intent to file before the Tribunal by way of paper book. Needless to say the reasonable opportunity of being heard to be given to the assessee and the Id. AO is to decide the issue in accordance with law. In case of further default on the part of the assessee, he shall not be entitled for any leniency. Ordered Accordingly.

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

Order pronounced in the open Court on 3<sup>rd</sup> July, 2024.

Sd/-  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

Sd/-  
**(Keshav Dubey)**  
**Judicial Member**

Bengaluru, Dated: 3<sup>rd</sup> July, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Bangalore*