

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "B" BENCH, BANGALORE**

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

ITA No. 751/Bang/2024 (Assessment Year: 2017-18)		
Kanala Subramanyam No. 58/1, 8th Cross, 12th Main Raghavendra Block Srinagar, Bengaluru 560050 PAN – BRYP2091H (Appellant)	vs.	The Income Tax Officer Ward - 5(2)(5), Bengaluru (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/250/2003-24/1062689536(1) dated 15.03.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2017-18.

2. The assessee has raised the following grounds of appeal: -
1. *The impugned order passed by the learned Commissioner of income tax (Appeals) NFAC is highly unjust, arbitrary and contrary to law and the principles of natural justice.*
 2. *The Learned Commissioner of income tax (Appeals) NFAC has failed to appreciate that the banking transaction of the appellant during F.Y. 2016-17 were in the normal course of the appellant's business activities and that the cash deposits to his bank account*

were in the normal course of his business activities and were out of genuine business receipts as well as the re-deposit of the earlier withdrawals.

3. *The learned Commissioner of income tax (Appeals) NFAC is not justified to have treated the entire cash deposited to the appellant's Bank accounts as unexplained cash and ought have appreciated that those were in the normal course of business and that the appellant had offered to tax the net income earned by him out of those transactions;*

Without prejudice to the above grounds the appellant urged the following alternate grounds.

4. *That, in facts and circumstances of the case, the Learned lower authorities ought to have appreciated that the action of the learned assessing officer had resulted in subjecting the banking deposits to taxation TWICE i.e once as part of the income offered by the appellant in his return of Income and also as added in the assessment order which is not permissible in law.*
5. *That, in the facts of the case, the learned Commissioner of Income tax (Appeals) NFAC ought to have restricted the additions, if any, warranted, only to the extent of embedded profits in the business transactions with the appellant bankers and not the entire deposits as erroneously determined by the learned assessing officer.*
6. *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 running the business of construction & repair services (small houses and repair works) during the FY 2016-17 relevant for AY 2017-18 filed his return of Income on 31/03/2018 declaring total income of Rs. 12,71,060/-.

Subsequently the assessee case was selected for **limited** scrutiny under CASS for the reason “cash deposit during the year”. Accordingly notice u/s. 143(2) of the Act dated 18/09/2018 was duly served within the statutory time limit. During the course of the Assessment proceedings in response to Notice U/s 142(1) of the Act, the assessee stated that he is a work Contractor and the entire cash deposits made by him during the year were received from the debtors and Customers. Further during the course of the Assessment proceedings the Assessee also produced the computation of income, Profit & loss A/c & Balance sheet as well as Bank Accounts held by him during the FY 2016-17 relevant for the Asst year 2017-18. Since the assessee did not furnish any details to explain the sources of cash deposits & also the supporting documents like Name, address & PAN of the persons from whom he had received the contract Amount even in response to notices issued U/s 142(1) as well as Show cause notice, the AO added the entire cash deposits into bank accounts namely Canara Bank, Union Bank Of India and Indian Bank totalling to Rs. 41,43,500/- as the unexplained Money u/s. 69A of the Act.

4. Aggrieved by the assessment completed U/s 143(3) of the Act, the assessee preferred an appeal before the Id. CIT(A)/NFAC. The Id. CIT(A) affirmed the view taken by the AO and dismissed the appeal by observing as below: -

“The appellant's contention is carefully perused and his claim that he did not receive any notice is found contradictory, when in the same letter, he claimed to have submitted all particulars to the AO vide letter dated 06- 03-2019. The assessment order is very clear in that, the appellant received the 1st notice u/s 142(1) and even the show cause notice got duly served on him. Most importantly, the so called cash book and the cash flow statement which is supposed to have been submitted vide 'point 6' to the undersigned, has been gone through and there is nothing found there by way of evidence, viz., names of the debtors etc. The other points put forward by the appellant have no bearing on the main issue, which is the substantiation of the source of the impugned cash.

On going through the contents of the show cause notice issued by the AO to the appellant [Ref:- sub-para 2 of para 4 of the assessment order], it is evident that no books of accounts were produced and since the source of the cash could not be explained to the satisfaction of the AO, the application of the provision of Sec.69A of the I.T. Act is deemed appropriate.

I, therefore, see no reason to interfere with the finding and conclusion of the AO.

The sole ground of appeal, is, therefore dismissed.”

5. At the outset the learned A.R. of the assessee drew our kind 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 seeks 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 ld A.R. submitted that the assessee is not a computer literate and also not aware of the provisions of Income Tax Act. Further, the learned A.R. vehemently submitted that as no reasonable opportunity of being heard has been provided to the assessee, it is a clear violation of 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 the Assessee could not produce the details/evidences before the lower Authorities. 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 ld. 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 3rd July, 2024.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bengaluru, Dated: 3rd 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