

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

Before Shri Manjunatha, G. Accountant Member and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.458/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2017-18)

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| Shri Waheeduddin Khaja Moinuddin Hyderabad PAN:DGOPM7707P | Vs. | ITO (International Taxation) Hyderabad |
| (Appellant) | | (Respondent) |
| निर्धारिती द्वारा/Assessee by: Shri Sashank Dundu, Advocate | | |
| राजस्व द्वारा/Revenue by:: Smt.Sheetal Sarin, DR | | |
| सुनवाई की तारीख/Date of hearing: 09/07/2024 | | |
| घोषणा की तारीख/Pronouncement: 09/07/2024 | | |

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 29.02.2024 of the learned CIT (A)-10, Hyderabad relating to A.Y.2017-18.

2. The brief facts of the case are that the assessee did not file his return of income for the A.Y 2017-18 u/s 139(1) of the I.T. Act, 1961. On the basis of statement of financial transaction filed by the Banks in the wake of demonetization, there was information available with the Department that the assessee has

made huge cash deposits during demonetization period. Hence, the Assessing Officer issued notice u/s 142(1) of the I.T. Act, 1961 on 8.3.2018. However, the assessee did not file his return of income for the A.Y 2017-18 in response to the said notice. Since the assessee failed to comply with the terms of a notice issued u/s 142(1) of the Act, the Assessing Officer proceeded to complete the assessment under “best judgment assessment” and assessed the total income of the u/s 69A of the I.T. Act, 1961 at Rs.10,80,000/-and made a demand of Rs.13,34,880/- u/s 156 of the I.T. Act, 1961.

3. Feeling aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). The learned CIT (A) dismissed the appeal of the assessee on the ground that the assessee failed to appear before the learned CIT (A) and submit any substantive evidences, regarding cash deposits during demonetization period and interest credited into the bank accounts.

4. Aggrieved by the order of the learned CIT (A) the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the statutory notices issued by the Department were not received by the assessee, hence, there was no representation before the Assessing Officer and the learned CIT (A). The learned Counsel for the assessee further submitted that given an opportunity, the

assessee would be able to substantiate its claim by producing all the necessary evidences before the Assessing Officer.

6. The learned DR, on the other hand, submitted that despite issuing several statutory notices by the Assessing Officer and the notices issued by the learned CIT (A), the assessee neither appeared before the lower authorities nor complied with the notices issued by the authorities below. Therefore, she submitted that the orders of the authorities below should be upheld and the grounds of appeal filed by the assessee should be dismissed.

7. We heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A). We find the learned CIT (A) dismissed the appeal file by the assessee ex-parte for non-prosecution, however, not discussed the issue on merits. It is a well settled position of law by the decision of various Courts that even in the case of ex-parte proceedings for non-prosecution of the appellant, the appellate authorities should decide the appeal on merit on the basis of material available on record. Since the learned CIT (A) dismissed the appeal filed by the assessee on technical ground for non-prosecution, in our considered view, the assessee deserves one more opportunity of hearing to explain its case. Therefore, we deem it proper to set aside the issue to the file of the Assessing Officer because even before the Assessing Officer, the assessee does not appear and filed any details. Thus, we set aside the order of the learned CIT (A) and restore the issue back to the file of the Assessing Officer

with a direction to re-consider the issue afresh after providing reasonable opportunity of being heard to the assessee.

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

Order pronounced in the Open Court on 9th July, 2024.

Sd/-

Sd/-

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| (K. NARASIMHA CHARY) JUDICIAL MEMBER | (MANJUNATHA, G.) ACCOUNTANT MEMBER |
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Hyderabad, dated 9th July, 2024

Vinodan/sps

Copy to:

| S.No | Addresses |
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| 1 | Shri Waheeduddin Khaja Moinuddin, 8-1-40/M/41, Near Seven Tombs, Samtha Colony, Tolichowk, Golconda, Hyderabad 500008 |
| 2 | Income Tax Officer (International Taxation) -1 Aayakar Bhavan, Basheerbagh, Hyderabad 500004 |
| 3 | Pr. CIT - 10 Hyderabad/CIT(IT &TP) Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order