आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं /**ITA No.120/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2013-14)

Shri Madaneshwar Vuppala Hyderabad PAN:AEAPV3029G	Vs.	Income Tax Officer Ward 9(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.C. Devdas, CA	
राजस्व द्वारा/Revenue by::	Shri Mookambikeyan, DR	
सुनवाई की तारीख/Date of hearing:	23/07/2024	
घोषणा की तारीख/Pronouncement:	23/07/2024	

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 21.11.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. The assessee has raised the following grounds and additional grounds:

1. The order of the C.I.T (Appeals)/NFAC in dismissing the appeal of the appellant is wholly unsustainable both on law and in facts
2. The order of the C.I.T(A)/NFAC failed to note that the appellant was not computer savvy and had relied on the auditor who had the email IDs to take care of the notices served and the auditor not having intimated to the appellant and therefore there was no intention to default and on the same set of facts the C.I.T(A)/NFAC having condoned the delay of 132 days in filing the first appeal ought to have considered the statement of facts filed along with the appeal and therefore erred confirming the addition of Rs.2,63,00,000.

3. The learned C.I.T(A)/NFAC erredin confirming the addition of Rs. 2,63,00,000 under section 69-C of the IT act, 1961 as unexplained expenditure, while the amounts were withdrawn from the bank and represented expenditure incurred on purchase of Rice for Re-Sale.

4. The learned C.I.T(A)/NFAC failed to note that the statement of facts filed along with the appeal clearly revealed that the total turnover of rice was Rs.6,58,46,215 and the purchases were Rs.6,47,03,676 and therefore erred in confirming an addition of Rs.2,63,00,000 which represented expenditure incurred for purchases of rice for sale and the sources for the payment were available and therefore erred in confirming the addition under section 69-C of the I.T Act, 1961.

5. The Appeal and craves to add, modify, or amend the above grounds, any time during the course of appeal

3. At the outset, the learned AR submitted that the additional grounds raised by the assessee are required to be adjudicated since the assessee has not raised this legal ground before the learned CIT (A) and therefore, the same may be admitted. Our attention was drawn to the following additional ground raised by the assessee:-

> 1. The Re-opening of assessment for the assessment-year 2013-2014 on 31/03/2021 is without jurisdiction, Invalid and bad in law as the notice u/s.148 has been issued on 31/03/2021 which is beyond six years from the end of assessment-year 2013-2014 and therefore the entire assessment made u/s.147 r.w.144 of the I.T Act, 1961 on 30/03/2022 assessing the Appellant on an Income of Rs.2,66,31,310 has no legs to stand and is to be quashed.
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> 2. The Learned C.I.T(A)/NFAC failed to note that the basis of re-opening of assessment was that the Information made available on insight postal that the Appellant had made huge cash withdrawals of Rs.2,63,00,000 cannot be the basis of assessment as the information does not speak about any Income escaping assessment and therefore the entire reassessment proceedings u/s.147 r.w. 144 of the Income-Tax Act, 1961 on the basis of a reopening notice u/s.148 on 31/03/2021 which is time barred and therefore the action of the NFAC/ASSMT/APPEAL/Centre in confirming the addition of Rs. 2,63,00,000 cannot stand and the entire assessment is to be quashed.
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> 3. Without prejudice to any of the aforesaid grounds the sanction granted by appropriate authority is with a application of mind and has been given in a mechanical manner which is contrary to the statutory provisions.

4. The learned DR objected to the admission of the additional grounds.

5. After hearing both sides, we find that the ground raised by the assessee are legal in nature and therefore we deem it appropriate to admit the additional grounds now raised before us for the above-said purposes we may fruitfully rely upon the decision of the Hon'ble Supreme Court in the case of NTPC reported in 229 ITR 383 (S.C). Accordingly, the additional grounds are admitted.

6. In the present case the Ld. CIT(A) passed the order ex parte while deciding the assessee's appeal. In the order the Ld. CIT(A) mentioned as under :-

> In this case, Notice was issued on 31.10.2022 to the appellant to furnish written submissions and documents on or before 15.11.2022. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 15.12.2022 to the appellant to furnish written submissions, information and documents on or before 30.12.2022. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing further to say in the matter and the appeal would be decided on merits on the basis of material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 31.10.2023 to the appellant to furnish written submissions and documents on or before 08.11.2023. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, the appeal is being decided on merits on the basis of material available on record.
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> Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 30.03.2022 filed by the appellant along with Form 35. The material on record has been carefully perused. No evidence has been tendered by assessee in appeal.
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> There is no material on record to warrant interference in the order of the AO.
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> In view of the fact that there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby **dismissed**.

7. The learned AR submitted that the appeal of the assessee is required to be allowed by allowing the additional grounds raised by the assessee, which are reproduced herein above. It is the submission of the learned AR that the reopening done by the Assessing Officer is required to be annulled on the ground that the group running was done by the assessing officer beyond. Of six years. The conjoined reading of sections 148 and 149 makes it abundantly clear that the reopening of the assessment beyond the period of 6 years is not permissible.

8. Per contra, the learned DR submitted that the issue whether the reassessment made by the Assessing Officer was beyond a period six years or is not is required to be examined based on the facts by the lower authority and this issue could not be decided at this stage, in the light of fact that this ground has not been raised by the assessee before authorities below.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the learned CIT (A) has passed the ex-parte order since the assessee did not comply with the notices issued by the learned CIT (A) and before the Assessing Officer also the assessee did not comply with the statutory notices issued and failed to submit any documents/evidences. In this view of the matter, we deem it proper to remand back the matter back to the file of the learned CIT (A) with a direction to pass a reasonable speaking order based

on the "**additional grounds"** now raised before us after affording reasonable opportunity of being heard to the assessee.

The learned CIT (A) is also directed to examine whether the reopening of the assessment made by the Assessing Officer was within the time period prescribed by the Act or not. After examining this aspect ld.CIT(A) shall proceed further to decide the other grounds on merit. Needless to say, that the above said exercise is required to be carried out by the learned CIT (A) after affording reasonable opportunity of being heard to the assessee. The assessee is also directed to cooperate with the learned CIT (A) by filing proper documents/evidences on the appointed date 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 23rd July, 2024.

Sd/-	Sd/-
(MANJUNATHA, G.) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 23rd July, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 9(1) Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order