

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos.663 and 664/Hyd/2024		
Assessment Year: 2010-11		
Nunepally Suresh, Hyderabad. PAN : ADXPN1021E (Appellant)	Vs.	The Income Tax Officer, Ward – 11(3), Hyderabad. (Respondent)
Assessee by:		Shri M.V. Joshi, C.A. appeared for Shri M. Chandramoleswara Rao, C.A.
Revenue by:		Shri AVES Madhukar, Sr.AR
Date of hearing:		29.07.2024
Date of pronouncement:		29.07.2024

ORDER

PER LALIET KUMAR, J.M.

These appeals of the assessee for A.Y. 2010-11 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.24.06.2024 invoking proceedings under section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. The appellate order passed by the Ld. NFAC/CIT(A) is erroneous and bad both on facts and in law.

2. On the facts and in the circumstances of the case in law the Ld. NFAC/CIT(A) has ought to have appreciated the fact that the Ld. Income tax Officer, Ward 11(3) Hyderabad has wrongly issued notice under 148 as the alleged income chargeable to tax escaped assessment is above 20 lakhs. As per the CBDT Instructions the jurisdiction over the cases whose income is above Rs. 20 Lakhs vests with Assistant Commissioner or Deputy Commissioner of Income tax and hence the proceedings initiated by the Ld. Income tax Officer, Ward 11(3) Hyderabad is bad in law.

3. On the facts and in the circumstances of the case in law the Ld. NFAC/CIT(A) has erred in sustaining the assessment order passed by the Assessing Officer under section 144 r.w.s. 147 of the I.T.Act, 1961 without service of the mandatory notice under section 148 on the appellant before the statutory time frame limitations. The Ld. NFAC/CIT(A) ought to have considered the fact that the service of the notice is prerequisite condition to assume the jurisdiction over the appellant to pass the assessment order. Thus, the assessment order passed without service of the mandatory notice under section 148 on the appellant is bad in law and null and void.

4. On the facts and in the circumstances of the case in law the Ld. NFAC/CIT(A) erred in sustaining the addition made in the assessment order without considering the facts available as per the bank records and thus violated the fundamental requirement of the best judgement assessment. The Ld. NFAC/ CIT(A) ought to have considered that the initiation of re assessment proceedings is on fallacious facts of the deposits of amount of cash will vitiates the validity of the assessment order.”

3. The brief facts of the case are that as per the information available with the department, the assessee has deposited cash of Rs.10 lakhs in the Savings Bank account during the F.Y.2009-10 relevant to A.Y.2010-11. On verification, Assessing Officer noticed that the assessee had not filed the return of income for the Asst. Year 2010-11 explaining the sources for the cash deposits. Hence, issued notice u/s.148 dt.31/3/2017 which was duly served on the

assessee. As there was no response from the assessee, notices u/s.142(1) dated 25/10/2017 and show-cause notice dated 19/12/2017 were issued. However, there was no compliance to any of these notices from the assessee. In view of the non-compliance to the notices issued and as the assessment was getting barred by limitation of time by 31/12/2017, as no other option except to complete the assessment ex-parte u/s.144 of I.T.Act.

3.1. During the course of assessment year, assessee had maintained bank account(s) with HDFC Bank Limited and as per the information received from the said Bank located at Senapati Bapat Marg, Mumbai, assessee had done transactions on 31.03.2010 by depositing cash of Rs.20,57,790/-. The assessee also made three transactions totaling to Rs.19,50,000/- on 17.06.2009. In the absence of any information / explanation from the assessee with regard to cash deposits and transactions made totaling to Rs.40,07,790/- (Rs.20,57,790/- + Rs.19,50,000/-) were treated as unexplained and accordingly, Assessing Officer completed the assessment and passed assessment u/s 144 r.w.s. 147 of the Act assessing the total income at Rs.40,07,790/-.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal before the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee on account of non-prosecution and also on merits.

5. The ld.AR for the assessee has submitted that in this case, the assessee was ex parte before the Assessing Officer as well as the ld.CIT(A). He further submitted that the ld.CIT(A) had dismissed the appeals of the assessee for not filing of return of income pursuant to section 148 of the Act. It was submitted that in the present case, the jurisdictional Assessing Officer had issued notice u/s 148 of the Act, whereas, as per the Board's Circular, it was required to be issued by the Deputy Commissioner. It was further submitted that service of notice was an essential condition for making the addition in the hands of the assessee, and without ensuring service of notice to the assessee, the Assessing Officer and ld.CIT(A) passed the orders. The ld.AR further requested the Bench to remand the matter back to the file of Assessing Officer for afresh adjudication.

6. Per contra, the ld.DR has submitted that the lower authorities have given sufficient time to the assessee to respond to the notices, and my attention was drawn to para 5 of the order of the ld.CIT(A), wherein three dates were given to file details / submissions by the assessee, but nothing has been filed by the assessee. The ld.DR further submitted that as the assessee has not responded to any of the notices, he does not deserve one more opportunity.

7. I have heard the rival submissions and perused the material on record. In the present case, the assessment pertains to A.Y. 2010-11, and the date of the assessment order passed by the Assessing Officer is 29.12.2017. On perusal of the record, it came to my notice that the assessee has not filed any reply to the notices issued by the lower authorities and has not explained the cash deposits made in his bank account, which led to the addition in his hands by the Assessing Officer. At this stage, the ld.AR has objected to reopening

the assessment on the reasons mentioned in the grounds of appeal as well as on account of the fact that the notice has not been served on both parties. However, in the interests of justice, it would be appropriate to remand the matter back to the file of the ld.CIT(A) for de novo consideration with a direction to consider all the submissions filed by the assessee. The assessee shall be at liberty to file documents, if any, as required for proving his case. Needless to say the ld.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the ld.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. I have not adjudicated the other grounds on merits as I am setting aside the orders passed by the lower authorities to the file of ld.CIT(A) for fresh adjudication. Thus, the grounds of the assessee are allowed for statistical purposes. In light of the above, the appeal of the assessee is allowed for statistical purposes.

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

ITA 664/Hyd/2024

9. The assessee has raised the following grounds of appeal:

“1. The appellate order passed by the Ld. NFAC/CIT(A) against the penalty order under section 271(1)(c) is erroneous and bad both on facts and in law.

2. On the facts and in the circumstances of the case in law the Ld. NFAC/CIT(A) erred in sustaining the penalty order passed under section 271(1)(c) of the I.T.Act on the basis of the invalid assessment order passed under section 144 r.w.s. 147 of the I.T. Act by the Assessing Officer.

3. On the facts and in the circumstances of the case in law the Ld. NFAC/CIT(A) failed to appreciate the fact that the penalty proceedings are initiated on the basis of the erroneous and mistaken facts mentioned in the assessment order. The Ld. NFAC/CIT(A) ought to have verified and checked the facts before levy of concealment penalty and confirming the same in the case of the appellant.”

10. This appeal is filed on account of the levy of penalty. It was submitted by the ld.CIT(A) in paras 5.2 and 5.3 that since the additions have been upheld in the hands of the assessee and despite granting opportunity to the assessee, the assessee did not file any submissions/documents or evidence in support of his case, and therefore, the Assessing Officer was left with no option to impose and confirm the penalty. As we have remanded back the quantum appeal to the file of ld.CIT(A) in ITA No.663/Hyd/2024 for the grant of one more opportunity to the assessee, therefore, in light of the above, we deem it appropriate to remand back this appeal also to the file of ld.CIT(A) to pass afresh order consequent to the adjudication of the quantum appeal i.e., ITA No.663/Hyd/2024.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

12. In the combined result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 29th July, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 29th July, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Nunepally Suresh, 6-32, Near Bahgat Singh Park, Fathenagar, Sanath Nagar, Telangana – 500018.
2	The Income Tax Officer, Ward – 11(3), Hyderabad.
3	Pr1.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order