

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / ITA No. 423 to 425/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2013-14, 2017-18 and 2019-20)

Farida Banu, ACIT, Central
C/o: P Murali & Co, chartered accountants, 6 – Vs. Circle-2 (3),
3 – 655/2/3, Somajiguda, Hyderabad-500082. Hyderabad
[PAN :AFQPB6398R]

अपीलार्थी / Appellant

प्रत्यर्थी /
Respondent

आ.अपी.सं / ITA No. 426 to 429/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2013-14, 2016-17, 2017-18 and 2019-20)

Mohammad Abdus Sattar, ACIT, central
C/o: P Murali & Co, chartered accountants, 6 – Vs. circle-2 (3),
3 – 655/2/3, Somajiguda, Hyderabad-500082. Hyderabad
[PAN :APRPS9709Q]

अपीलार्थी / Appellant

प्रत्यर्थी /
Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 31 /07/2024
घोषणा की तारीख/Pronouncement on: 31/07/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the separate but identical orders, all dated 31/10/2023 passed by the learned Commissioner of Income Tax (Appeals)-12,Hyderabad (“Ld. CIT(A)”), in the case of Farida Banu and Mohammed Abdus Sattar (“the assesseees”) for the assessment years 2013-14 to 2019-20 respectively, assesseees preferred these appeals. Since common issues are involved in all these matters, we deem it just and convenient to dispose of these seven appeals by way of this common order.

2. At the outset, learned AR submitted that the only short question that arises in these appeals is whether the assessee is entitled to adjust the cash seized during search against the admitted tax in full or not? He submitted that in spite of the fact that huge amount that was seized during the search that was conducted on 22/11/2018 in the premises of the assesseees and available with the Department, learned CIT(A) dismissed the appeals preferred by the assesseees, in limine, on the ground that the assesseees have not paid the admitted tax in full before the due date of filing of the appeal, and therefore, the appeal filed by the assesseees are not liable to be admitted for non-payment of admitted tax as per the provisions contained in section 249(4)(a) of the Income Tax Act, 1961 (for short “the Act”). Learned AR cited the decision of a coordinate Bench of this Tribunal in the case of Heena Kauser vs. ACIT in ITA numbers 430 to 432 /Hyd/ 2024 for the assessment years 2013-14, 2017-18 and 2019-20 wherein under identical facts and circumstances it was held that once the money seized by the Department was lying with the Revenue and advance tax was to be paid by the assessee as a precondition to file the appeal, then the said tax, if any, to be paid by the assessee could be adjusted in the accounts of the Revenue against the amount the rate, and merely because the assessee did not file an application for the adjustment of the existing

liability, it will not preclude the assessee from filing the appeal for non-deposit of tax liability, if the same can be adjusted from the seized cash.

3. Learned AR also submitted that the assessee submitted letters before the learned Assessing Officer to adjust the self-assessment tax from the cash seized during search. He filed the copies of such letters in the form part of record.

4. Learned DR heavily relied on the orders under challenge and submitted that the Bench in the case of Heena Kauser (supra) observed that if for any reason the learned CIT(A) concludes that the tax demand cannot be adjusted, then the authority may ask the assessee to deposit the self-assessment tax as provided under section 149 of the Act.

5. We have gone through the record in the light of the submissions made on either side. Absolutely there is no dispute that an amount of ₹ 4, 18, 31, 540/- was seized at the residential premises of the assessee in this case on 21/11/2018 during search and the same amount is available with the Revenue. It is also a fact that the learned CIT(A) vide impugned orders decline to admit the appeals on the ground that since the assessee's did not paid the admitted tax in full before the due date of filing of the appeal, the appeal filed by the assessee's are not liable to be admitted for non-payment of admitted tax as per the provisions contained in section 249 (4) (a) of the Act. To this fact situation, the decision of the coordinate Bench in the case of Heena Kauser (supra) is applicable and we deem it just and necessary to produce hereunder the relevant findings of the Bench:-

12. In the present case, undoubtedly, the huge amount of cash was recovered and seized during the course of search, which was sufficient to meet the tax liability. However, no application has been filed by the assessee before the Assessing Officer as provided under 1st proviso to section 132B of the Act and for the first time, the application was filed before the Id.CIT(A) on 12.03.2024.

12.1 In our considered opinion, once the money seized by the department was lying with the Revenue and advance tax was to be paid by the assessee as a precondition to file the appeal, then the said tax, if any, to be paid by the assessee could be adjusted in the accounts of the Revenue against the amount lying with it. For both purposes, the money will flow in the account of the Revenue / adjust to the account of the Revenue. Merely the assessee has not made an application for the adjustment of the existing liability, will not preclude the assessee from filing the appeal for non-deposit of tax liability, if the same can be adjusted from the seized cash. In our view, to make a request, at the stage of appellate proceedings, before the Id.CIT(A) for adjusting against the existing tax liability from the amount seized by the Revenue during the course of the search, is not prohibited, though, technically speaking, the application for adjudication is to be made within the time period provided by the 1st proviso of Section 132B of the Act. In view of the above, we deem it proper to remand back the matter to the file of Id.CIT(A) with a direction to examine afresh the contention of the assessee and find out whether at the stage of appellate proceedings, the request for adjustment of the seized amount can be accepted by the Revenue as against the tax demand now raised or not. In this case, the Id.CIT(A) concludes that the tax demand cannot be adjusted, so the authority may ask the assessee to deposit the self-assessment tax as provided under section 149 of the Act. Afterwards, the Id.CIT(A) is directed to decide the appeal on merits. We have not expressed any opinion on the merits and admissibility of the assessee's claim, the Id.CIT(A) is directed to decide the appeal without being influenced by our observation made hereinabove. Accordingly, the appeal of the assessee for A.Y. 2013-14 is allowed for statistical purposes.

6. Respectfully following the above view taken by the coordinate Bench, we set aside the impugned orders and restore the matter to the file of the learned CIT(A) with a direction to examine afresh the contention of the assessee and find out whether at this stage of appellate proceedings, the request for adjustment of the seized amount can be accepted by the Revenue as against the tax demand now raised or not and in case the learned CIT(A) concludes that the tax demand cannot be adjusted, the authority may ask the assessee to deposit the admitted tax as provided under section 149 of the Act.

7. In the result, all these appeals are allowed for statistical purposes.

Order pronounced in the open court on this the 31st day of July, 2024.

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated:31/07/2024

Copy forwarded to:

1. Smt.Farida Banu and Shri Mohammed Abdus Sattar C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082.
2. The ACIT Central Circle 2(3) Hyderabad
3. The Pr.CIT (Central), Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD