

**IN THE INCOME TAX APPELLATE TRIBUNAL “GAUHATI” BENCH,
VIRTUAL HEARING AT KOLKATA**

Before

**Dr. Manish Borad, Accountant Member
&
Shri Manomohan Das, Judicial Member**

**I.T.A. Nos.1 to 3/GTY/2024
Assessment Years: 2013-14 to 2015-16**

&

**I.T.A. Nos.4/GTY/2024
Assessment Years: 2017-18**

Zoramthari **Appellant**
(PAN: AAPPZ6814N)

Vs.

Income Tax Officer, Ward-1, Silchar **Respondent**

Appearances by:

*Shri Nikhil Goyal, Advocate appeared for Appellant.
Shri Kausik Ray, JCIT, appeared for Respondent.*

Date of concluding the hearing : 24.07.2024

Date of pronouncing the order : 26.08.2024

ORDER

Per Dr. Manish Borad, Accountant Member :

The captioned appeals filed by the assessee pertaining to the Assessment Years (in short “AY”) 2013-14 to 2015-16 & 2017-18 are directed against the separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Ld. Commissioner of Income-tax (Appeal), NFAC, Delhi [in short ld. “CIT(A)”] all dated 06.11.2023 arising out of separate assessment order passed u/s. 147 r.w.s. 144 of the Act by Assessing Officer, National Faceless Assessment Centre, Delhi dated 21.03.2022, 14.03.2022, 26.03.2022 and 25.03.2022 respectively.

2. As the grounds of appeal are common and facts are almost identical, except variance in amount, we dispose of all the appeals by this consolidated order for the sake of convenience and brevity.

3. As the grounds of appeal raised by the assessee for all these years are same except for the variance in amount, we reproduce below the grounds of appeal for AY 2013-14:

“1. That the reassessment proceedings are bad in law and non-est as the same have been concluded without following the directions of Hon’ble Supreme Court in the case of Union of India Vs. Ashish Agarwal (2022) 444 ITR 1 (SC).

2. That the reopening of the proceedings is bad in law in the absence of valid service of notice under section 148 of the Act.

3. That reopening of assessment is barred by limitation prescribed under section 149 of the Act.

4. That the reopening of assessment is bad in law since the sanction for issue of notice is not as per the provisions of section 151 of the Act.

5. That the reopening of assessment is based on borrowed satisfaction and is not sustainable in law.

6. That Ld. CIT(A) and Ld. AO have erred in not giving effect to the provisions of section 10(26) of the Act.

7. That in the facts and circumstances of the case, addition of Rs.11,15,53,370/- as the income of the appellant on account of cash deposit in a saving bank account by invoking the provisions of section 69A of the Act is arbitrary and bad in law.

8. That the assessment under section 144 of the Act is bad in law and has been concluded without perusal of any evidence and without making any reference to the bank statement and without analysing any credit and debit entries in the bank account.

9. The impugned order had been passed in gross violation of the principle of natural justice and without allowing reasonable opportunity of being heard to the Assessee. ”

4. At the outset, Ld. Counsel for the assessee submitted that assessee failed to appear before the lower authorities due to unavoidable circumstances and prayed that the application for additional evidence may please be allowed and all the issues raised for AY 2013-14 to AY 2015-16 and AY 2017-18 may please be restored to

the file of the AO for fresh adjudication. The contents of the application for additional evidence evenly filed for all the assessment years read as under:

“That the addition under section 69A of the Act has been sustained by Ld. CIT(A) and Ld. AO considered the deposits made in the bank account amounting to Rs.11,15,53,370/- as have escaped assessment. Since the Assessee is a resident of Mizoram and is a part of Tribal community, all the income earned by her is covered by the section 10(26) of the Income Tax Act,1961. That the relevant documents, being the residential certificate and the tribal community certificate will be relevant for the proper adjudication of the matter and are prayed to be placed on record for the necessary adjudication.

Grounds for admission of Additional Evidence

A. That since the grounds for addition under section 69A of the Act for the subject year against the Assessee is on account of the on account of the cash deposits made in the bank account amounting to Rs.11,15,53,370/-, the aforementioned documents would be necessary for proper adjudication of the subject appeal and in the interest of justice.

B. It further stated that the Assessee was unable to furnish the relevant evidence due to a multiplicity of pending tax proceedings and the documents could not be placed before the authorities below inadvertently.

Power to admit additional evidence

That this Hon'ble Tribunal is empowered to admit additional evidence as per the provisions of Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963. For the sake of brevity the relevant provision has been reproduced hereunder for the ready reference of the Hon'ble Bench –

Production of additional evidence before the Tribunal

"29. The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced. "

Prayer

In light of the facts stated and grounds enumerated, it is humbly prayed that documents at serial no. 1 to 2 of Paper book -I filed on _____ may kindly be admitted as additional evidence under Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963.”

5. On the other hand, Ld. DR vehemently argued supporting the orders of the lower authorities.

6. We have heard the rival submissions and perused the material placed before us at the time of hearing. The assessee before is stated to be a resident of State of Mizoram and is a part of tribal community and possesses relevant documents being the residential certificate and the tribal community certificate required for the purpose of claiming exemption u/s. 10(26) of the Act. We also notice that Ld. AO possessed information about huge cash deposits/credits in the bank account held in the name of the assessee during the impugned assessment years. Though the assessee was issued relevant notices under the Act but there was no compliance before the Ld. AO who was left with no option except to frame best judgment assessment u/s. 144 of the Act and he concluded the assessment proceedings making the addition u/s. 69A of the Act for the alleged unexplained deposit in the bank account.

7. When the assessee carried out the matter before the Ld. CIT(A) again for unavoidable reasons assessee failed to appear. The assessee is claiming to have not been communicated about the dates of hearing and also could not file additional evidences under Rule 46A of the Income Tax Rules. Before us, assessee has filed an application for admission of additional evidence and other papers for all the impugned years which contains the details of residential and tribal certificates and other details filed in support to explain that the

assessee is covered u/s. 10(26) of the Act and also it has sufficient evidence to explain the source of alleged deposits.

8. Perusal of the assessment orders and orders the Ld. CIT(A) clearly indicates that it was being a one sided affair and in absence of any details, whatever amounts were deposited in the bank had been added in the hands of the assessee. Though the assessee was given sufficient opportunity by the lower authorities but considering the fact that assessee is a resident of State of Mizoram and claimed to part of tribal community, one cannot ignore the situation that assessee may not have been informed by her authorised representative or the notice of hearing could not be served. Hon'ble Courts have consistently held that the person should be assessed only for the income which is earned during the year and only such income should be subjected to tax in accordance with the Income-tax Act. Article 265 of the Constitution of India says that no tax shall be levied or collected except by authority of law. Therefore, the assessee should be subjected to tax only if she has earned taxable income as per the provisions of the Income Tax Act and for arriving at such stage firstly, the income for the year has to be determined and then it has to be examined whether it is taxable under the Act or exempt u/s. 10(26) of the Act. All these exercises could be carried out only if the assessee is granted an opportunity to furnish the relevant details before Ld. Jurisdictional AO so as to explain the source of alleged deposits and if they are found to be satisfactory then the impugned addition will not stand. Now, since the assessee has filed the additional evidence, we in the larger interest of justice and being fair to both the parties deem it appropriate to admit the additional evidence filed before us and restore all the issues raised in the instant appeals to the file of the AO for *de novo* adjudication and after considering the additional evidence filed before us and any other detail which Ld. AO finds necessary can

be filed and then Ld. AO can decide in accordance with law. Therefore, all the grounds of appeal raised by the assessee for all the years under appeal are allowed for statistical purposes.

10. In the result, all the appeals of the assessee for AYs 2013-14 to 2015-16 and AY 2017-18 are allowed for statistical purposes.

Order is pronounced in the open court 26th August, 2024 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

Sd/-

(Manomohan Das)
Judicial Member

(Dr. Manish Borad)
Accountant member

Dated: 26th August, 2024

Jd. (Sr. P.S.)

Copy of the order forwarded to:

1. **Appellant – Sm. Zoramathari, H/ No. KB-04/b Lunglei Road, near Vespa Showroom, Bawngkawn, Aizawal, Mizoram-796014.**
2. **Respondent– ITO, Ward-1, Silchar**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata