

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

BEFORE SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.494/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2021-22)

Shri Sanjay Awathare, Maharashtra. PAN:AKWPA7660C	Vs.	Dy. Commissioner of Income Tax, Circle 2(4), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा / Revenue by::	Shri Madan Mohan Meena, DR	
सुनवाई की तारीख / Date of hearing:	04/09/2024	
घोषणा की तारीख / Pronouncement:	04/09/2024	

आदेश/ORDER

PER SHRI PRAKASH CHAND YADAV, J.M:

The present appeal of the assessee is arising from the order of Ld. Commissioner of Income Tax (Appeals)-12, Hyderabad dt.19.02.2024 having DIN No.ITBA/APL/M/250/2023-24/1061094397(1) and relates to Assessment Year 2021-22.

2. There is a delay of 21 days in filing the appeal before the Tribunal. Explaining the cause for delay, the counsel for the assessee drawn our attention towards the Affidavit filed along with condonation of delay application and contended that the delay has happened because the

Chartered Accountant to whom the work of filing the appeal was entrusted was busy in statutory audits and hence the assessee was unable to file the appeal on time before the ITAT. Further the counsel of the assessee submitted that after consulting with the other advocate, the assessee has immediately filed the present appeal and hence assessee acted in *bona-fide* manner. The learned Department Representative strongly opposed the application filed by the assessee in respect of condonation of delay of 21 days.

3. After considering the totality of facts we hereby condone the delay of 21 days in filing of the present appeal, for the reasons mentioned in the application for condonation of delay duly supported with affidavit.

3. The facts leading to the filing of present appeal are that the assessee is an individual, could not file his return of income for the impugned assessment year. Thereafter, on 02.06.2020, an information was received by the Investigation Wing from the Police authorities of District Gadchiroli that the assessee was in possession of cash of Rs.1,20,00,000/-. Explaining the source of cash, the assessee disclosed before the police authorities that he is working for Mr. Mohd. Bashu Miya, who is tendu leave contractor and same cash belongs to him and the assessee was carrying the cash for making payment to the famers of Tendu leaves. Thereafter, a search action was conducted in the case of Mr. Mohd. Bashu Miya by the Department on

26.06.2020, after resorting to the provisions of section 132A of the Income Tax Act, 1961 (“the Act”). During the course of assessment proceedings, nobody had appeared before the Assessing Officer (AO). However, the AO based on submissions made by some other partner explaining the source of cash added the entire amount of Rs.1.20 Crs as undisclosed income u/s.69A of the Act on protective basis. The Assessing Officer has also made an addition of Rs.9,50,000/- in the hands of the assessee on substantive basis alleging that the assessee failed to explain the source of cash deposited in Warangal Urban Co-operative Bank Ltd. This amount of Rs.9,50,000/- was added u/s.69A of the Act on substantive basis.

4. Aggrieved with the order of Assessing Officer, the assessee filed appeal before the Learned CIT(A) and assailed the order of Assessing Officer on both the additions. The Ld. CIT(A) during appellate proceedings has observed that while search, statement of the assessee was recorded u.132(4) of the Act. The Ld. CIT(A) further observed that at the time of recording of statement u.132(4) of the Act, the assessee deposed that the cash was of Mr. Mohd. Bashu Miya. However, during the course of assessment proceedings, the assessee retracted from the statement of 132(4) and cooked up a new story of having partnership with 4 other persons and withdrawal from his own bank account. The Ld. CIT(A) was of the view that since there was a contradiction in the statements of the

assessee as tendered before the search party as well as before the Assessing Officer. However, the Ld CIT(A) after appreciating the contentions of the assessee deleted the addition of Rs 92,80,000/- and sustained the addition of Rs.27,20,000/- in the hands of the assessee on substantive basis. The Ld. CIT(A) confirmed the addition of Rs.9,50,000/- made by the Assessing Officer on account of cash deposit in Warangal Urban Co-operative Bank Ltd.

5. In this backdrop, the assessee has come up in appeal before us. Arguing Ground No.1, i.e. denial of sufficient opportunity by the Ld. CIT(A), the counsel for the assessee has contended that the Assessing Officer has made the addition of Rs.1.20 Crores in the hands of the assessee on protective basis which has been partly converted by the Ld. CIT(A) of substantive basis in the hands of the assessee. The counsel for the assessee pointed out that similar addition has been made in the hands of Mr. Mohd. Bashu Miya on substantive basis and the appeal of Mr. Mohd. Bashu Miya is pending before the Ld. CIT(A). Therefore, in the interest of justice the matter may kindly be restored to the file of Ld. CIT(A). The counsel for the assessee relied upon the decision of co-ordinate bench in the case of Arif Mohammad and other in ITA Nos.495 & 496/Hyd/2024 and contended that in similar facts the co-ordinate bench had restored the matter to the file of Ld. CIT(A).

6. Per contra, the Ld. DR relied upon the orders of authorities below. However, could not show any disagreement for setting aside the matter to the file of Ld. CIT(A).

7. We have heard rival contentions of both the parties and perused the material on record. After considering the rival submissions, we observe that on identical issue, the co-ordinate bench in the case of Arif Mohammad and Other (supra) in para 7 has observed as under :

*“ 7. Heard both the parties, perused the materials available on record and gone through the orders of authorities below. The Assessing Officer made addition on protective basis for Rs.9,00,000/- after considering the relevant explanation given by the assessee during the course of investigation that the said cash belonged to **Mr. Mohd Bashu Miya**, a tendu merchant, because, substantive addition has been made in the hands of Mr. Mohd Bashu Miya in his assessment. The learned AR for the assessee submitted that the appeal filed by the Mr. Mohd Bashu Miya is pending before the Ld.CIT(A). Once the substantive addition made in the case of other person is pending for adjudication before the first appellate authority, in our considered view, the protective addition made in the hands of the appellant cannot be decided independently. In our considered view, the Ld.CIT(A) should have consolidated the appeals of the present assessee along with the appeal of Mr. Mohd Bashu Miya. Therefore, we set aside the order passed by the Ld.CIT(A) and restore the issue back to the file of Ld.CIT(A) and also direct the Ld.CIT(A) to decide this appeal along with appeal filed by by Mr. Mohd Bashu Miya in ITA No.12/10033/2021 and decide the issue in accordance with law.”*

Respectfully following the above view, we remit this appeal to the file of Ld. CIT(A) for fresh adjudication after affording an opportunity of being heard

to the assessee. We also direct the assessee to apprise the Ld CIT(A) with the status of appeal of Mr Mohd Bashu Miya *ITA No.12/10033/2021*.

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

Order pronounced in the open Court on 4th Sept., 2024.

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Hyderabad.

Dated: 04.09.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. Shri Sanjay Awathare, AT-Salezari, Chandrapur-442 702 Maharashtra.
2. DCIT, Circle 2(4), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

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BY ORDER,