

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1273/Bang/2024
Assessment year : 2011-12

Shivanand Sharanappa Nashi, At Post Almel, Taluka Sindgi, Vjayapura. PAN : AFWPN 2891P	Vs.	The Income Tax Officer, Ward 3, Vijayapura.
APPELLANT		RESPONDENT

Appellant by	:	Shri Kiran B. Sanmane, CA
Respondent by	:	Shri V. Parithivel, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.09.2024
Date of Pronouncement	:	11.09.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the ex-parte order dated 03.05.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2011-12.

2. Briefly stated the facts of the case are that the assessee filed return of income declaring income of Rs.1,24,190 estimating income @ 8% on the turnover u/s. 44AD of the Act. The return was processed u/s. 143(1) of the act. Subsequently the case was selected for scrutiny and assessment order was passed assessing the income at Rs.3,32,680.

3. The Id. Pr. CIT exercised his jurisdiction u/s. 263 of the Act and observed that the AO while completing assessment u/s. 143(3) has not examined the cash deposits in SB Account of more than Rs.10 lakhs and directed the AO for fresh assessment as per order u/s. 263. The AO passed the assessment order on 26.12.2006 u/s. 143(3) r.w.s. 263 of the Act and made addition of Rs.47,38,010 towards cash deposits in the account in Karnataka Bank Ltd. for want of proper explanation. The AO further noted that there was undisclosed credits in the bank account in Syndicate Bank Ltd. and for want of proper substantiation by the assessee made addition of Rs.17,14,811 u/s. 68. Aggrieved from the above order, the assessee filed appeal before the Id. First Appellate Authority (FAA).

4. The Id. FAA issued hearing notices on 28.01.2019, 15.02.2019, 14.11.2019 & 22.11.2019 and noted that the assessee has not responded till the date of passing of his order. Accordingly the FAA disposed off the case and confirmed the additions made by the AO towards both transactions of Rs.64,52,821 (47,38,010 + 17,14,811) and passed the order on 03.05.2024. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR vehemently argued the case and submitted that in response to notices of Id. FAA, the assessee responded to the notices issued. In this regard he filed a paperbook of 1-85 pages and in page 1 has spelt out the date of compliance and date of filing of response and acknowledgment no. containing the documents submitted. The other

submissions are listed out in the paperbook. However, the Id. FAA has passed a very cryptic order without considering the written submissions of the assessee. He therefore requested that the matter may be sent back to the Id. FAA for fresh consideration. He also relied on the following judgments and submitted that the assessee was not required to maintain books of account and filed return of income under presumptive basis, therefore the deposit in bank account should not be considered as income from other sources:-

- (i) Shri Kokkarne Prabhakara in ITA No.1239/Bang/2019 dated 11.9.2020.
- (ii) Girish V. Yalakkishettar (2020) 115 taxmann.com 489 (Bang. Trib)
- (iii) Thomas Eapen (2020) 113 taxmann.com 268 (Cochin Trib.)

6. The Id. DR relied on the order of lower authorities and submitted that the assessee's turnover is of Rs.15.52 lakhs and cash deposit in bank account are not matching. The assessee has deposited cash more than the turnover in his SB account whereas if the assessee is running contract business the transaction might have been carried out towards Current Account. Over and above the cash deposit from the turnover of the assessee is income from other sources as unexplained investment. The definition of section 69A is very much applicable and he referred to page 12 of PB dated 11.3.2019. The assessee has agreed for addition of 1/4th of Rs.47,38,000 which clearly shows that the deposit in SB A/c is not part of the turnover.

7. Considering the rival submissions, we note that the assessee filed appeal before the Id. FAA and responded to the notices issued by

the Id. FAA as per paperbook submitted. The assessee has filed index with documents submitted before the respective authority, which is reproduced below:-

<u>INDEX</u>		
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2(a)	Screenshot of Acknowledgement of submissions filed before the CIT(A) on 11/02/2019	2
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3(a)	Screenshot of Acknowledgement of submissions filed before the CIT(A) on 10/03/2019	19
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10	Copy of Bank Statement of State Bank of India for FY 10-11	77-79
11	Copy of ITR Filed and Tax Computation sheet	80-81
12	Copy of Statement of payments made by KBNL towards Contract Payments for FY 2010-11	82-83
13	Copy of Balance Sheet and Profit & Loss Account for FY 2010-11	84-85

Certified that, all the documents provided herein are true copies in respect of their originals and are on record with the authorities below.

8. On going through the order of the Id. FAA, the Id. FAA has noted that there is no response from the assessee's side and accordingly he has passed the order. Considering the facts of the case and in the interest of justice, we remit the issues to the CIT(Appeals) for fresh consideration taking into consideration the documents as stated above and to pass a speaking order after giving reasonable opportunity of being heard to the assessee.

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

Pronounced in the open court on this 11th day of September, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 11th September, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.