

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

Before Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No. 838/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Shri Raghavendra Bacha Hyderabad PAN:ACGPB1646R (Appellant)	Vs.	Income Tax Officer Ward 4 (1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri K.A. Sai Prasad, CA		
राजस्व द्वारा / Revenue by: Shri Aluru Venkata Rao, DR		
सुनवाई की तारीख / Date of hearing: 18/09/2024		
घोषणा की तारीख / Pronouncement: 18/09/2024		

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 26/06/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2016-17.

2. The assessee raised the following grounds:

1. The Learned First Appellate Authority, in the facts and circumstances of the case, failed to appreciate the fact that the income escaping assessment is less than the statutory limit of Rs.50,00,000/- and hence initiation of reassessment on 27-03-2023 i.e beyond four years from the end of relevant assessment year is bad in law.
2. The Learned First Appellate Authority, is not justified in conforming addition of Rs.18,42,000/- as unexplained money u/s.69A made by the Ld.Assessing Officer.
3. The Learned First Appellate Authority, is not justified in conforming addition of Rs.100,000/- as unexplained Investment u/s.69 made by the Ld.Assessing Officer.
4. The Learned First Appellate Authority, in the facts and circumstances of the case, is not justified in not appreciating the appellant's claim that only profit element ought to have be brought to tax and not entire cash deposited.
5. The Learned First Appellate Authority failed to appreciate the fact that since the notice u/s.148 was issued by jurisdictional assessing officer and not by NFAC, initiation of proceedings u/s.148 and any subsequent proceedings are bad in law.
6. The appellant reserves hisright to add, amend, delete or substitute any ground or grounds during the course of the hearing.

3. The brief facts of the case are that the assessee is an individual and has not filed his return of income for the A.Y 2016-17. On the basis of specific information flagged by Risk Management Strategy formulated by CBDT, income chargeable to tax has escaped assessment in the case of the assessee.

Therefore, the assessment has been reopened u/s 148A of the I.T. Act, 1961 and after due procedure, order u/s 148A(d) dated 27/03/2023 was passed with the reasons that the income chargeable to tax had escaped assessment on account of purchase of immovable property for Rs.57,50,000/- and cash deposit of Rs.20,91,000/- in AXIS Bank and Rs.6,90,000/- in Vijaya Bank Account. Notice u/s 148 of the I.T. Act, 1961 was issued on 27/03/2023. The assessee has filed return of income in response to notice u/s 148 dated 27/04/2023 admitting the total income of Rs.2,57,410/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash deposits into AXIS Bank and Vijaya Bank Accounts and therefore, called upon the assessee to explain the source for the said cash deposits. In response, the assessee submitted that he is into the business of trading into building materials and cash deposits into bank account is out of his business receipts. The total cash deposits has been considered as his business turnover and 14% net profit has been estimated. The Assessing Officer after considering the relevant submission of the assessee and also taken note of details of cash deposits into two Banks observed that although the appellant claims to have been in the business of trading in building material but no evidence has been filed including VAT/GST Registration Nos, copy of return filed under GST, details of purchase and sales etc., Therefore, rejected the explanation furnished by the assessee and made addition towards cash

deposits of Rs.18,42,000/- as unexplained money u/s 69A and brought to tax u/s 115BBE of the I.T. Act, 1961.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A) the assessee reiterated his arguments made before the Assessing Officer and submitted that merely for the reason not filing VAT Registration and other details, the argument of the assessee that the source of cash deposit into bank account is out of business receipts cannot be disregarded, more particularly, when the assessee claimed that he does not require to obtain GST Registration because of his low turnover. The learned CIT (A) after considering the relevant submission and also taken note of the reasons given by the Assessing Officer to make addition towards cash deposits, rejected explanation furnished by the assessee and sustained the addition made towards cash deposits u/s 69A of the I.T. Act, 1961.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition made towards cash deposits as unexplained money without appreciating the fact that the assessee is into the business of trading in building material which is in unorganized sector and

therefore, the question of furnishing GST Registration does not arise, more particularly, when the assessee is not required to obtain said registration if his gross receipts/turnover does not exceed the threshold limit. Therefore, he submitted that the addition made by the Assessing Officer should be deleted.

7. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the appellant could not substantiate his argument that source for cash deposits is out of business receipts. The Assessing Officer and the learned CIT (A) after considering the relevant facts has rightly made the addition towards cash deposits u/s 69A of the I.T. Act, 1961 and their orders should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has not filed regular return of income u/s 139 of the I.T. Act, 1961. It is also an admitted fact that the appellant has filed return of income in response to notice issued u/s 148 of the I.T. Act, 1961 and declared gross turnover of Rs.18,42,000/- and estimated 14% net profit and declared total income of Rs.2,57,410/-. The assessee claimed that the source for cash deposits is out of business receipts and total cash deposits has been offered to tax under presumptive tax in terms of section 44AD of the I.T. Act, 1961. The Assessing Officer dis not accept

the explanation of the assessee on the ground that no evidence has been placed on record to substantiate the argument of trading in building material and source for cash deposits.

9. I have gone through the reasons given by the Assessing Officer to make addition towards u/s 69A of the I.T. Act, 1961 in light of the argument of the learned Counsel for the assessee and I find that, the Assessing Officer rejected the explanation of the assessee only on the ground that the appellant failed to file relevant GST/VAT Registration and returns filed under the said Act. In my considered view, the Assessing Officer is completely erred in coming to the above conclusion for the simple reason that the registration u/s GST/VAT is mandatory, if gross receipts/turnover from the business exceeds certain threshold. In the present case, the appellant claims that he does not require to obtain registration under GST because his turnover is below the threshold limit under GST Act. In my considered view, merely for not submitting GST registration and return, the argument of the assessee cannot be rejected, because as I have noticed in earlier part of this order, the registration is mandatory only in case gross receipts exceeds the threshold. Since the gross receipts of the appellant is below the threshold limit, in my considered view, the argument of the assessee that source for cash deposit into bank account is out of his business receipts needs to be accepted. At the same time, the assessee is also not able to file relevant evidences including bills/vouchers for purchase and sales to

prove his argument and also to justify 14% net profit declared under presumptive taxation. Therefore, considering the facts and circumstances of the case and also the nature of the business of the assessee, I am of the considered view that a reasonable amount of profit should be estimated to meet the ends of justice. Thus, I direct the Assessing Officer to estimate 25% profit on total cash deposits of Rs.18,42,000/- into bank accounts. I order accordingly.

10. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 18th September, 2024.

Sd/-

**(MANJUNATHA, G.)
ACCOUNTANT MEMBER**

Hyderabad, dated 18th September, 2024.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 4(1) IT Towers, Masab Tank, AC Guards, Hyderabad 500028
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order