

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

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

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| ITA No.608/Hyd/2024 | | |
| Assessment Year: 2016-17 | | |
| Suresh Thotakura, Nalgonda. PAN : AOKPT5453L. | Vs. | The Income Tax Officer, Ward – 1, Suryapet. |
| (Appellant) | | (Respondent) |
| Assessee by: | Shri Sashank Dundu, Advocate. | |
| Revenue by: | Shri D. Praveen, Sr. A.R. | |
| Date of hearing: 11.09.2024 | | |
| Date of pronouncement: 12.09.2024 | | |

ORDER

PER MADHUSUDAN SAWDIA, A.M.

This appeal is filed by Mr. Suresh Thotakura (“the assessee”), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), dated 12.02.2024 for the A.Y. 2016-17.

2. The grounds raised by the assessee read as under :

“ 1) The order of the learned First Appellate Authority is not correct either on facts or in law and in both.

2) The learned First Appellate Authority is not justified in confirming the action of the Assessing Officer in making the addition of Rs.93,28,096/- as unexplained money u/s 69A.

3) The learned first appellate authority failed to appreciate the fact that the appellant acted as an agent for main dealers of vehicle vendors.”

3. Brief facts of the case are that the assessee, who is an individual, filed his return of income for A.Y.2016-17 on 01.06.2017 declaring total income at Rs.5,05,110/-. The learned Assessing Officer (“Ld. AO”) was informed by ITO(I&CI)-3, Hyderabad, that during the impugned year the assessee had deposited cash of Rs.1,82,54,450/- in his bank account, however the turnover shown by the assessee u/s 44AD of the income tax Act, 1961(“the Act”) was only Rs.89,26,354/-. Therefore the Ld. AO issued notice u/s 148 of the Act to the assessee and completed the assessment u/s 147 r.w.s.144 r.w.s.144B of the Act on 31/03/2022 by making addition of Rs. 93,28,096/- i.e. the excess of cash deposited in the bank account over the turnover shown u/s 44AD of the Act, u/s 69A of the Act, due to the reason that the assessee could not furnish conclusive documentary evidences with regards to sources of such cash deposit.

4. Feeling aggrieved by the order passed by the Ld. AO, assessee filed appeal before the Ld. CIT(A). The assessee did not make any compliances to the notices issued by Ld. CIT(A). Hence, the Ld. CIT(A) dismissed the appeal of the assessee on account of non-prosecution.

5. Feeling aggrieved with the order of Ld. CIT(A), the assessee is now in appeal before us, contending that the revenue authorities did not provide sufficient opportunity to the assessee to submit the necessary documents/evidences to explain the sources of the cash deposited in the bank account. It is further contended that the revenue authorities passed the order without providing proper opportunity. The Ld. AR also submitted that the documents/evidences to explain the sources of the cash deposited in the bank account could not be submitted before the Ld. AO due to shortage of time, as the case was about to be time barred. Further the notices issued by the Ld. CIT(A) was on the e-mail, other than the e-mail provided on the Form no. 35. Therefore, the assessee could not be able to get the notices to make any compliances. Hence the non prosecution on the part of the assessee was unintentional. The Ld. AR further submitted that the assessee does not stand to gain by allowing the appeal to be disposed of without any documentary evidence being produced and it is only due to the reasons beyond the control of the assessee, the assessee could not produce the necessary

documents/evidences to prosecute his case. By consolidating all the grounds, he further submitted that given an opportunity, the assessee is now ready to produce all such details and conduct the proceedings diligently and get the matter disposed of on merits.

6. Per contra, Ld. DR placed heavy reliance on the orders of the authorities below, and submitted that sufficient opportunity has already been given by the authorities, but the assessee failed to avail the same. He opposed the grant of further opportunity to the assessee.

7. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. It could be seen from the orders of the revenue authorities that the assessee failed to substantiate his case by providing necessary documentary evidence with regards to the sources of the cash deposited in the bank account, which resulted in passing the orders without consideration thereof. However as submitted by the Ld. AR, non prosecution on the part of the assessee was only due to the reasons beyond the control of the assessee. Further, it is a fact that the assessee does not stand to gain by not producing such documents. Be that as it may, now the assessee is ready to produce all such documentary evidence in support of his contentions and get the matter disposed of on merits. The highest that would happen by allowing an opportunity to the assessee is that a cause would be decided on merits. With this view of the

matter, we are of the view that fresh opportunity should be given to the assessee and, accordingly, we set aside the impugned order and restore the issue to the file of the Ld. AO for passing a fresh order on merits after affording the opportunity of hearing to the assessee. Grounds of appeal are answered accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 12th September, 2024.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad,
Dated 12th September, 2024.
** TYNM, Sr.P.S.*

Copy to:

| S.No | Addresses |
|------|---|
| 1 | Suresh Thotakura, C/o. Katrapati & Associates, 1-1-298/2/B/3, Sowbhagya Avenue Apartments, 1 st Floor, Ashok Nagar, Hyderabad. |
| 2 | Income Tax Officer, Ward 1, Suryapet. |
| 3 | PrI.CIT, Hyderabad. |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order