

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.128/Nag./2024
(Assessment Year : 2017-18)

Abdul Kadar Mohammad Ibrahim Dosani
Opp. Dr. Ranade Hospital
Civil Lines, Near Shrikrishna Hawali
Yavatmal 445 001 PAN – AIZPD9498A

..... Appellant

v/s

Income Tax Officer
Ward-1, Yawatmal

..... Respondent

Assessee by : Shri Naresh Jakhotia
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 30/09/2024

Date of Order – 22/10/2024

ORDER

The assessee has filed this appeal challenging the impugned order dated 17/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. The assessee has raised following grounds:-

"1. Whether the order passed by the Learned CIT (A) is in accordance with the principle of natural justice and after giving the fair & reasonable opportunity to the Appellant?"

2. Assessment Order as passed by the Assessing Officer and thereafter confirmed by the CIT (A) is improper, incorrect and unjustifiable and the addition needs to be deleted.

3. On the facts and circumstances of the case & in law, the learned AO has grossly erred in making addition & CIT(A) has grossly erred in confirming the addition of Rs.7,76,440/- & Rs.7,00,000/- unexplained money under section 69A of the Income Tax Act-19610.

4. Whether learned Assessing officer is right treating the amount as unexplained money without appreciating the submission during the course of the assessment proceeding.

5. Appellate crave to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal."

3. The assessee is an individual carrying on business of mobile recharge vouchers and petty sale and purchase of mobile handsets and accessories. The assessee is assessed under section 144 of the Income Tax Act 1961 ("the Act") whereby a total demand of ₹ 18,54,102, was raised. During demonetisation period, the assessee deposited ₹ 14,11,000, in Vijaya Bank Yavatmal and ₹ 7,00,000, in the Yavatmal Urban Co-operative Bank Ltd. Yavatmal. The cash sales of mobile handsets and accessories during pre-demonetisation period was ₹ 6,34,560. Excluding mobile voucher receipts, the Assessing Officer considered the above cash sales of ₹ 6,34,560, as explained and has made addition on account of unexplained money under section 69A of the Act. The Assessing Officer also made addition of ₹ 7,00,000, under section 69A on account of cash deposits during demonitisation in the Yavatmal Urban Cooperative Bank Yavatmal. The Assessing Officer further estimated income from business and profession at ₹ 2,06,325 @8% of ₹ 25,79,060. The Assessing Officer, while making the above addition, has not

considered receipt on account of mobile recharge vouchers. Aggrieved, the assessee filed appeal before the first appellate authority.

4. The learned CIT(A) dismissed the appeal of the assessee by observing as under:-

"4. It is pertinent that in order to decide this appeal in a timely manner, a number of notices / communications/correspondences were made through ITBA portal to the appellant, viz., communications dated 14.01.2021, 08.12.2023, 18.12.2023 and 27.12.2023. However, there has been no compliances from the part of the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. Hence, in view of the aforesaid total non-compliance of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis of documentation available on record. The appellant has failed to avail the opportunity to file / furnish the submissions / documents in support of the grounds of appeal though the appellant was offered for sufficient opportunity to file / furnish the submissions during the course of appellate proceedings. Furthermore, it is pertinent that the appellant has not sought any adjournment during the appellate proceedings.

5. In the result, the appeal of the appellant is dismissed."

5. During the course of hearing, the learned A.R. appearing for the assessee submitted that the learned CIT(A) passed an ex-parte order and prayed that one opportunity may be granted by restoring the matter to the file of the Assessing Officer to enable the assessee to substantiate its case before the Assessing Officer.

6. On the other hand, the learned D.R. submitted that the learned CIT(A) despite granting sufficient opportunities, the assessee has not appeared before the learned CIT(A) and not filed relevant details. He strongly supported the orders passed by the learned CIT(A).

7. I have heard both the parties, perused the materials available on record and gone through orders of the authorities below. I find that though the learned CIT(A) gave opportunities to the assessee, ultimately, the order passed by him is an ex-parte order. Therefore, I am of the opinion that by following the principles of natural justice, one more opportunity should be given to the assessee to by restoring the appeal to the file of the Assessing Officer to enable the assessee to substantiate his case before the Assessing Officer. It is pertinent to mention here that in the event of assessment concluded under section 144 of the Act by the Assessing Officer and on appeal before the Tribunal, the matter, if required, has to be restored to the file of the Assessing Officer for denovo adjudication. Such amendment is made in the statute w.e.f. 1st October 2024. The recent amendment as contained in section 251 of the Act is reproduced below:–

"Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment."

8. In view of the above, the order passed by the learned CIT(A) is set aside and remit the matter to the file of the Assessing Officer and direct him to adjudicate the matter denovo after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 22/10/2024

NAGPUR, DATED: 22/10/2024

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur