

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 218/Coch/2024
Assessment Year : 2017-18

Shri Sayed Muhammed M, T.C. 48/1016(7) Noor Mahal, Edayar Bridge, Poonthura, Thiruvallam, Thiruvananthapuram – 695 026, Kerala. PAN: ARKPM4666M	Vs.	The Income Tax Officer, Thiruvananthapuram.
APPELLANT		RESPONDENT

Assessee by	:	Shri C A Jojo, Advocate
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	03-10-2024
Date of Pronouncement	:	28-10-2024

ORDER

PER BENCH

This is an appeal filed by the assessee challenging the order of the NFAC dated 29/11/2023 in respect of the A.Y. 2017-18.

2. The appeal was filed with a delay of 52 days for which the assessee filed an application to condone the said delay. In the application, the assessee explained the reasons for the delay.

We have considered the application filed by the assessee along with its annexures and found that the delay has been properly explained and

therefore we condone the delay of 52 days in filing the appeal before this Tribunal.

3. The brief facts of the case are that the AO had taken the cash deposits in current account of the assessee as income. The AO also taken into consideration the payments made to the credit card and the cash withdrawals and the commission paid and based on that the notice u/s. 148 was issued. The assessee had not filed their return as well as not responded to the various notices issued and therefore a show cause notice was issued to the assessee and the assessee also appeared through the video conference and submitted that the payments made to the credit card are nothing but for the purpose of booking air tickets and bookings on behalf of his customers. The assessee further submitted that he received only the commission which is below the taxable limit and therefore prayed to drop the proposals. The AO not accepted the explanations and made the assessment. As against the said order, the assessee filed appeal before the Ld.CIT(A) and contended that there is no cash deposits in his bank account as alleged by the AO and further submitted that the payments made for the credit card is not its turnover and therefore the estimation of income at 8% u/s. 44AD is also not correct. Thereafter, the Ld.CIT(A) issued three hearing notices for which the assessee had not replied and no documentary evidences were also produced before him. Therefore the Ld.CIT(A) had dismissed the appeal ex-parte. As against the order, the assessee is in appeal before the Tribunal with the following grounds:

“A. The assessment order AY 2017-18 issued by the AO is unreasonably high pitched and lacks justification. It relies on transactions of another entity's account attributing it with that of the appellant. This inclusion of external sources as the petitioner's income is arbitrary, unreasonable, and violates principles of natural justice.

B. The petitioner was denied a fair opportunity to explain the mistakes made by the Assessing Officer in issuing the assessment order. Hence, the assessment order and its demand are illegal and arbitrary and should be quashed.

C. The assessing officer failed to conduct any enquiry before issuing the S.148 Notice, merely alleging that the petitioner has escaped assessment within the meaning of 5.147. No examination of the petitioner's 26A5 or bank account was undertaken prior to making the assessment. Therefore, the assessment order is erroneous.

D. The notice issued under S.148 was not properly served to the petitioner and lacks essential details and approvals. Hence, the notice issued to the petitioner is invalid, ultra vires, and unsustainable.

E. The assessment erroneously attributes cash deposits from a different entity's bank account to the petitioner. This violates the provisions of the Income Tax Act and principles of natural justice.

F. The assessment order was passed without proper enquiry and in violation of procedural fairness. Therefore, it cannot be sustained in the eye of law.

H. The petitioner was denied a personal hearing before issuing an order under 5.250 by the 1st respondent. Hence, the petitioner is entitled to a fair opportunity of hearing the appeal by the 1st respondent. The petitioner was denied personal hearing before issuing an order u/s 250 by the 1st respondent. The petitioner received SMS alert on 29.09.2023, 18.10.2023 and 26.10.2023 from the income tax department stating that "Income Tax Department has issued a notice/letter for AY 2017-18 under S.250. Kindly submit online response in case of notice by login to e-filing account". The petitioner each time on getting the SMS logged in to the e-filing account of the petitioner but the page was found blank, could not find any notice in action column and therefore could not submit his objection. Faceless Appeal Centre was not reachable to the petitioner. The petitioner's chartered accountant also tried to login to the site to submit the objection and response. But could not find any notice of hearing in the site and no link was there to submit the response. There were technical issues in the e-login site of the income tax department. Therefore, a fair opportunity of filing the response before the 1st respondent is denied. Therefore, the petitioner is entitled for a fair opportunity of hearing the appeal by the 1st respondent.

I. The dismissal of the appeal was based on a purported "non-response" from the petitioner without considering

their contentions and supporting documents. Hence, it constitutes a clear denial of justice.

J. The initiation of proceedings against the petitioner instead of the partnership firm represents a violation of natural justice. The petitioner being a small businessman cannot afford to pay such a huge amount of demanded tax. Hence, it is a clear violation of natural justice.

The grounds for appeal assert that the assessment order and subsequent actions by the respondents are erroneous, arbitrary, and in violation of procedural fairness and legal principles, necessitating their reversal or quashing. The appellate order and so-called assessment u/s 144 are liable to be quashed.”

4. At the time of hearing, the Ld.AR submitted that the alleged deposits are made in the partnership firm account and not into the assessee's individual account and in respect of the payments made through the credit cards, he submitted that he was doing the travel agent business and therefore purchases the tickets using his credit card and thereafter the money received from the customers were deposited into the credit card account and contended that therefore the entire assessment made u/s. 147 is bad in law. Further, the Ld.AR contended that the Ld.CIT(A) without granting sufficient opportunity had passed the dismissal order and therefore prayed to grant one more opportunity to place the documents before the lower authorities.

The Ld.AR relied on the orders of the authorities below and prayed to dismiss the appeal.

5. We have heard the arguments of both sides and perused the materials available on record.

6. We have considered the submission that the notices u/s. 147 and 148 issued by the AO on various dates were not received by the assessee since the same were sent to the old address of the assessee. Further, we have considered the fact that the assessee was not able to file his objections to the hearing notices issued by the Ld CIT since no notices were available in the e filing account of the assessee and no link was provided in the account

to file the written submissions and therefore we accept the reasons stated by the assessee and set aside the order of the Id CIT and remit the issue to the file of the Id CIT(A) to decide the issue afresh on merits, after granting a reasonable opportunity of hearing to the assessee. We also make it clear that the assessee is at liberty to produce the documents in support of his claim.

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

Order pronounced in the open court on 28th October, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 28th October, 2024.
/MS /

Copy to:

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|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin