

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 3706/Mum/2024
(Assessment Year: 2017-18)

Manish Kumar Vij 2B-404, Gaikwad Nagar, Gate No.8, Malwani, Malad (W), Mumbai-400 095	Vs.	ITO-31(2)(3) Room No. 613, 6 th Floor, Kautilya Bhavan, G Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. AVFPV 0735 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Kunal Shah
Respondent by	:	Shri R. R. Makwana
Date of Hearing	:	17.09.2024
Date of Pronouncement	:	29.10.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals)-9, Delhi ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has challenged this appeal on the following grounds:

GROUND(S) OF APPEAL

On the facts, and in the circumstances of the case, and in law, the Appellant craves to prefer an appeal against order dated 24 May 2024 passed by the Commissioner of Income-tax (Appeals) (hereinafter referred to as the 'learned CIT(A)) under section 250 of the income-tax Act, 1961 ('the Act' in respect of order dated 4 November 2019 passed by the Income tax Officer -31(2)(3) (learned AO') under section 144 of the Act on the following grounds:

1. Legal grounds - Order under section 144 of the Act is bad in law, erroneous and not tenable in law:

1.1 On the facts and in the circumstances of the case, and in law, the order passed by the learned AO under section 144 of the Act and further confirmed by the Hon'ble CIT(A) is bad in law

1.2 On the facts and in the circumstances of the case, and in law, the order passed by the learned AO and the Hon'ble CIT(A) are in gross violation of principles of natural justice.

1.3 On the facts and in the circumstances of the case, and in law, the learned AO and the Hon'ble CIT(A) have grossly failed to grant adequate time to file response and consequently passing the order confirming the addition, is clearly violative of the canons of natural justice and fairness.

Thus, the order is clearly a pre-determination by the authority, with a pre-disposed mind, and rendering tire requirement of opportunity of hearing otlose.

1.4 On the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) has erred in confirming the action of the leased AO in passing ex-parte assessment order under section 144 of the Act

1.5 On facts and in the circumstances of the ease, and in law, the learned AO and the Hon'ble CIT(A) has erred in confirming the addition under section 69A of the Act on account of cash deposits which is highly unjustified, unwarranted, unsustainable, not proper on facts, based on presumptions & surmises, contrary to the principles of natural justice and not in accordance with the provisions of law.

1.6 On the facts and in the circumstances of the case, and in law, the learned AO has grossly erred in making an addition under section 69A of the Act of an amount which is different and much greater than what the learned AO proposed vide the final show cause notice issued dated 19 September 2019. Thus, the order of the learned AO ought to be quashed since the same is bad in law

1.7 On facts and in the circumstances of the case, and in law, the learned AO erred in making an addition under section 69A of the Act which is not in consonance to the provisions of law contained in the Act, as the Appellant was not required to maintain any books of accounts for the captioned year.

The Appellant prays that the impugned order be quashed as being bad in law

2. **Factual grounds:**

2.1 On facts and in the circumstances of the case, and in law, the learned AO erred in appreciating the fact that the Appellant was not obligated to file the tax return under section 139 of the Act for the captioned year.

2.2 On facts and in the circumstances of the case, and in law, the learned AO erred in appreciating the fact that a part of cash deposits were made out of the savings from business undertaken in year 2014 and 2015 and such income was offered to tax in those respective years.

2.3 On facts and in the circumstances of the case, and in law, the learned AO erred in appreciating the fact that a part of cash deposits were made out cash gills from friends and family on the auspicious occasion of marriage held just before the commencement of the captioned year.

2.4 *On facts and in the circumstances of the case, and in law, the learned AO erred in appreciating the fact that a part of cash deposits were made out of loan availed from friends and family members to start a new business venture.*

2.5 *On facts and in the circumstances of the case, and in law, the learned AO erred in appreciating the fact that the most of cash deposits were made prior to demonetization period making it incontrovertible.*

2.6 *On facts and in the circumstances of the case, and in law, the learned AO erred in making an addition under section 69A of the Act of a sum as unexplained cash even though the said sum was received through proper banking channels.*

Penalty order passed under section 271AAC is bad in law:

2.7 *On facts and in the circumstances of the case, and in law, the order passed by the learned AO under section 271AAC is violative of provisions of section 275 of the Act.*

2.8 *On facts and in the circumstances of the case, and in law, the learned AO erred in appreciating the fact the Appellant had filed an appeal before the Hon'ble CIT(A) and thus the penalty proceedings ought to be kept in abeyance.*

The Appellant prays that the impugned penalty order be quashed as being bad in law.

3. The brief facts are that the assessee is an individual and had not filed his return of income for the year under consideration. The assessee's case was selected for scrutiny and notice u/s. 142(1) of the Act was issued and served upon the assessee, who had also failed to furnish return of income in response to the said notice. The learned Assessing Officer (ld. A.O. for short) then passed the assessment order u/s. 144 of the Act on 04.11.2019, being best judgment assessment, determining the total income at Rs.57,17,659/- after adding u/s. 69A of the Act cash deposits during demonetization period amounting to Rs.17,47,500/- and Rs.39,70,159/- other than cash deposited during demonization period appearing in the bank account of the assessee.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The Id. CIT(A) vide an *ex parte* order dated 24.05.2024, upheld the order of the Id.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate his claim and has been non compliant throughout the appellate proceedings.
6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.
8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has got a good case on the merits and prayed that the assessee may be given one more opportunity to present his case before the Id. CIT(A).
9. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.
10. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on his side and needless it is to say that sufficient opportunity of hearing is to be given to the assessee.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.10.2024

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 29.10.2024

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai