

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Ms. Padmavathy S., Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA Nos. 1701 & 1702/Bang/2024 (Assessment Years: 2015-16 & 2018-19)		
Mohammed Shabbeer Housain Kembhui Shorapur, Yadgir, Karnataka PAN – AGXPH5731J	vs.	The Income Tax Officer Yadgir
(Appellant)		(Respondent)
Assessee by:	Smt. Pratibha R., Advocate	
Revenue by:	Shri D.K. Mishra, CIT-DR	
Date of hearing:	23.10.2024	
Date of pronouncement:	24.10.2024	

ORDER

Per Bench

These appeals by the assessee are against separate orders passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)], both dated 11.07.2024 for Assessment Years (AY) 2015-16 and 2018-19.

2. The commons grounds raised by the assessee for both AYs pertain to the addition made by the Assessing Officer (AO) towards unexplained cash deposits in the bank accounts and alleged bogus turnover. The assessee also raised legal grounds on the validity of reopening of assessment.

3. The assessee is an individual engaged in the business of trading in Toor. The assessee did not file the return of income for both the assessment years 2015-

16 and 2018-19. Based on the information that the assessee has made substantial cash deposits in various bank accounts the AO reopened the assessment for both the assessment years under consideration. The assessee in response to notice u/s. 148 of the Income Tax Act, 1961 (the Act) filed return of income for AYs 2015-16 & 2018-19. The AO issued various notices to the assessee and the assessee has responded to few of the notices to make submissions. Since the assessee did not respond to the Show Cause Notice (SCN), the AO completed the assessment u/s. 147 r.w.s. 144 r.w.s. 144B of the Act in which the AO made additions towards alleged bogus sales and cash deposited from undisclosed sources. For AY 2015-16 the AO also made addition of Rs. 1,28,002/- u/s. 56 of the Act. Aggrieved, assessee filed further appeal before the CIT(A).

4. Before the CIT(A) besides the grounds on merits, the assessee raised additional grounds contending that section 68 cannot be applied in respect of income from a source which has already been taxed which would amount to double taxation. The assessee also raised the additional ground that no addition can be made u/s. 68 where the books of accounts have been rejected by the AO and that the income should have been estimated on reasonable basis once the books are rejected. Before the CIT(A) the assessee also furnished various details such as invoices, bank statements etc., along with written submissions contending that the additions made by the AO are not tenable on merits. The CIT(A) adjudicated only the additional grounds rejecting the contentions of the assessee and confirmed the additions made by the AO based on the additional grounds raised by the assessee. The assessee is in appeal before the Tribunal against the order of the CIT(A).

5. The learned A.R. submitted that the assessee is hailing from a small town and is not well educated. Therefore is submitted that the assessee was not aware of the various notices issued by the AO. The ld AR further submitted

that the assessee has responded to few of the notices but could not submit the complete details sought for by the AO due to lack of sufficient time being provided to submit the details by the AO. The learned A.R. also submitted that before the CIT(A) the assessee furnished all the details but the CIT(A) adjudicated only the additional grounds raised by the assessee and has not adjudicated the main grounds which the assessee raised on merits. Accordingly the learned A.R. prayed for one more opportunity to contend the additions made on merits before the lower authorities.

6. The learned D.R., on the other hand, submitted that the assessee has been non cooperative and therefore supported the orders of the lower authorities.

7. We have heard the rival contentions and perused the material on record. Based on the information that the assessee has deposited cash in various bank accounts and not filed return of income the AO reopened the assessment u/s. 147 of the Act. From a perusal of the assessment order as extracted below we notice that the assessee has responded to the notices issued u/s. 142(1) of the Act but has not responded to the show cause notice: -

Types of notice/ communication	Date of notice/ communication	Date of compliance given	Response of the assessee received / not received	Date of response if received	Response type (Full/ part/ adjournment)	Remarks, if any
148	29.03.2022	-	Not Received	-	-	-
142(1)	30.09.2022	10.01.2022	Not Received	-	-	-
142(1)	31.10.2022	09.11.2022	Not Received	-	-	-
Issued letter	14.11.2022	19.11.2022	Received	24.11.2022	-	-
142(1)	10.01.2023	13.01.2023	Not Received	-	-	-
142(1)	17.01.2023	19.01.2023	Received	25.01.2023	-	-
143(2)	17.01.2023	19.01.2023	Received	25.01.2023	-	-
SCN	27.01.2023	01.02.2023	Received	07.02.2023	-	-
Final SCN	09.03.2023	11.03.2023	Not Received	-	-	-

It is further noticed that the last of the notice was issued on 09.03.2023 seeking response by 11.03.2023 and the AO has completed the assessment by

passing order u/s. 147 r.w.s. 144 on 18.03.2023. Therefore we see merit in the contention of the learned A.R. that sufficient opportunity was not given by the AO to submit relevant details and contend the issues on merits. Further we notice that the CIT(A) has adjudicated only the additional grounds raised by the assessee on the legality of making additions u/s. 68 of the Act when the books of account were rejected u/s. 145(3) of the Act. We further notice that the CIT(A) has not given any finding on the merits with regard to the additions made by the AO which the assessee contended through the main grounds of appeal raised before the CIT(A). It is relevant to notice that these facts are identical for both AY 2015-16 and AY 2018-19. During the course of hearing the learned A.R. submitted two paper books (with 130 pages for AY 2015-16 and with 111 pages for AY 2018-19) with various details furnished before the CIT(A) on merits. Considering the facts as enumerated above for both AYs and in the interest of natural justice and fair play we are inclined to give one more opportunity to the assessee to contend the issues on merits before the lower authorities. Accordingly we remit both the appeals back to the AO with a direction to consider the various details furnished by the assessee with regard to additions made and decide the issues on merits afresh in accordance with law. Needless to say that the assessee should be given reasonable opportunity of being heard. It is ordered accordingly.

8. In the result, the appeals filed by the assessee for AY 2015-16 and AY 2018-19 are allowed for statistical purposes.

Order pronounced in the open Court on 24th October, 2024.

Sd/-
(Prakash Chand Yadav)
Judicial Member

Sd/-
(Padmavathy S.)
Accountant Member

Bengaluru, Dated: 24th October, 2024
n.p.

Copy to:

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

By Order

//True Copy//

*Assistant Registrar
ITAT, Bangalore*