

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before Shri INTURI RAMA RAO, Accountant Member

आ.अपी.सं / **ITA Nos.1024 to 1028/Hyd/2024**
(निर्धारण वर्ष / Assessment Years: 2011-12 to 2013-14)

Shri Ram Mohan Rapala Warangal PAN:AHAPR2964D (Appellant)	Vs.	Income Tax Officer Ward 3 Warangal (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri A.V. Raghuram, Advocate
राजस्व द्वारा / Revenue by:		Shri Aravindakshan, DR
सुनवाई की तारीख / Date of hearing:	06/11/2024	
घोषणा की तारीख / Pronouncement:	06/11/2024	

आदेश/ORDER

These five appeals filed by the assessee are directed against the different orders of the learned CIT (A)-NFAC Delhi, relating to A.Ys.2011-12 to 2013-14 respectively. Since common issues are involved in all these appeals, for the sake of convenience, these were heard together and are being disposed of by this consolidated order.

ITA Nos.1024, 1025 & 1027/Hyd/2024

2. The brief facts of the case are that the assessee is an individual and engaged in the business of trading in stationery items and general stores under the name and style of "Vasundhara Books Stationery & General Stores" and has not

filed return of income for the A.Y 2011-12. The Assessing Officer, on receipt of information from the Investigation Wing, Unit-II Hyderabad that, the appellant had made huge cash deposits in the bank account and formed an opinion that, income had escaped assessment on tax. Accordingly, notices u/s 148 was issued and served upon the assessee. In response to the said notice, the appellant filed a return of income on 3/9/2018 declaring income of Rs.3,62,500/-. Against the said return of income, the assessment was completed by the Assessing Officer (Income Tax Officer, Ward-3 Warangal) vide order dated 11/02/2018 passed u/s 143 of the I.T. Act, 1961 and added the total income of the assessee at Rs.48,46,500/-. While doing so, the Assessing Officer made the entire addition of cash deposits in the savings bank account maintained by the assessee with ICICI Bank Account No.020101524775 at Rs.44,84,000/- treating it as unexplained money, by holding that the appellant had failed to discharge the onus of proving the source of cash deposits.

3. Being aggrieved, the assessee preferred an appeal before the learned CIT (A) who, vide the impugned order dated 17/05/2019, dismissed the appeal filed by the appellant. On further appeal before the Tribunal, the Tribunal, vide order dated 30/09/2019 remitted the matter back to the file of the Assessing Officer for denovo assessment in accordance with law. Consequent to the revenue order passed by the Tribunal, the Assessing Officer, NFAC, Delhi, vide order reiterated the additions made in original assessment proceedings. But aggrieved, the

appellant filed an appeal before the learned CIT (A), who vide impugned order confirmed the action of the Assessing Officer by holding that the appellant had failed to furnish requisite documentary evidence in support of the contention that the cash deposits were made out of the business receipts of the appellant.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee took me through the statement of the Bank Account held by the appellant and submitted that the lower authorities have failed to give the benefit of the earlier withdrawals made by the assessee for the subsequent cash deposits. He further submitted that the lower authorities having accepted the income returned by the appellant, it is not open to the lower authorities to hold that the appellant had not carried on the business. Thus, he submitted that there was no case for making addition on account of cash deposits made in the Bank Account as unexplained money of his entire cash deposits, which are made out of the sale proceeds of the business of the appellant.

6. The learned DR, on the other hand, supporting the orders of the authorities below submitted that in the absence of proof of carrying on the business, the Assessing Officer was justified by making the entire cash deposits as unexplained money of the appellant.

7. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The solitary issue in the present appeal is whether the Assessing Officer was justified in making addition of the entire cash deposits as unexplained money of the appellant by holding that there was no proof of the assessee carrying on the business of the appellant dealing with stationery and general stores. I carefully perused the copy of the statement of the bank account held by the appellant with ICICI Bank. From the perusal of the said statement, it would reveal that there was cash deposits followed by withdrawals as well. Without entering into any controversy, whether the appellant had really carried on the business or not, it would be suffice to hold that the amount withdrawn from the Bank account by cash, should be treated as available for the subsequent deposits in the bank account, in the absence of any evidence on record to show the utilization of the withdrawn amount. Thus, the lower authorities, i.e. the Assessing Officer as well as the learned CIT (A) should have given the benefit of telescoping of withdrawals against the subsequent deposits. Therefore, the approach adopted by the Assessing Officer as well as the learned CIT (A) is totally unjustified and unreasonable. In order to meet the ends of justice, I deem it proper to remand the matter back to the file of the Assessing Officer with a direction that the amount withdrawn from the Bank Account by way of cash should be treated as available against the subsequent deposits and the balance, if any, can be brought to

tax and the balance amount, if any, as reduced by the amount of returned income may be brought to tax.

8. In the result, appeals filed by the assessee in ITA Nos. ITA Nos.1024, 1025 & 1027/Hyd/2024 are partly allowed in the above terms.

ITA Nos.1025 & 1027/Hyd/2024

9. These two appeals filed by the assessee are directed against the separate orders of the learned CIT (A) NFAC confirming levy of penalty u/s 271(1)(c) of the I.T. Act, 1961. Since in the quantum appeal for the A.Ys 2011-12 & 2012-13, in corresponding appeal in respect of which penalty was levied were restored to the file of the Assessing Officer, these two appeals are also stands restored to the file of the Assessing Officer in terms of provisions of section 275 (A) of the I.T. Act, 1961.

10. In the result, appeals in ITA Nos.1025 & 1027/Hyd/2024 are also partly allowed for statistical purposes.

Order pronounced in the Open Court on 6th November, 2024.

Sd/-

**(INTURI RAMA RAO)
ACCOUNTANT MEMBER**

Hyderabad, dated 6th November, 2024.

Vinodan/sps

Copy to:

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1	Shri Ram Mohan Rapala, H.No.16-8-167 Abbani Kunta, Ward-16 Warangal
2	Income Tax Officer Ward-3, Siva Nagar, Warangal 506002
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order