

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

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member and

आ.अपी.सं / **ITA No.281/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Shri Satish Kumar Bollapelli Warangal PAN:AIKPB8758J (Appellant)	Vs.	Income Tax Officer Ward-3 Warangal (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri S. Rama Rao, Advocate	
राजस्व द्वारा/Revenue by:	Shri K. Meghnath Chowhan, DR	
सुनवाई की तारीख/Date of hearing:	07/11/2024	
घोषणा की तारीख/Pronouncement:	12/11/2024	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal by the assessee is directed against the revision order dated 15/03/2023 of the learned Pr. CIT (A)-1, Hyderabad, passed u/s 263 of the I.T. Act, 1961, for the A.Y.2018-19.

2. There is a delay of 9 days in filing of the present appeal by the assessee. The assessee has filed petition for

condonation of delay, which is supported by an affidavit of the assessee. The learned AR of the assessee has submitted that the assessee took steps for filing the appeal well in time and also paid the appeal fee vide challan dated 10/05/2023. However, in the meantime, the father of the assessee, who is 87 years old became seriously ill and the assessee got busy in getting his treatment and could not file the appeal within the period of limitation. Thus, the learned AR has submitted that the delay of 9 days in filing the present appeal is neither intentional nor willful and the same may be condoned. On the other hand, the learned DR has no serious objection if the delay of 9 days is condoned.

3. Having considered the rival submissions and on a careful perusal of the affidavit, we find that the assessee has paid appeal fee, vide challan dated 10/05/2023 within the period of limitation for filing the present appeal. The delay of 9 days has been explained by the assessee that, in the meantime on 12/05/2023, the father of the assessee who is 87 years old became seriously ill and the assessee was busy in getting the treatment of his father and could not file the present appeal. Therefore, we are satisfied that the assessee was having a sufficient cause for the delay of 9 days in filing the present appeal. Accordingly, the delay of 9 days in filing the present appeal is hereby condoned.

4. The assessee has raised the following grounds:

“1. The order of the learned Pr. CIT, Hyderabad-1 is erroneous both on facts and in law.

2. The learned PCIT ought to have seen that there is no error in the assessment order passed u/s 143(3) of the I.T. Act, dated 11/02/2021 which is prejudicial to the interest of revenue;

3. The learned PCIT ought to have seen that the amount of Rs.54,51,668/- represent the difference between the turn over and the aggregate of the deposits made into the Bank Account and is properly explained and cannot be added;

4. The learned PCIT ought to have seen that the said information was before the Assessing Officer while completing the assessment who accepted the same and, therefore, the learned PCIT erred in setting aside the order passed by the Assessing Officer.

5. Any other ground or grounds that may be urged at the time of hearing”.

5. The learned AR of the assessee has submitted that the assessment was completed u/s 143(3) r.w.s. 143(3A) of the Act, on 11/02/2021 whereby the Assessing Officer has accepted the returned income. He has pointed out that the assessee is carrying out the business of wine shop under the name and style of “Sri Laxmi Narasimha Wines” and offered the income to tax which was accepted by the Assessing Officer. Subsequently, the Pr. CIT has invoked the provisions of section 263 of the I.T. Act, 1961, on the point that the deposits in the Bank Account of the assessee are more than the turnover declared by the assessee and, therefore, the learned Pr. CIT was of the view, that the difference of the total deposits in the Bank Account and total turnover declared by the

assessee is liable to be assessed to tax. He has pointed out that the assessee's license for running the wine shop expired on 30/09/2017 and thereafter, the license was granted to another person who taken over the business of running the wine shop at the same place and in the same name. The new licensee used the Bank Account of the assessee which is in the name of the proprietorship concern upto 15th November and therefore, the differential amount of deposit in the Bank account is nothing but the deposits made by the new licensee. He has referred to the Bank account statement of the assessee as well as the affidavit filed by the assessee to explain the deposits made by the new licensee from 1st October till 15th November in the bank account of the assessee. Thus, the learned AR has submitted that this difference of deposits in the bank account is nothing, but the turnover of the new licensee, who has used the bank account of the assessee till 15th November and thereafter, he started his own bank account transactions for the purpose of his business. Thus, the learned AR has contended that the income after 30/09/2017 from the business of wine is assessable to tax in the hands of new assessee and who has also offered the said income to tax. He has referred to the affidavit of Shri Bandi Kishan who was the successful bidder and granted license for running the wine shop, in question, from 1/10/2017 to 30/09/2019 and admitted this fact that, he has used the bank account of the assessee from 1st October 2017 to 15th November, 2017 for his business transactions. The learned AR has referred to the transactions as

recorded in the bank account and submitted that out of the deposits made by the new licensee, the payments were also made from the same account for purchase of liquor which proves that the bank account of the assessee was used by the new license holder. Alternatively, the learned AR has submitted that in any case, only the commission/profit element of the said turnover can be taxed instead of the entire amount as directed by the Pr. CIT in the impugned order. Hence, the learned AR has pleaded that the Tribunal may pass an appropriate order on this point.

6. The learned DR, on the other hand, has submitted that despite various notices issued by the learned PCIT, the assessee did not file any evidence in support of the claim that the bank account of the assessee has been used by the new licensee and transaction of deposits represents the business transaction of the new licensee and not of the assessee. He has referred to Para 5 of the impugned order and submitted that only the written submissions were filed by the assessee through mail, however, to substantiate the submissions, the assessee did not file any evidence. The Pr. CIT has specifically pointed out that the assessee was required to furnish the copies of the Aadhar and PAN card of the new licensee Shri Bandi Kishan as well as the copy of the agreement between the assessee and the said person, allowing him to use the bank account of the assessee during the period from 1/10/2017 onwards. Thus, he has relied upon the impugned order of the learned Pr. CIT.

7. We have considered the rival submissions as well as the relevant record filed by the assessee. After the completion of the assessment u/s 143(3) r.w.s. 143A, the learned Pr. CIT on perusal of the assessment record noticed that, the assessee made deposits to the tune of Rs.2,95,57,360/- in his Bank Accounts held with Andhra Bank and State Bank of India and there were no cash withdrawal during the year under consideration in comparison to the turnover declared by the assessee of Rs.2,41,05,692/-. Thus, the learned Pr. CIT has observed that there is a difference between the total deposits in the Bank Account and the turnover declared by the assessee to the extent of Rs.54,51,668/- which has not been considered and examined by the Assessing Officer while passing the assessment order which renders the order of the Assessing Officer as erroneous, in so far as it is prejudicial to the interest of the Revenue. Accordingly, the learned Pr. CIT issued a show cause notice u/s 263 of the Act, on 16/01/2023. Initially, there was no compliance on behalf of the assessee to the notice issued by the learned PCIT. However, finally the assessee has filed his written submission through email, on 22/02/2023 and explained that the differential amount of deposit in the Bank Account has been made by the new licensee Shri Bandi Kishan,s who has used the bank account of the assessee after the new license of liquor shop was granted to him w.e.f 1/10/2017. The learned Pr. CIT did not accept this explanation of the assessee for want of supporting evidence regarding the identity of Shri Bandi Kishan as the assessee did

not file his Aadhar and PAN Card of the said person or any agreement between the assessee and the said person allowing to use the bank account of the assessee. The learned Pr. CIT finally set aside the assessment order by treating the same as erroneous as well as prejudice to the interest of the Revenue and directed the Assessing Officer for re-adjudication of the matter after giving an opportunity to the assessee to file documentary evidence in support of his claim. The assessee has now filed the details regarding the deposits made in the Bank Account which are reflected in the Bank Account of the assessee as well as the affidavit of Shri Bandi Kishan S/o Eshwaraiah Bandi placed at Page 49 and 50 of the paper book which reads as under:

*“Before the Income Tax Appellate Tribunal,
Bench: Hyderabad*

ITA No.281/Hyd/2023

A.Y 2018-19

In the matter of appeal in the case of Sri Bollapelli Satish Kumar, Bhupalapally, Telangana State.

AFFIDAVIT

I, Bandi Kishan, son of Eshwaraiah Bandi, aged 43 years resident of H.No.10-57/1 Jawaharnagar Colony, Bhupalapally, Telangana do here by solemnly affirm and state as under:

I affirm and state that UI was the successful bidder in the Excise auction conducted by the Excise Department of Govt. of Telangana for sale of Indian Made Foreign Liqour by Shop at Gazette Sl.No.02, Bhupalapally Municipality for the licence period 1/10/2017 to 30/09/2019 in the name and style of “Sri Laxmi Narasimha Wines”.

Earlier, the excise licence of the above mentioned Wines Shop was in favour of Sri Satish Kumar Bolapalli son of Sri

Sammaiah and he operated the wineshop during the relevant period.

I affirm and state that the Bank account opened in the name of "Sri Laxmi Narasimha Wines" by Sri B Satish Kumar earlier was utilized by me as I was not aware of the fact that consequent to the change of ownership of the Wine shop, the Bank account is to be operated under my PAN. Therefore, the cash deposits made in the said bank account during the period 1/10/2017 to 15/11/2017 represent my business transactions. The payment by way of demand drafts towards purchase of liquor from the Telangana Beverages Corporation were also routed through the said bank and they tally depot statements of Beverages Corporation.

I affirm and state that the business turnover for the period 1/10/2017 to 15/11/2017 relate to me and such turnover was admitted in the return of income filed by me for the A.Y 2018-19. I am annexing copies of the return of income filed for the A.Y 2018-19 along with final accounts and Audit Report in Form 3CB and 3CD.

What is stated above is true to the best of my knowledge and belief.

*Sd/-
DEPONENT*

8. Thus, the new licensee in the affidavit stated that he has utilized the bank account of the assessee for his business transactions from 1/10/2017 to 15/11/2017 and the payments were also made from the Bank Account of the assessee towards purchase of the liquor through demand draft issued in favour of the Telangana Beverage Corporation. This fact is also reflected from the Bank account transaction of the assessee that against these deposits made from 1/10/2017 to 15/11/2017, the withdrawals were only in the shape of payments made to Telangana Beverages Corporation through bank drafts. Therefore, in the facts and circumstances of the case, we are of the

considered view that, instead of considering the entire difference of deposits as income of the assessee, this fact of deposits representing the business transaction of the new licensee Shri Bandi Kishan, is required to be verified by conducting a proper inquiry and verification by the Assessing Officer. In any case, the income from these deposits can be assessed to tax only to the extent of the business profits and at the net profit percentage already declared by the assessee in the return of income and accepted by the Assessing Officer while passing the scrutiny assessment. The assessee is also directed to cooperate with the proceedings before the Assessing Officer and file necessary records including the return of income of Shri Bandi Kishan to show that the said deposits in the bank account is already taken into consideration as the income from the business by the said person along with the books of account and Audit Report of both the parties. Thus, the Assessing Officer is directed to examine the issue afresh in the light of our above observations and in case the income is assessed in the hands of the assessee, the same should be only the net profit on the differential amount, in question. In case if it is found that the new licensee Shri Bandi Kishan has offered the income on the turnover which is deposits in the Bank Account of the assessee, then no addition shall be made in the hands of the assessee.

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

Order pronounced in the Open Court on 12th November, 2024.

Sd/-

Sd/-

(MANJUNATHA, G.) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
---	---

Hyderabad, dated 12th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Satish Kumar Bollapelli, 5-64 Shyampet, Warangal 506319
2	Income Tax Officer Ward 3 Warangal 506002
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order