

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.2249/Bang/2024
Assessment year : 2017-18

Sri Guru Thipperudraswamy Devasthana, Nayakanahatty, Challekere Taluka, Chitradurga – 577 535. <b>PAN:AAFTS 5283A</b>	Vs.	The Income Tax Officer, Exemptions, Ward-I, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri Annamalai, Advocate
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.12.2024
Date of Pronouncement	:	16.01.2025

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Sri Guru Thipperudraswamy Devasthana (the assessee/appellant) for the assessment year 2017-18 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 25.9.2024 wherein the appeal of the assessee against the best judgment assessment order u/s. 144 of the Income-tax Act, 1961 [the Act] dated 16.12.2019 by the ITO, Ward-1, Hubli was dismissed as assessee failed to respond to 4 different notices issued by

the Id. CIT(A). The CIT(A) dismissed the appeal for want of explanation as well as on merits also.

2. The assessee is aggrieved and is in appeal before raising the following grounds of appeal :-

“1. The order of the learned Commissioner of Income Tax [Appeals], NFAC, Delhi passed under Section 250 of the act dated 25.09.2024 in so far as it is against the Appellant, is opposed to law, equity, weight of evidence, probabilities on the facts and circumstances in the Appellant's case.

2. The order passed by the learned Commissioner of Income Tax [Appeals] is in violation of the principles of natural justice and ought to have granted another opportunity to the Appellant on the facts and circumstances of the case.

3. The learned Commissioner of income Tax [Appeals] erred in dismissing the appeal of the Appellant ex-parte without appreciating that the Appellant was prevented by reasonable cause in not attending the appellate proceedings on the facts and circumstances of the case.

4. The learned Commissioner of Income Tax [Appeals] erred in holding that "the Appellant is not serious to pursue the appeal and did not provide any explanation or evidence in support of the grounds of appeal so the learned Commissioner of Income Tax [Appeals] is constrained to upheld the addition made by the assessing officer for want of explanation as well as merit too" on the facts and circumstances of the case.

5. The learned Commissioner of Income Tax [Appeals] is not justified in law in holding that the appellant was given adequate opportunities by way of notices issued when the appellant has not received any of the said notices issued under section 250 of the Act dated 30.12.2020, 07.07.2023 and 20.08.2024 and consequently the order passed under section 250 of the Act dated 25.09.2024 is in violation of the principles of natural justice and requires to be set aside on the facts and circumstances of the case.

6. The learned Commissioner of Income Tax [Appeals] failed to adjudicate all the specific grounds of appeal vide No. 1 to 17 of the grounds of appeal filed by the appellant along with the statement of facts before the learned Commissioner of Income-Tax [Appeals] and consequently the order passed is in violation of the principal of natural justice and requires to be set aside on the facts and circumstances of the case.
7. The learned Commissioner of Income Tax [Appeals] ought to have made an attempt on serving the hearing notices issued under section 250 of the Act vide communication to the appellant's e-mail id or physically by way of Speed post and consequently the impugned order passed without providing an opportunity of being heard to the appellant is in violation of the principles of natural justice on the facts and circumstances of the case.
8. The learned Commissioner of Income Tax [Appeals] is not justified in law in passing the impugned order, without granting another opportunity of hearing for filing the written submissions on each of the grounds of appeal and relevant documents in support of the case of the appellant on the facts and circumstances of the case.
9. The assessment order being passed under section 144 of the Act is required to be set aside to the learned Assessing Officer to make a fresh assessment on the facts and circumstances of the case.
10. The learned Commissioner of Income Tax [Appeals] is not justified in law in upholding the addition made by the learned Assessing Officer a sum of 4,85,49,050/- u/s 69A of the Act on the facts and circumstances of the case.
11. The learned Commissioner of Income Tax [Appeals] failed to appreciate that the provisions of section 69A of the Act is not applicable on the facts and circumstances of the case.
12. The learned Commissioner of Income Tax [Appeals] failed to appreciate that the appellant is a notified Charitable institutions and Hindu Religious Institutions as per Notification No. RD 87 MUAABI 2012, Bangalore dated 29.09.2012 on the facts and circumstances of the case.

13. The learned Commissioner of Income Tax [Appeals] failed to appreciate that the appellant is exempted from income-tax as per section 10(23BBA) of the Act on the facts and circumstances of the case.

14. The learned Commissioner of Income Tax [Appeals] failed to appreciate that the appellant is not required to file the return u/s 139 of the Act as per the CBDT Circular No. 4/2002 dated 16.07.2002 on the facts and circumstances of the case.

15. Without prejudice the authorities below were not justified in law levying the tax on the credits of the bank account as considered in the assessment order without considering the expenditure incurred by the appellant on the facts and circumstances of the case.

16. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the appellant denies itself liable to be charged to interest under section 234A and 234B of the Act on the facts and circumstances of the case. Further the levy of interest under section 234A and 234B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts and circumstances of the case.

17. The appellant craves leave of this Hon'ble Tribunal to add, alter, amend, delete or substitute any or all of the above grounds urged above as may be necessary at the time of hearing of the appeal.

18. For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.”

3. The facts of the case show that on the basis of data analytics and information gathered during Operation Clean Money, it was found that during the demonetization period assessee has deposited cash of Rs.29,54,393 in its bank accounts with Canara Bank, but has not filed any return of income. Therefore, notice u/s. 142(1) was issued to explain the source of cash deposit. The assessee did not comply with the notices

issued and therefore a final notice was issued as a show cause notice for addition u/s. 69A of the Act. The assessee did not reply. The AO issued notice u/s. 133(6) to Canara Bank and gathered information from them which showed that amount credited in the bank account for the financial year is Rs.4.85 crores, out of which cash deposits is Rs.2.39 crores and out of that demonetized currency deposit is Rs.7.55 lakhs. In reference to show cause notices, the assessee submitted a letter dated 10.10.2019 stating that Rs.29,77,122 which was received by devotees in cash during the demonetization period, without knowing the demonetization, has been deposited in the bank account. The ld. AO thereafter passed assessment order u/s. 144 of the Act holding that amount of Rs.4,85,49,050 is chargeable to tax u/s. 69A of the Act in the absence of any explanation for the total credit as income of assessee to be taxed u/s. 115BBE of the Act. He also denied any benefit of section 11 & 12 of the Act for the reason that no information is available about filing of return of income and audit report u/s. 10B and any registration to the assessee u/s. 12AA of the Act. Accordingly total income of assessee was assessed at Rs.4,85,49,050.

4. The assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) in Para 4, notwithstanding that he issued four notices on respective dates, but the assessee has failed to respond to any of the notices, therefore he upheld the order of the AO and appeal was dismissed.
5. The assessee is aggrieved with the same and is in appeal before us. The assessee submitted that the ld. CIT(A) has issued notices to wrong email

id which is not belonging to the assessee. He referred to Form 35 to show that email id of assessee mentioned in Form 35 is [fininfinity2@gmail.com](mailto:fininfinity2@gmail.com), but the CIT(A) issued the notice to [sgtstyakanahatty@gmail.com](mailto:sgtstyakanahatty@gmail.com). The 2nd notice issued on 7.11.2022 was sent to 3 email ids. Further notice dated 7.7.2023 was also sent to different email id with which assessee is not concerned. It was further stated that the CA of the assessee passed away on 21.8.2024, therefore the hearing notice on 20.8.2024 asking for compliance on 27.8.2024 could not be complied, even if it is received properly. With respect to assessment proceedings, it was submitted that assessee did not file any return of income because it falls in the category of trust notified u/s. 10(23BBA) of the Act.

6. The learned departmental representative vehemently submitted that the assessee has not responded to any of the queries raised by the learned assessing officer as well as before the learned CIT – A and therefore, the learned that lower authorities have passed the order is on the merits of the case as per information available on record.
7. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Assessee did not file any return of income under the belief that assessee is a trust notified under section 10 (23BBA) of the act. There was an information available with the learned assessing officer that assessee has deposited cash of ₹ 2,954,393/- in its bank account is maintained with Canara Bank during demonetization period from 9 November 2016 to 30 December 2016. The learned

assessing officer issued notice under section 142 (1) of the act for explanation of sources of cash deposits. In paragraph number 5 of the assessment order there is a complete list of various opportunities granted by learned that AO including a show cause notice issued on 28/11/2019 and further on 4/12/2019. Except on 3/10/2019, in response to notice issued under section 142 (1) of the income tax act, the assessee responded by letter dated 18/10/2019 requesting more time. Therefore, there was no compliance by assessee, excepting seeking more time that too only once. The learned AO obtained information under section 133 (6) of the act from the bank and found that assessee has deposited ₹ 755,000 of specified banking notes. Further in absence of any explanation the assessing officer found that in the bank account of the assessee total sum credited of ₹ 48,549,050 which was added under section 69A of the income tax act and framed the assessment order under section 144 of the act. On appeal before the learned CIT – A in form number 35 the assessee mentioned a particular email ID. The first notice issued by the learned CIT – A on 30/12/2020 was on a different email ID then was mentioned in form number 35. In the second notice issued on 7/11/2022, the notices were sent on three different email ID. Of course, in these three email ids one of the email ID was that was mentioned in form number 35. In the notice dated 7/7/2023, the notice was sent to a different email ID which was not mentioned in the earlier notices by the learned CIT–A. Further one notice dated 20/8/2024 was also sent on email ID to which notices were sent on 7/7/2023. Therefore, in fact except one notice dated 7/11/2022, none of the notices were sent

on the email ID mentioned by the assessee in form number 35. It is also not known that how the learned CIT–A came to know about the different email ids on which notices were sent. Before us, the assessee has denied that these email ids belong to the assessee. Unfortunate incident was also reported that the chartered accountant of the assessee passed away on 21/8/2024 and the appellate order was passed on 25/9/2024, due to this even otherwise, non-compliance is for a sufficient cause. Further, before us, for nonfiling of the return the assessee has categorically stated that it was under the bona fide belief that the appellant was not required to file the return of income in view of its entitlement for exemption under section 10 (23BBA) of the Act as the assessee is subject to the administration by executive order of the government of Karnataka. For this reason, the assessee did not file the return of income and submitted so before the assessing officer. On appreciation of the above facts, it is apparent that assessee has failed to get a proper hearing before the lower authorities. Even otherwise the learned CIT–A has also not decided the issue on the merits of the case but has merely uphold the order of the learned AO without giving his own reasoning. In view of the above facts, though the assessee has raised 18 grounds of appeal, but without adjudicating on the merits of the case, we restore the issue back to the file of the learned assessing officer with a direction to the assessee to substantiate the amount of ₹ 48,549,050 deposited in the bank account of the assessee as not chargeable to tax under section 69A of the Act. The learned assessing officer may examine the same, after giving an

opportunity of hearing, decide the issue afresh. In the result, ground number 1 – 9 are allowed with above directions.

8. Ground number 10 – 18 are on the merits of the case which are not adjudicated in view of our decision of restoring the issue back to the file of the learned assessing officer.

9. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 16<sup>th</sup> day of January 2025.

Sd/-

( KESHAV DUBEY )  
JUDICIAL MEMBER

Sd/-

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,  
Dated, the 16<sup>th</sup> January 2025.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.