

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'A' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2138/Bang/2024
Assessment Year : 2017-18

Shri Dinesh Narayan Shetty, HIG-26, NIDI A & B Block, Ramakrishna Nagar, Mysuru – 570 023. PAN: AELPS7936L	Vs.	The Income Tax Officer, Ward – 1[4], Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sunaina Bhatia, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Dept.

Date of Hearing	:	09-12-2024
Date of Pronouncement	:	16-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 25/10/2024 in respect of the A.Y. 2017-18 on the following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] erred in disposing off the appeal holding that the appellant had not furnished any response during the course of appellate proceedings without

appreciating that the appellant had furnished detailed written submissions in support of his arguments on 24/07/2024, which included additional evidence tendered as per application under Rule 46A of the I.T.Rules and therefore, the dismissal of the appeal against the order u/s. 144 of the Act was unwarranted and unjustified.

3. The learned CIT[A] erred in upholding the assessment u/s.144 of the Act, especially when no effective opportunity was given in course of the assessment proceedings under the facts and in the circumstances of the case.

4. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs.29,88,000/- as unexplained money u/s.69A of the Act, by unreasonably rejecting the explanation on mere surmise, suspicion, assumptions and presumptions and without considering the explanation and evidence tendered in course of the appellate proceedings under the facts and in the circumstances of the appellant's case.

4.1 The learned CIT[A] is not justified in upholding the invocation of the provisions of section 11566E and taxing the aforesaid addition made at the rate of 60% under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-A of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. At the time of hearing, the Ld.AR submitted that the assessment order was made u/s. 144 of the Act and submitted that the assessee had not received the notices and therefore the assessment was made u/s. 144 of the Act. The Ld.AR further submitted that the addition made u/s. 69A of the Act is not based on any material records and therefore the addition is required to be deleted. The assessee also filed a paper book in which he

enclosed the written submissions along with the application for admission of additional evidence under Rule 46A of IT Rules, 1962. The Ld.AR also brought to our notice that the assessee had filed various documents on 24/07/2024 but unfortunately the Ld.CIT(A) without considering the said documents had decided the appeal ex-parte and dismissed the appeal. The Ld.AR submitted that the order of the Ld.CIT(A) without considering the documents filed on 24/07/2024 is against the principles of natural justice and therefore prayed to set aside the same.

The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

3. We have heard the arguments of both sides and perused the materials available on record.

4. As seen from the assessment order, it is an ex-parte order made u/s. 144 of the Act for the reason that the assessee had not responded to any of the notices. It is the case of the assessee that no notices were received by him and therefore he was not able to appear before the AO and therefore the addition made u/s. 69A of the Act is not correct. Further, we have also perused the acknowledgement filed by the assessee from which we came to know that the assessee had filed various documents on 24/07/2024 with a prayer to accept the additional evidences in support of his case that there is no unexplained money involved in this case. In the appellate order, the Ld.CIT(A) had extracted the notices issued on various dates but he had not dealt with any of the documents filed along with the said reply including the application to admit the additional evidences filed by the assessee in support of his claim.

5. Admittedly, the assessment is also an ex-parte assessment made u/s. 144 of the Act and the Ld.CIT(A) had also not considered the various documents which were filed as an additional evidences in support of the case of the assessee and therefore in the interest of justice, we are remitting this issue to the file of Ld.AO to consider the documents filed by the

assessee before us and decide the issue afresh on merits and in accordance with law after granting a reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 16th January, 2025.

Sd/-
(PRASHANT MAHARISHI)
Vice - President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 16th January, 2025.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore