

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHINBENCH:COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.578/Coch/2023
AssessmentYear: 2017-18

Quadisiyya Hajj Cell Quadisiyya Complex Thazhuthala Mukathala PO Kollam 691 577 PAN NO :AAAFQ3277H	Vs.	ITO Ward-3 Kollam
APPELLANT		RESPONDENT

Appellant by	:	Shri R. Krishnan, A.R.
Respondent by	:	Shri Sanjit Kumar Das, D.R.

Date of Hearing	:	06.01.2025
Date of Pronouncement	:	28.01.2025

O R D E R

PERKESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. CIT(A)/NFAC dated 19.6.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1053793992(1) for the Assessment Year (in short "AY") 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

2. The assessee has raised following grounds of appeal:

- 1) The learned Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs. 3,35,25,792/- as unexplained money from undisclosed sources of the appellant, assessable u/s 69A of the Income Tax Act read with section 115BBE of the Income Tax Act.
- 2) The learned officers below, ought to have noted that section 69A of the Income Tax Act operates on a different sphere section 69A is attracted, wherein any financial year the assessee is found to be the owner of any money, bullion, jewellery or any other valuable article and no other explanation is offered as to its source or the explanation offered is in the opinion of the Assessing Officer not satisfactory.

- 3) The learned Commissioner of Income Tax (Appeals) ought to have appreciated that this is a case of the Assessing Officer treating the deposits in bank account as unexplained income by treating the passbook as the books of accounts. It has been held in several cases that passbook cannot be treated as books of accounts for the purpose of section 69A and therefore the addition is absolutely bad in law. The findings of the learned Commissioner of Income Tax (Appeals) on applicability of Section 69A of the Income Tax Act is absolutely erroneous.
- 4) The learned Commissioner of Income Tax (Appeals) erred in stating that the appellant had not furnished any explanation for the cash deposits in the bank accounts amounting to Rs. 3,35,25,792/-. In Para-5 of the appellate order he has himself reproduced the submissions of the appellant that the amounts were related to the services rendered in connection with Hajj pilgrimage and that the transactions reflected in the bank account were disclosed in the individual return of the partner.
- 5) The learned Commissioner of Income Tax (Appeals) erred sustaining the addition despite the confirmation and observation of the Assessing Officer that the closing cash balance, balances in bank accounts, deposit accounts, interest incomes, etc. have been disclosed in the individual return of the partner. To that extent, the order passed by the Assessing Officer is without considering the materials available on record and against the principles of natural justice.
- 6) The learned officers below erred in stating that the appellant had not furnished any explanation or documentary evidences in support of the deposits in bank accounts when there was a clear finding by the Assessing Officer that all the amounts stood disclosed in the individual return of the partner and that this was a case of diversion of income from the firm to the partner with the sole intention to evade tax.
- 7) The learned Assessing Officer erred in concluding that this is a case of diversion of income from the firm to the individual without really proving the same.
- 8) The learned Commissioner of Income Tax (Appeals) ought to have rendered his decision taking into consideration the facts of the case which clearly proved that this was a case of clerical mistake committed at the time of opening of account when the PAN of the firm was entered by the bank in respect of transactions pertaining to the individual. Having found that the firm has not carried on any activity during the year and the further fact that the transactions pertain to individual partner, the addition in the hands of the firm is absolutely bad in law.

Appellant prays that the addition of Rs. 3,35,25,792/- made in assessment be deleted.

3. Brief facts of the case are that although the assessee firm had entered into a high value financial transaction during the financial year 2016-17 but it had not filed any income tax return for the assessment year 2017-18. Accordingly, notice u/s 142(1) of the Income Tax Act, 1961 (in short "The Act") issued requiring the assessee firm to furnish return of income. The assessee had not

responded to said notice and accordingly the AO has taken up for scrutiny and show cause u/s 144 r.w.s. 142(1) of the Act was issued requiring to explain and to show cause in writing as to why the scrutiny assessment should not be finalized u/s 144 of the Act and to explain the show cause in writing as to why the cash deposited in bank accounts during the year should not be treated as unexplained income. During the course of assessment proceedings, the assessee has stated that the nature and source of various cash amounts deposited in the bank accounts from 1.4.2016 to 31.3.2017 including the cash deposited during the demonetization period were related to the service of providing arrangements for Haj pilgrims. However, as the assessee has not submitted books of accounts of the partnership firm and also not explained the source of all amounts credited in the bank account by cash and other credits, the entire amount deposited by cash and by other credits during the financial year 2016-17 amounting to Rs.3,35,25,792/- was treated as unexplained money from undisclosed sources of the partnership firm as provided in section 69A of the Act.

3.1 Aggrieved by the assessment completed u/s 144 of the Act, the assessee has preferred an appeal before Id. CIT(A).

3.2 The Id. CIT(A) also dismissed the appeal on the ground that assessee has not furnished explanation/evidences in support of grounds of appeal inspite of several opportunities provided to them. As the assessee has not furnished any explanation for the cash deposited in the bank accounts amounting to Rs.3,35,25,792/-, the Id. CIT(A) concluded that the assessee failed to discharge the onus and therefore, he did not find any reason to interfere with the findings/observation of the AO made in the assessment order and accordingly addition of Rs.3,35,25,792/- made by AO was

confirmed. Aggrieved by the order of Id. CIT(A)/NFAC, the assessee has filed the present appeal before us.

3.3 Before us, Id. A.R. of the assessee submitted that assessee could neither represent their case before AO nor before the Id. CIT(A). The Id. A.R. submitted that the assessee is a partnership firm that was constituted with an intention of carrying on business facilitating pilgrimage to Mecca (Haj & Umrah). PAN was also applied and was also allotted in the name of partnership firm. However, the firm never commenced its business. The assessee firm was actually constituted to take over the business carried on by the individual Muhammed Unju when the government changing its policy of allowing pilgrimage services by persons other than individuals or proprietors. However, the change did not materialized and therefore, there was no necessity to carry on partnership business and accordingly, the firm never commenced its business.

3.4 The Id. A.R. of the assessee further submitted that the transaction in Canara Bank account was in fact accounted for in his individual case filed under PAN BGXPP8105M. During the course of assessment proceedings, the partner also submitted a copy of audit report in his name along with name of Quadisiyya Hajj Cell. Further, the PAN of the firm was wrongly tagged to the individual account and the person who was assessed in his individual capacity. Further, Id. A.R. submitted that a correction request had been given to the bank to correct the PAN, which is already been done by the bank after the end of the year. Lastly, the Id. A.R. of the assessee submitted that as before both the lower authorities, the assessee could not represent his case properly by submitting explanation/submission/information, therefore,

requested to provide one more opportunity to substantiate their claims.

4. The ld. D.R. on the other hand, supported the order of the authorities below and submitted that the assessee did not avail the opportunities of being heard granted by both the authorities below.

5. We have heard the rival submissions and perused the materials available on record. On going through the assessment order, we find that the assessment order has been passed u/s 144 of the Act. The AO has observed that assessee has not produced any books of accounts of the firm for verification. Further, no other details of assets, liabilities, expenses made available for verification. Further, interest and remuneration to partners and depreciation etc., are also not allowed as not claimed. Before ld. CIT(A) also we find that as the assessee could not furnish any explanation/evidences in support of the grounds of appeal, the ld. CIT(A) concluded that assessee failed to discharge the onus and accordingly dismissed the appeal. We also take a note of the fact that the AO did not accept the contention that PAN of the firm was wrongly tagged to the individual account. The ld. A.R. of the assessee submitted that bank has already corrected the PAN. We are of the view that these things need to be examined afresh. Being so, in the interest of justice and fair play, and as requested by the ld. A.R. of the assessee, we are of the opinion that one more opportunity may be granted to the assessee to substantiate their claim and accordingly, we remit the entire issue in dispute to the file of AO for de-novo consideration and to decide in accordance with law. The assessee is directed to cooperate with the proceedings and file all the documents/records before the AO to substantiate their claim. Needless to say, a reasonable opportunity of being heard must be granted to the assessee. In case of further

default on the part of the assessee, they shall not be entitled for any leniency. Ordered accordingly.

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

Order pronounced in the open court on 28th Jan, 2025

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Keshav Dubey)
JudicialMember

Bangalore,
Dated: 28th Jan,2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Cochin.