

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “SMC” BENCH, VISAKHAPATNAM**

(HYBRID HEARING)

**श्री ललित कुमार, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI LALIET KUMAR, HON’BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.380/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)**

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| Manoj Kumar Jeswani D.No. 33-21-11, Sri Sai Ratna Towers Balaji Street, Seetharamapuram Vijayawada – 520002 [PAN: AVJPK4437D] | v. | Income Tax Officer – Ward – 2(2) C.R. Building, 1 st Floor Annex M.G. Road, Vijayawada – 520002 Andhra Pradesh |
| (अपीलार्थी/ Appellant) | | (प्रत्यर्थी/ Respondent) |

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| करदाता का प्रतिनिधित्व/ Assessee Represented by | : | Shri K. Venkata Praveen |
| राजस्व का प्रतिनिधित्व/ Department Represented by | : | K. Sandhya Rani, Sr.AR |
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| सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing | : | 20.01.2025 |
| घोषणा की तारीख/Date of Pronouncement | : | 22.01.2025 |

आदेश /O R D E R

PER SHRI LALIET KUMAR, JUDICIAL MEMBER:

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2024-

25/1066700718(1) dated 15.07.2024 for the A.Y.2017-18 arising out of order passed under section 144 of the Income Tax Act, 1961 (in short 'Act') dated 04.12.2019.

2. Brief facts of the case are that, assessee deriving income from business of Retail Trade in Footwear and has been regularly filing VAT returns as well as GST returns for the said firm disclosing the total turnover. For the assessment year under consideration assessee has not filed return of income. Based on the information available in AIMS module in ITBA with regard to verification of cash transactions, Ld. Assessing Officer [hereinafter in short "Ld. AO"] on 09.03.2018 issued notice under section 142(1) of the Act calling for return of income of the assessee for the AY:2017-18. The details of the information available with the Department in ITBA portal pertaining to the assessee individual are as under: -

| Sl.No. | Name of the Bank | Account No. | Cash deposit during demonetization period Rs. |
|--------|--------------------------------------|--------------|--------------------------------------------------|
| 1. | ICICI Bank Eluru Road, Vijayawada | 180301501478 | 6,00,000/- |
| 2. | ICICI Bank Eluru Road, Vijayawada | 180305500019 | 4,56,500/- |

3. In response, assessee failed to furnish his return of income for A.Y.2017-18 either under section 139 (on or before due date) and also failed to furnish Income Tax Return in response to notice issued u/s 142(1) of the Act.

Subsequently, on 19.09.2019 notice under section 142(1) of the Act, calling for certain information such as copy of ITR filed for AY:2017-18, details of all bank accounts along with copies of bank account statements, Sources for the cash deposits made into bank accounts. As there is no response from the assessee, Ld.AO issued summons under section 131 of the Act on 04.11.2019 requiring the assessee to attend office on 08.11.2019 along with copies of bank account statements, books of accounts, VAT returns, documentary evidences for cash deposits. In response, assessee furnished Bank account statements of accounts No. 14561000016468 held by the assessee with HDFC Bank, Vijayawada and also bank account statements of ICICI and copies of VAT returns for the F.Y.2015-16 & 2016-17. 03. Ld. AO issued notice under section 133(6) of the Act to banks calling for information i.e., copies of bank account statements and copy of KYC forms, SBNs details, etc., from ICICI Bank, Eluru Road Branch, Vijayawada and the information has been provided by the banks. Thereafter, Ld.AO issued show-cause notice asking the assessee as to why the cash deposited during demonetization should not be treated as income of the assessee in the absence of proper evidence, and show cause as to why business income should not be estimated under section AAD @8% on turnover. In response, assessee has not filed any reply. Therefore, Ld. AO proceeded to complete the assessment under section 144 of the Act by adding total income of Rs.17,13,610/- and proposed tax of Rs.14,16,265/- including interest and proposed a penalty for deferment of filing income tax return.

4. On being aggrieved, assessee preferred an appeal before Ld. CIT(A) and filed its submissions. After considering the submissions, Ld.CIT(A) dismissed the appeal of the assessee.

5. On being aggrieved, assessee preferred an appeal before us by raising the following grounds of appeal: -

“1. The order of the Learned ('Ld.) Commissioner of Income Tax (Appeals) (herein after referred to as the Appellate Commissioner/ "CIT(A)") is erroneous as per law and on facts of the case.

2. The Ld. CIT(A) has erred in law and on facts of the case by upholding the order of the Ld. Assessing Officer. The Ld.Assessing Officer had taken the total credits of Rs. 82,13,907/- in the bank accounts as total turnover and applied provisions of section 44AD of the Act, thereby making the addition which is not tenable and voidable.

3. The Ld. CIT (A), had upheld the order of the Ld. Assessing Officer where the Ld. Assessing Officer had considered the cash deposits of Rs. 10,56,500/- during the demonetization period which was also included in 82,13,907/- (total credits in all the three bank accounts) making the same subject to double taxation even when the Appellant was having requisite cash balance generated in the retail trade of foot wear from cash sales in the period from 1st April 2016 to 8th November 2016. The Ld. CIT (A) had erred in upholding the Assessment Order where the addition of Rs- 10, 56,500/- as unexplained income under section 69A of the Act is totally arbitrary.

4. Without prejudice to the above grounds or any other grounds which may be raised, the Ld. CIT(A) has erred in law and on facts of the case by upholding an order which has a high pitched assessment in the case of the appellant by making an addition to the highest magnitude thereby causing harassment and serious grievance to the appellant.

5. The Appellant craves to leave, add, modify, alter, delete and/or rescind all or any of the grounds of appeal on or before the final hearing if necessary so arises, with the approval of Hon'ble Income Tax Appellate Tribunal.

6. In the light of the above grounds, the Appellant requests and prays the Hon'ble Income tax Appellate Tribunal, Visakhapatnam bench to grant the necessary relief based on the facts.”

6. At the time of hearing, Ld. AR submitted that Ld.CIT(A) as well as Ld.AO passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld.AR pleaded that the matter may be remitted back to the file of the Ld. AO in the interest of natural justice.

7. On the other hand, Ld. Departmental Representative [hereinafter in short “Ld. DR”] relied on the order of the Ld.CIT(A) and submitted that assessee has not utilized the opportunity provided by Ld.CIT(A). The Ld.CIT(A) thus, dismissed the appeal of the assessee. Therefore, the order passed by Ld. CIT(A) is exparte order and pleaded to confirm the orders passed by the Revenue Authorities.

8. We have heard both the sides and perused the material available on record. On a perusal of the Ld.CIT(A) order we observe that Ld. CIT(A) in Para No. 5 observed that assessee has not submitted bank statements and decided the issue as under:

“5. *Appellate Proceedings:*

During the appellate proceedings, appeal notices were sent to the appellant on 29.12.2020, 09.11.2023, 27.02.2024, 14.05.2024 and 02.07.2024 fixing the case for 31.12.2020, 1.12.2023, 07.03.2024, 30.04.2024, 29.05.2024 and 09.07.2024 respectively. The appellant has replied with documentary evidences along with written submissions on 20.04.2022, 13.12.2023, 30.12.2023, 06.03.2024 and 19.05.2024.

The appellant has submitted Bank statements of – ICICI Bank – A/c no. 180305500019 and 180301501478; Current a/c and savings a/c respectively.

HDFC Bank – A/c no. 14561000016478

VAT returns copies, Financial statements for the period of April 1, 2016 to November 8, 2016, Financial statements for the period of April 1, 2016 to December 31, 2016, Financial statements for the period of April 1, 2016 to March, 2017, Details of bank transactions i.e. cheques dishonour, loans obtained from the parties etc.

I have gone through the assessment order, statement of facts, grounds of appeal and the documents furnished by the appellant during the appellate proceedings. The appellant before me claims to be an individual and derives income from the business of footwear. The appellant is carrying on footwear business in the name of Hollywood Shoe Center in Vijaywada, Andhra Pradesh. . The appellant before me is aggrieved on mainly two issues.

The addition of Rs. Rs. 10,56,500/- on account of cash deposited during demonetization period under section 69A Business income estimated at 8% of the sales turnover in the given financial year. Adjudication on ground no. (i) The appellant before me is engaged in a retail business of selling footwear and earning income from it. In my view, generally the nature of business is cash driven and as per appellant the cash collected was mainly from the sales of shoes per unit from the customers. The appellant only submitted cash book from 01.04.2016 to 08.11.2016. The cash deposit entries prior to demonetization period were perused from cash book. On going through the submissions made by the appellant, the cash book has cash deposit entries prior to demonetization period to the tune of Rs. 76,63,436/- and further month wise cash in hand was also perused, the average monthly cash in hand prior demonetization period was approximately Rs. 10,64,366 /- which is claimed to be received from sales in cash and also deposited from bank accounts of the appellant. **Further the appellant has not submitted his bank statements in appellate proceedings to cross-check the amount withdrawal from bank and used as cash in hand by the appellant.** The onus to prove the genuineness of the cash deposited during the demonetization period solely lies on the individual under which it is in possession. The veracity of sources of amount under contention is still in question for want of evidence. The amount deposited and sales made by the appellant are not coherent and are subject to verification from credible sources such as Bank account statements and copy of sale proceeds of the stock. The invoices and the stock register could have been furnished by the appellant during various hearings throughout the appellate proceedings. The appellant has also not submitted the VAT return although claimed in the written submission for cross verification.

I, therefore uphold the decision taken by the AO to add Rs. 10,56,000 as the unexplained income under section 69A of the Income Tax Act of the appellant for want of necessary documentary proofs and satisfactory explanations. Thus, this ground of appeal of the appellant is hereby dismissed.”

9. Further, we observe that Ld. CIT(A) in Page 5 has observed that during the assessment proceedings, assessee furnished bank statements before the Ld. AO, for the sake of clarity it is reproduced below:

“Since the assessee has not submitted the information to the notices under section 142(1) & summons U/s. 131, except filing copies of VAT returns and bank account statements”

10. In view of the contrary observations of the Ld. CIT(A) in respect of furnishing of bank details by the assessee, we are of the considered view that the appeal be remitted back to the file of the Ld. AO for deciding afresh. Ld. AO is directed to decide, whether the cash deposits during the demonetization period was out of sale or not and whether there was a requisite withdrawal and deposits from that account or not. Therefore, considering the facts and circumstances of the case and in order to meet the principles of natural justice, we are of the view that it is a fit case to remit the matter back to the file of the Ld. AO for fresh consideration by providing one more opportunity to the assessee and at the same breath we direct the assessee to cooperate with the proceedings before the Ld. AO without seeking unnecessary adjournments. The Ld. AO also directed to dispose off the case on merits. Thus, the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22nd January, 2025.

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| Sd/- (एस बालाकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER | Sd/- (ललित कुमार) (LALIET KUMAR) न्यायिक सदस्य/JUDICIAL MEMBER |
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Dated: 22.01.2025
Giridhar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Manoj Kumar Jeswani**
D.No. 33-21-11, Sri Sai Ratna Towers
Balaji Street, Seetharamapuram
Vijayawada – 520002
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 2(2)**
C.R. Building, 1st Floor Annex
M.G. Road, Vijayawada – 520002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam