

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2425/Bang/2024
Assessment Year : 2018-19

Shri Shivaramaiah Guruswamy, G-6, Teachers Hostel, GKVK, Bangalore University of Agricultural Sciences, Bangalore – 560 065. PAN: ABGPG5062M	Vs.	The Income Tax Officer, Ward – 3(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Pranay Sharma, Advocate
Revenue by	:	Shri Subramanian S, JCIT-DR

Date of Hearing	:	28-01-2025
Date of Pronouncement	:	31-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 17/10/2024 in respect of the A.Y. 2018-19 and raised the following grounds:

“1. The order passed by the learned Authorities below, is opposed to law, weight of evidence, natural justice,

probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies himself liable to be assessed at a total income of Rs. 67,86,000/- as against the Nil income on the facts and circumstances of the case.

3. The learned AO failed to serve notice to the appellant and hence the entire proceedings are bad in law. The learned AO failed to appreciate the fact that the appellant is aged 69 years old and is single and also not supported by any of his family members and is not conversant with technology and was not able to see the notices issued. Hence, in the absence of service of notices the entire proceedings are bad in law.

4. The learned authorities below erred in completing the assessment by taxing Rs. 67,86,000/- as unexplained income u/s 69A of the Act, ignoring the fact that there was no gain out of the sale of immovable property on facts and circumstances of the case and hence, the addition is bad in law.

5. The learned authorities below erred in not allowing cost of acquisition on the property sold under the facts and circumstances of the case.

6. The learned authorities below erred in taxing the sale of immovable property under 69A ignoring the fact that the same is taxable under capital gain under the facts and circumstance of the case.

7. The learned authorities below failed to appreciate the fact that the sale proceeds were utilized for purchase for residential property and hence eligible for exemption which result in no tax on the facts and circumstances of the case.

8. The learned authorities below erred in taxing the pension income of Rs. 2,71,000/- under 69A ignoring the fact that the same is chargeable to tax under the Head "Income from Salary" on facts and circumstances of the case.

9. The learned authorities below erred in taxing the entire income as appearing in the computerized system, without giving any effect of deductions and exemptions as per the provisions of law as per the facts and circumstances of the case.

10. *The learned authorities below erred in not giving credit for the TDS deducted and as per the data appearing in the Form 26AS computerized system as per the facts and circumstances of the case.*

11. *Without prejudice, the learned AO erred in concluding the assessment u/s 144 without being judicious and the estimates are required to be justified which the learned AO failed to do so.*

12. *The appellant denies the liability to pay interest under section 234A, 234B and 234C and fees under section 234F of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied is not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*

13. *Without prejudice, the additions made is highly excessive and deserves to be deleted.*

14. *The learned authorities below erred in not giving adequate opportunity of being heard. The impugned order is passed without granting adequate opportunity to the appellant and in violation of principles of natural justice on the facts and circumstances of the case.*

15. *The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

16. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

2. The brief facts of the case are that the assessee is a senior citizen and during the assessment year, the assessee sold an immovable property for a sale consideration of Rs. 65 Lakhs and also received a salary of Rs. 2,71,000/- and interest income of Rs. 15,000/-. In spite of the said facts, the assessee had not filed his return of income and the assessee's case was reopened for assessment and notices u/s. 148A, 148, 142(1) were issued to the assessee. The assessee had not responded to any of the notices and

therefore the AO made a best judgment assessment u/s. 144 r.w.s 147 of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that he was not conversant with the technology and therefore he was not able to file the appeal in time but after finding a suitable auditor, the appeal itself was filed with a delay of 54 days. The assessee on merits had contended that the AO had not granted sufficient opportunity since the notices sent through the email was not viewed by the assessee and therefore the assessee could not be able to file objections to the various notices. The assessee had given the email address of him in form 35 but unfortunately because of his lack of knowledge in the technology, he has also not looked into the email and therefore the notices sent to the assessee's email were not viewed and therefore the Ld.CIT(A) had dismissed the appeal ex-parte. As against the said ex-parte order, the assessee is in appeal before this Tribunal.

3. At the time of hearing, the Ld.AR submitted that the assessee was not conversant with the technology and therefore the notices issued by the AO as well as the Ld.CIT(A) were not noticed by him and therefore he was not able to appear before both the authorities and prayed to grant one opportunity for producing the documents. The Ld.AR further submitted that he has given the new email ID of the auditor in form no. 36 and the notices may now be sent to the same so that he will appear and produce the necessary documents.

4. The Ld.DR relied on the orders of the lower authorities and submitted that all the notices were sent to the email ID of the assessee and therefore the authorities below had rightly passed an order for non prosecuting the appeal.

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

6. We have perused the assessment order in which the AO had taken the entire sale consideration as unexplained money u/s. 69A of the Act after admitting that the said amount is received by the assessee by way of the sale of immovable property. Further, the AO in order to ascertain the said transactions had issued notices to the Sub-Registrar u/s. 133(6) of the Act but no details were furnished by the Sub-Registrar. The AO also requested the verification unit of the department for physical verification and a report but unfortunately, the authorities of the department also not responded to the said notice. In such circumstances, the AO had treated the entire sale consideration as unexplained money u/s. 69A of the Act. Having accepted the fact that it is the sale consideration received on the sale of immovable property, the addition made u/s. 69A of the Act that too on the entire sale consideration is not correct. But unfortunately, the assessee had not responded to the various notices and therefore we cannot blame the assessing officer for making the assessment u/s. 144 of the Act.

7. We have considered the submissions made by the Ld.AR and in view of the fact that the assessment was made u/s. 144 and also the entire sale consideration was treated as unexplained money u/s. 69A of the Act, we are of the view that the issue needs to be decided on merits. We therefore set aside the orders of the AO as well as the Ld.CIT(A) and remit the matter to the file of AO to make a fresh assessment order by considering the issue denova. As submitted by the Ld.AR, the hearing notices may be sent to the email ID mentioned in form 36 i.e. admin@mrnmca.com. We are showing this leniency to the assessee on condition that the assessee should pay a cost of Rs. 5,000/- under the head of the IT Department i.e Other payments-Miscellaneous Receipts 0075 and on such payment, the AO is directed to execute the above said directions otherwise it is deemed that the appeal is dismissed.

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

Order pronounced in the open court on 31st January, 2025.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 31st January, 2025.
/MS /

Copy to:

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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