

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 709/Coch/2024

Assessment Year : 2017-18

Shri Aboobacker, Arimala House, Natakkal, Post Uppala, Manjeshwar Taluk, Kasaragod District. Kerala – 671 322. PAN: AUMPA0643D	Vs.	The Income Tax Officer, Ward – 1 & TPS, Kasargod.
APPELLANT		RESPONDENT

Assessee by	:	Shri Arun Raj, Advocate
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	05-02-2025
Date of Pronouncement	:	21-02-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 04/06/2024 in respect of the A.Y. 2017-18.

2. The assessee has filed this appeal with a delay of 12 days and also explained the reasons for the said delay by filing an application and we have also gone through the said application and satisfied ourselves that the said delay is only a minimal one and also properly explained and therefore we condone the said delay in filing this appeal and proceeded to take up the appeal on merits.

3. The brief facts of the case are that the assessee is doing the business of wholesale and retail trading of sheep and goats and he earned income through selling the sheep and goats in the local market. He has deposited the sale proceeds into his current account. On the basis of the information received, the AO sought to reopen the assessment u/s. 148 of the Act but the assessee had not filed any reply or return in response to the notices and therefore the AO had treated the entire deposits as unexplained credits u/s. 68 of the Act and made an assessment u/s. 144 of the Act.

4. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that he is an uneducated person and he is also not conversant with the Income tax proceedings and therefore he has entrusted his file to the local accountant for filing his returns. The accountant while filing the return gave his mobile no. as well as the email ID and therefore the said notices were not received by the assessee. In fact, the accountant also has not filed the return of income and therefore the AO made the order u/s. 144 of the Act which is liable to be set aside. The assessee also submitted that the source of deposits are nothing but the sale proceeds of his business and therefore the addition made u/s. 68 as unexplained cash credit is also not correct. The Ld.CIT(A) had issued three hearing notices but unfortunately the assessee had not filed any explanations and also not filed any documents in support of his case and therefore the Ld.CIT(A) had dismissed the appeal for non-prosecution. As against the ex-parte order, the assessee is in appeal before this Tribunal.

5. At the time of hearing, the Ld.AR submitted that the ex-parte order of the Ld.CIT(A) is not correct since the assessee had e-filed their written submissions on 31/05/2024. But the Ld.CIT(A) had not considered the written submissions and passed an ex-parte order on 04/06/2024 and therefore the said order is liable to be set aside.

6. On the other hand, the Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal filed by the assessee.

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

8. As seen from the assessment order, the same was made u/s. 144 of the Act since the assessee had not responded to the various notices issued by the AO. Similarly, the Ld.CIT(A) had also dismissed the appeal ex-parte by observing that the assessee had not filed any written submissions to the three notices issued by him. But in the grounds of appeal, in ground no. 6, the assessee had submitted that he had filed his written submissions on 31/05/2024 vide acknowledgment no. 381733731310524 but unfortunately, the Ld.CIT(A) had observed that the assessee is not interested in persuading the appeal. On considering the said ground, we are of the view that the Ld.CIT(A) had failed to consider the written submissions filed by the assessee on 31/05/2024 which was filed through the portal of the department. Therefore the order of the Ld.CIT(A) is against the facts of the case and therefore we are inclined to set aside the order of the Ld.CIT(A) with the direction to consider the issue afresh after giving a reasonable opportunity of being heard to the assessee. We also make it clear that the assessee is at liberty to file the written submissions and documents when the matter is taken up for hearing before the Ld.CIT(A).

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

Order pronounced in the open court on 21st February, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 21st February, 2025.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Cochin