

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2323/Bang/2024
Assessment Year : 2013-14

Sri Panati Vikramdeva Reddy, No. 8, Behind Sandhya Tent, Venkateshwara Layout, Madiwala, Bengaluru – 560 068. PAN: ABOPR2086C	Vs.	The Assistant Commissioner of Income Tax, Circle – 4(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sunaina Bhatia, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	27-02-2025
Date of Pronouncement	:	30-04-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 15/02/2024 in respect of A.Y. 2013-14 and raised the following grounds:

“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 without allowing proper and effective opportunity to the appellant in course of the appellate proceedings under the facts and in the circumstances of the appellant's case,

3. The impugned order passed u/s.147 rws 144B of the Act dated 28/03/2022 is bad in law and void-ab-initio in as much as, the said assessment u/s.147 of the Act, has been made after the substitution of section 147 of the Act, by the Finance Act, 2021 w.e.f. 01/04/2021 and consequently, the impugned order passed under the erstwhile provisions of section 147 of the Act, is a nullity since, the said provisions do not exist in the statute after substitution and consequently, the order passed deserves to be annulled.

3.1 The learned A.O. ought to have appreciated that the erstwhile provisions section 147 of the Act, have been substituted by the Finance Act, 2021 without any saving clause to enable continuation of the proceedings pending on the date of substitution of the provisions of section 147 of the Act and consequently, no assessment could be framed u/s.147 of the Act, since the substituted provisions of section 147 of the Act, empower the A.O. to frame an assessment only subject to the provisions of section 148 and 148A of the Act and consequently, the impugned order passed without a statutory provision in the statute on the date of passing the assessment order is a nullity.

4. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the order of re-assessment requires to be cancelled.

5. The learned CIT[A]/NFAC is not justified in upholding the addition of Rs. 17,09,973/- on account of Business Income under the facts and in the circumstances of the appellant's case.

6. 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, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.

7. 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. The brief facts of the case are that the assessee is carrying on the business of management of solid waste with the BBMP. The appellant filed his return of income on 30/09/2013 along with the audit report in form 3CB and 3CD. Based on the search and seizure conducted at the premises of Shri P. Gopinath Reddy, the AO treated the inflated expenses as undisclosed income. Accordingly, a notice u/s. 148 was issued but since the said notice was uploaded in the portal, the assessee has no knowledge about the same. Later on, when the notice u/s. 148 was issued, the assessee filed their return of income declaring the original income declared by him. Since the notices u/s. 142(1) were not known to the assessee, they have not filed any further replies and therefore a show cause notice u/s. 144 of the Act was issued. Thereafter, the assessee filed his return of income and also submitted the details to the notice issued u/s. 148 of the Act. Subsequently, a notices u/s. 143(2) and 142(1) were issued and the assessee also submitted some details and sought for time to file the further details called for by the AO. The AO issued a show cause notice on 26/03/2022 and calling upon the assessee to file his objections on or before 27/03/2022. Since the AO had granted one day time for filing the reply, that too on a Sunday, the assessee was not able to file the details and therefore the assessment u/s. 147 r.w.Rule 144B was made in which the AO had made an addition of Rs. 17,09,973/-. Challenging the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had also dismissed the appeal for the non appearance of the assessee. As against the said order of the Ld.CIT(A), the assessee has filed the present appeal before this Tribunal with a delay of 216 days.

3. In the petition for condonation of the delay, the assessee submitted that the appeal order was not served on him physically and since he was not conversant with the email and other electronic means of communication, he was not able to verify the portal and therefore he had not responded to the notices issued by the Ld.CIT(A). The assessee further submitted that only when the assessee approached the authorized representative to settle the case under the Direct Tax Vivad Se Vishwas Scheme, 2024, he came to know that the appeal was dismissed by the Ld.CIT(A) on 15/02/2024 itself. Thereafter the assessee approached the present counsel and the appeal was filed with a delay of 216 days.

4. We have perused the form 2 certificate issued by the PCIT in which the assessee was directed to pay a sum of Rs. 2,14,616/- in order to avail the Direct Tax Vivad Se Vishwas Scheme, 2024 which was also paid by the assessee on 17/02/2025. From the above said details filed by the assessee, it is clear that the assessee had intended to settle the dispute with the department and for which the necessary payments were also made on 17/02/2025.

5. We have considered the reasons stated in the delay condonation petition filed by the assessee and also about the fact that the assessee had opted for Direct Tax Vivad Se Vishwas Scheme, 2024 and therefore we are inclined to take a lenient view and condoned the said delay of 216 days in filing the appeal before this Tribunal. Now we proceed to decide the appeal on merits.

6. We have seen that the Ld.CIT(A) had also passed an ex-parte order since the assessee had not appeared before him for the 3 Notices issued by him. We have also considered the submissions made by the Ld.AR that the assessee had some difficulties in viewing the notices which was sent through electronic mode and therefore the assessee had not appeared before the Ld.CIT(A). We have also considered the submission that the assessee

had also opted for Direct Tax Vivad Se Vishwas Scheme, 2024, for which form 2 was also issued by the authorities and the assessee had also paid the determined tax amount in order to avail the scheme. In such circumstances, we are inclined to set aside the ex party order of the Ld.CIT(A) and restore the issue back to the file of the Ld.CIT(A) for denovo consideration.

7. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 30th April, 2025.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 30th April, 2025.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore