

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH " A "**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.1108/Bang/2014 (Assessment Year : 2006-07)		
Shri Manjunatha C, C/o P. Sridhar, D.No.89, 4thCross, Ganapathi Temple Road, Vidhanasoudha Layout, Laggere, Bangalore-58 PAN AJNPM 3675P	Vs.	Income Tax Officer, Ward 8(3), Bangalore.
Appellant		Respondent.

Appellant By : Shri C. Ramesh, C.A.

Respondent By : Shri P. Dhivahar, JCIT (D.R)

Date of Hearing : 25.2.2015.

Date of Pronouncement : 20.3.2015.

**O R D E R**

**Per Shri Jason P. Boaz, A.M. :**

This appeal by the assessee is directed against the order of the CIT (Appeals) - V, Bangalore dt.23.6.2014 for Assessment Year 2006-07.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, an individual, filed his return of income for Assessment Year 2006-07 on 24.8.2006 declaring income of Rs.1,34,780 and the case was subsequently selected for scrutiny. The Assessing Officer in the order of assessment observed that as per AIR

information on record, the assessee, deposited Rs.18,69,650 in his Savings Bank Account with HDFC Bank, Malleshwaram, Bangalore in the year under consideration. In order to examine the source of these deposits, the Assessing Officer records that notice under Section 143(2) of the Income Tax Act, 1961 (herein after referred to as 'the Act') was issued on 6.8.2007 fixing the case for hearing. There was no response thereto by the assessee. Subsequently, notices under Section 142(1)/143(2) were issued on 8.1.2008, 19.9.2008 and 12.11.2008 posting the case for hearing on 15.2.2008, 15.10.2008 and 20.11.2008 respectively. Again, there was no response from the assessee to these statutory notices for hearing. The Assessing Officer then issued a letter and notice under Section 142(1) of the Act calling upon the assessee to show cause as to why his income should not be estimated ex-parte under Section 144 of the Act at Rs.20,14,430 on the basis of the material available on record and posted the case for hearing on 12.12.2008. In spite of this notice also being served on the assessee, there was no response. In that view of the matter, the Assessing Officer was of the opinion that the assessee had not explained the sources for the cash deposits amounting to Rs.18,69,650 in his savings bank account at HDFC Bank, Malleshwaram Branch, Bangalore and therefore held these to be unexplained cash credits and brought the same to tax in the assessee's hands. Accordingly, the assessment completed ex-parte under Section 144 of the Act by order dt.24.12.2008 and thereby determined the total income of the assessee at Rs.20,04,430 as under :-

Income as declared in the return of income :	Rs.1,34,760.
Add : Unexplained cash deposits in assessee's S.B. Account at HDFC Bank, Malleshwaram Branch.	Rs.18,69,650.
Total income :	Rs.20,04,430.

2.2 Aggrieved by the order of assessment for Assessment Year 2006-07 dt.24.12.2008, the assessee preferred an appeal before the CIT (Appeals) - V, Bangalore. Neither assessee nor his AR appeared before the learned CIT(A) on the dates on which the hearings were fixed and therefore, the learned CIT(A) dismissed the assessee's appeal for non-prosecution, holding as under at para 3 of his order dt.23.6.2014 :-

"3. The appellant has raised various grounds of appeal disputing the addition made by the Assessing Officer. However, since there has been no compliance to the notices issued to the appellant, and the notice has been received unserved, the appeal is dismissed for non-prosecution, as no evidence or submission has been filed in support of the grounds of appeal and statement of facts."

3. Aggrieved by the order of the CIT (Appeals) - V, Bangalore for Assessment Year 2006-07 dt.23.6.2014, the assessee is in appeal before the Tribunal raising the following grounds :-

*"1. The Assessing Officer was not correct in completing the assessment by passing order under Section 144 without giving opportunity to appellant, only based on AIR information.*

*2. The Assessing Officer was not correct in estimating the income from business at Rs.18,69,650 as unexplained cash deposits, without giving a reasonable opportunity to appellant.*

3. *The CIT (Appeals) was not correct in dismissing the appeal without giving an opportunity to appellant. As the appellant has not received notice dt.11.6.2014 stated in CIT (Appeals) order and appellant AR withdrew appearance without giving sufficient notice to appellant.*

4. *The appellant objects to the levy of interest under Section 234B and C consequential to the above additions, as it has paid all the taxes due as per the provisions of the Act.*

5. *The appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal."*

4.1.1 The learned Authorised Representative was heard in support of the grounds raised; wherein it has been contended by the assessee that the actions of the Assessing Officer and learned CIT (Appeals) were not correct in respectively completing the assessment ex-parte u/s. 144 of the Act and in dismissing the assessee's appeal without affording the assessee adequate opportunity of being heard. It was also submitted that the assessee had not received certain hearing notices. The learned Authorised Representative in written submissions dt.25.2.2015, put forth in the appellate proceedings, submitted that the assessee could not represent before the Assessing Officer in the assessment proceedings in view of his 2 year ill health on account of hypertension which ultimately required hospitalization. It is submitted that the assessee could not attend the appellate proceedings before the learned CIT (Appeals) as he has shifted residence and was not residing at his given address.

4.1.2 The relevant portion of the AR's written submissions explaining the assessee's reason for non-appearance before the authorities below is extracted hereunder :-

*" The assessment has been completed by the Assessing Officer under Section 144 of the Act as best judgment assessment in view of the fact that the appellant has not appeared for the notices and made additions to the extent of Rs.18,69,650 treating it as unexplained cash deposits in HDFC Bank account, based on AIR information.*

*The appellant filed an appeal before CIT (Appeals) - V through his AR of the appellant. The CIT (Appeals) has dismissed the appeal in view of the fact that the appellant has not complied with the notice issued by CIT (Appeals) and no evidence or submission has been filed in support of the grounds raised in the appeal.*

*In this regard the appellant wishes to submit as follows.*

*The appellant was staying in a rental house, when the PAN was applied during FY 2005-06. Thereafter the appellant has vacated the said rented house in Jan., 2009. However, the appellant could not attend the assessment proceeding during 2008, in view of the ill health due to hypertension.*

*The appellant could not reply to the draft assessment order of A.O. in view of his ill health.*

*However, the appellant started undergoing medical treatment on regular basis for uncontrolled hypertension since 2 years which culminated the Hospitalisation. Hence, there was no person to receive the notice issued by appellate authority. Further the appellant has vacated said premises and shifted to new house belonging to his relative.*

*In view of the medical treatment, the appellant could not attend day to day activities and also the appellant was not residing at PAN address as mentioned in the order as the appellant has shifted his residential accommodation to his relative's address during early 2009. Hence the appellant could not receive the notices sent by CIT (Appeals) during May, 2014 and June, 2014.*

*In this regard the appellant has filed Rectification Application before CIT (Appeals) - V on 8.7.2014 along with Affidavit, medical certificate and bank statements. This Rectification Application was not disposed of by CIT (Appeals).*

*The copies of the same are enclosed.*

*The Assessing Officer has estimated income from business based on AIR information alone. The Assessing Officer has not verified the bank statements of the appellant. Further the appellate authority has also not verified the bank statements as the appellate order is passed ex-parte.*

*The appellant was conducting chit business and the money was collected from customers for chit business and the same was deposited in his bank account.*

*Hence, the appellant prays before appellate authority to remand the assessment proceedings to Assessing Officer to verify the bank statements and sources of cash deposits or pass such other order as Tribunal may deem fit."*

4.1.3 In support of the averments made above, the learned Authorised Representative has filed copies of the rectification application filed on 8.7.2014 before the CIT (Appeals)-V, Bangalore alongwith Affidavit dt.7.7.2014; copy of Medical Certificate indicating that the assessee was suffering from Hypertension and had been advised bed rest from 10.4.2014 to 5.7.2014 and copy of his Bank Statement of HDFC Bank for the relevant period. It is prayed by the learned Authorised Representative that since both the order of assessment and the impugned order of the learned CIT (Appeals) were passed ex-parte and dismissed for non-prosecution respectively, the assessee having now explained the reasons for non-appearance before the authorities below and also filed a copy of his HDFC Bank account, the orders of lower authorities may be set aside and the matter be restored to the file of the Assessing Officer for de-novo consideration and fresh adjudication thereon after affording the assessee adequate opportunity of being heard in the matter.

4.2 Per contra, the learned Departmental Representative vehemently supported the impugned orders of the authorities below and contended that due opportunity of hearing has been afforded to the assessee which the assessee failed to comply with. In view of this, the learned Departmental Representative prayed that the assessee's appeal be dismissed.

4.3.1 We have heard the rival contentions and perused and carefully considered the material on record. From the material on record, we find no substance in the assessee's claim in the grounds that he was not afforded sufficient opportunity to represent his case. Admittedly, it is only due to the non-attendance and non-compliance by the assessee to notices issued that has led to the assessment being completed *ex-parte* under Section 144 of the Act and also to the dismissal of his appeal and confirmation of the order of assessment by the learned CIT (Appeals). It is seen that the case was taken up for scrutiny on the basis of AIR information that the assessee had made cash deposits in his savings bank account with HDFC Bank, Malleshwaram Branch to the tune of Rs.18,69,650 in the year under consideration that, *inter alia*, required verification in order to bring to tax the correct income of the assessee. This exercise, we find, has not been possible, in large measure, due to the assessee's non-compliance to notices for hearing before both the authorities below.

4.3.2 As per the written submissions, the Affidavit of the assessee and the accompanying medical certificate placed before us, which were also filed before the learned CIT (Appeals) in rectification proceedings, it has been submitted that the assessee was not able to attend the hearings before the authorities below as he was not keeping good health, which ultimately required bed rest. It has also been submitted that the assessee could not attend the hearings before the authorities below as he had shifted residence in this period and not informed the revenue authorities of this change and

therefore the notices being sent to the old residential address were not received by him. There is no doubt that present state of affairs in the case on hand is largely due to the conduct of the assessee before the lower authorities. However, in view of the reasons cited by the assessee before us for non-compliance with statutory notices for hearing in both the assessment and appellate proceedings, on account of his ill-health over a long period which required bed rest and also his change of residence which led to him not receiving the notices issued, we are of the considered opinion that it would be in interest of equity and substantial justice that the assessee be afforded a fresh opportunity of presenting his case before the authorities below so that his correct income can be assessed and brought to tax for the year under consideration as no examination thereof has been possible by the authorities below in the given circumstances of the case. In this view of the matter, we set aside the orders of the authorities below and restore the matter of assessment of the assessee for Assessment Year 2006-07 to the file of the Assessing Officer for de-novo examination and consideration of the case and for adjudication thereon after affording the assessee adequate opportunity of being heard and to file details required and consideration thereof in accordance with law. The assessee is also directed to attend the hearings and file details as required before the authorities below and to inform the authorities below of changes, if any of his residential / office addresses. It is ordered accordingly.

5. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> March, 2015.

Sd/-  
**(N.V.VASUDEVAN)**  
Judicial Member

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - A Bench.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore