

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Shri Inturi Rama Rao, Accountant Member
AND
Shri K. Narsimha Charry, Judicial Member**

ITA No.1049/Hyd/2016
(Assessment Year: 2011-12)

Income Tax Officer Vs Shri Syed Abbas Miah
Ward-1, Kurnool Kurnool
(Appellant) PAN: AVXPS 6081 K
(Respondent)

C.O. No.56/Hyd/2016
(Arising out of ITA No.1049/Hyd/2016)
A.Y. 2011-12

Shri Syed Abbas Miah, Vs Income Tax Officer
Kurnool Ward-1, Kurnool
PAN: AVXPS 6081 K
(Appellant) (Respondent)

For Revenue : Smt. S. Praveena, DR
For Assessee : Shri S. Rama Rao

Date of Hearing: 29.05.2017
Date of Pronouncement: 02.06.2017

ORDER

Per Inturi Rama Rao, A.M.

This is appeal filed by Revenue directed against the order of the learned CIT (A) Kurnool, dated 29.04.2016 for the A.Y 2011-12. The Revenue raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the learned CIT (A) erred in deleting the addition of Rs.1,51,98,000 made towards unexplained cash deposits in Bank Accounts.

2. That on the facts and in the circumstances of the case, the learned CIT (A) erred in deleting the addition of Rs.1,53,58,600 made towards unexplained credits”.

2. Brief facts of the case are that the respondent assessee is an individual deriving income from salary, business and other sources. He filed return of income for the A.Y 2011-12 on 31.8.2011, admitting an income of Rs.3,80,880 and agricultural income of Rs.1,60,000. Against the said return of income, the assessment was completed by the Income Tax Officer Ward-1 Kurnool u/s 144 of the Act, vide order dated 23.4.2014. According to the AO, the respondent assessee had not responded to the notices issued u/s 142(1) and 143(2) and not filed any information or explanation to the questionnaire dated 30.09.2013 issued by the AO. Therefore, the AO had drawn inference that the cash deposits appearing in the following accounts are unexplained cash deposits:

- i) Oriental Bank of Commerce, Kurnool A/c No.09922011003195 of Rs.45,80,300
- ii) Oriental Bank of Commerce, Kurnool A/c No.099201131000381 of Rs.40,18,000
- iii) Oriental Bank of Commerce, Himayatnagar, Hyderabad A/c No.11112191001028 of Rs.25,40,000
- iv) Bank of Baroda, Kurnool A/c No.24210200000029 of Rs.40,60,000

Thus, he brought the entire cash deposits made into the above accounts to tax. Similarly, the AO has stated that the respondent assessee had failed to file the clarification in respect of sundry creditors appearing in the balance sheet as on 31.03.2011, on failure of assessee to comply with notices, AO held that all the sundry creditors are not verifiable and not genuine. Therefore, he

brought to tax an amount of Rs.1,53,58,600 as unexplained credits.

3. Being aggrieved, an appeal was filed before the learned CIT (A) who vide the impugned order allowed the appeal by observing that the respondent assessee had complied with the notices and filed the requisite information in response to the notices issued by the AO. He further observed that the AO instead of examining the details filed by the respondent assessee had brushed aside the statements simply added back all the bank deposits, sundry creditors by passing an ex-parte assessment order. Therefore, he directed the deletion of the entire addition made by the AO. Being aggrieved, the Revenue is in appeal before us.

4. The learned DR vehemently contested that the learned CIT (A) ought not to have granted relief by considering the additional evidence without affording an opportunity of being heard to the AO. Thus she prayed that the impugned order is passed in gross violation of the principles of natural justice and prayed that the order of the learned CIT (A) be cancelled.

5. The learned Counsel for the assessee submitted that the CIT (A) after duly examining the assessment records had come to a conclusion that no additional evidence was filed before him and the notices issued by the AO are duly complied with by submitting the requisite information and evidence in support of the return of income. Therefore, he submitted that the findings of the learned CIT (A) is not perverse finding and is passed after

proper appreciation of the evidence on record. Thus, he prayed that the order of the CIT (A) may be sustained.

6. We heard the rival submissions and perused the material on record. In the present case, the AO made a categorical statement in the assessment order that the respondent assessee had not responded nor complied with the several notices issued during the course of assessment proceedings. Nothing is discernible from the assessment records that the respondent assessee had duly responded or complied with the notices issued u/s 143(2) and 142(1) of the Act. In the absence of any evidence controverting the findings of the AO, the CIT (A) ought not to have observed that the assessee had complied with all the notices, had filed the requisite information before the AO. The order of the CIT (A) rests on the premise that AO had not undertaken any verification of the details filed before him, he simply brushed aside the information filed by the respondent assessee and concluded and completed the assessment by making the addition on account of cash deposits made in the bank accounts treating as unrealistic and treating the sundry creditors as fictitious. This finding of the CIT (A) is not borne out of the record nor based on evidence on record. The CIT (A) failed to pass a reasoned and speaking order in support of the sources on the cash deposits made or to say that the sundry creditors are genuine. Therefore, even assuming that the respondent assessee had filed additional evidence before the CIT (A) in support of the sources for cash deposits or proving the genuineness of the sundry creditors, the learned CIT (A) ought to have given an opportunity of rebutting the same to the AO in terms of Rule 46A of Income Tax Rules,

1962. The provisions of Rule 46A are framed only is part of the principles of natural justice, even in the absence of Rule 46A, keeping in view the principles of natural justice, the CIT (A) is duty bound to afford an opportunity of rebutting the additional evidence to the AO. The CIT (A) ought to have afforded both an opportunity to oppose it and to test the additional evidence or produce evidence in rebuttal. Therefore, these facts goes to prove that the order passed by the CIT (A) is in gross violation of the principles of natural justice and this order cannot be sustained in the eyes of law. Hence this order of the CIT (Appeals) cannot be sustained.

7. In the result, Revenue's appeal is allowed.

8. With regard to the cross objection filed by the assessee, since we have already allowed the appeal filed by the Revenue, the cross objection filed by the assessee which is in separate order of the CIT (A) need no adjudication and hence dismissed.

9. In the result, Revenue's appeal is allowed while the cross objection filed by the assessee is dismissed.

Order pronounced in the Open Court on 2nd June, 2017.

Sd/-
(K. Narsimha Charry)
Judicial Member

Sd/-
(Inturi Rama Rao)
Accountant Member

Hyderabad, dated 2nd June, 2017.

Vinodan/sps

Copy to:

- 1 Income Tax Officer Ward 1, O/o Add. CIT, Aayakar Bhavan, Opp: Children Park, N/R. Peta, Kurnool
- 2 Sri Syed Abbas Miah, 40-310-1, 2nd Floor, Bellary Road, Opp: Balaji Hotel, Kurnool
- 3 CIT (A)-Kurnool
- 4 Pr. CIT - Kurnool
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order