

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.2896/Del/2024

[Assessment Year : 2017-18]

Genius Money Changer Flat No.915, 9 th Floor Indra Prakash Building 21 Barakhamba Road New Delhi-110001 PAN-AAKFG5961E	vs	ITO, Ward-44(2) New Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Vipin Jain, CA	
Respondent by	Shri Ram Kishan Meena, Sr. DR	
Date of Hearing	07.11.2024	
Date of Pronouncement	17.01.2025	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 10.05.2024 passed by Ld. Commissioner of Income Tax, National Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”] u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 19.12.2019 passed u/s 144 of the Act pertaining to assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

1. *“That on the facts and in the circumstances of the case, and in law, the Ld Assessing Officer has erred in making addition of Rs. 52,34,050 to the income of the assessee firm, on wholly illegal and frivolous grounds, untenable in law. It is prayed that addition made to income be directed to be deleted.*
2. *That the Ld AO has erred in law in holding that the return filed by the assessee firm on 19.06.2019, in compliance to notice dated 09.05.2019, issued u/s 142(1) of The I Tax Act, 1961, is an invalid*

return, having adjudicated on the said return filed and in completing the assessment u/s 144 of the I Tax Act, 1961.

3. *That if the return filed by the assessee firm on 19.06.2019 is held to be an invalid return, the assessment order dated 19.12.2019 passed under section 144 is also required to be held to be illegal and bad in law and is required to be quashed.*
4. *That proceedings carried out and assessment made without issuing any notice u/s 143(2) of the Income Tax Act 1961, are rendered bad in law and without jurisdiction, required to be quashed.*
5. *That directions obtained u/s 144A of The Income Tax Act, 1961, from The Joint Commissioner of Income tax Range 44, New Delhi, without intimating and without providing the appellant firm any opportunity of being heard, render the assessment bad in law, liable to be quashed.”*

3. Briefly stated, the assessee is a partnership firm engaged in money exchange business for AY 2017-18 in question. The assessee firm did not file any return of income within the time limit prescribed under s. 139(1) of the Act. The Assessing Officer (“AO”) issued notice under s. 142(1) on 24.01.2018 requiring the assessee to file the return of income. The assessee did not however, file any return in compliance of such notice also. Another notice was issued under s. 142(1) of the Act on 09.05.2019, asking the assessee to furnish the return on or before 17.05.2019. The assessee ultimately filed return of income on 19.06.2019 declaring total income at INR 81,603/-. The AO treated the return so filed to be an invalid return. The AO thereafter, issued several notices under s. 142(1) of the Act for the purposes of assessment. Some of the notices were partly complied with. The AO ultimately framed the assessment order dated 19.12.2019 under s. 144 of the Act whereby the income returned as per ITR was ignored and addition of INR 52,34,050/- was made under s. 69A of the Act towards unexplained money. The income was thus assessed at the same amount of INR 52,34,050/-.

4. The best judgement assessment made under s. 144 of the Act on the basis of material available on record by the AO was challenged before the Ld.CIT(A). However, the Ld.CIT(A) declined to give any relief to the assessee.

4. Aggrieved, the assessee preferred before the Tribunal.

5. The Ld. Counsel for the assessee alleged that additions made and the assessment carried out under s. 144 of the Act is wholly illegal and untenable in law. The Ld. Counsel for the assessee submitted that the action of AO holding the return of income as invalid filed in pursuance of notice issued under s. 142(1) of the Act and thereby, framing the assessment under s. 144 is without legal foundation. The AO has not assigned any reasons as to why the return filed by the assessee was held to be invalid. The Ld. Counsel for the assessee also pointed out that once the return has been treated as invalid return, the proceedings under s. 147 r.w.s. 148 ought to have been invoked rather than framing assessment under s. 144 of the Act without issuing any notice under s. 143(2) of the Act.

6. The Ld. Sr. DR for the Revenue, on the other hand, justified the action of the Revenue authorities. The Ld. Sr. DR contended that the assessee firm in the present case has failed to meet the statutory requirement of filing return of income under s. 139(1) of the Act. Consequently, the Revenue was left no option but to issue notice under s. 142(1) of the Act calling upon the assessee to file return of income. The assessee filed return of income after second notice under s. 142(1) of the Act, that too, after the extended date allowed for filing the return of income by the AO. Thus, such return filed after limitation period under s. 139 of the Act as well as after the date specified under s. 142(1) of the Act, cannot be reckoned in law. The AO has made assessment under s. 144 in the absence of any valid return as per the statutory mandate. The income returned by the assessee has been ignored and the additions have been made by the AO based on material available on record. No fault can be found in the procedure adopted by the AO. The AO is entitled in law to frame the assessment under s. 144 of the Act in the absence of any valid return of record and there is no requirement in law to initiate proceedings under s. 147/148 of the Act in such circumstances.

7. We have considered the rival submissions on the subject matter. Section 144 provides that the AO is entitled to frame best judgement assessment after taking into account of relevant material which the assessee has gathered where any person fails to make return of income required under s. 139(1) of the Act or has not filed return under other sub-clause (1) of section 139 or extended period available under s. 139 of the Act or fails to comply with the terms of the notice under s. 142(1) of the Act. In the instant case, the AO has admittedly issued notice under s. 142(1) of the Act after noticing that the assessee failed to file return of income within the prescribed time limit. The return ultimately filed by the assessee on 19.06.2019 is also in violation of time limit prescribed in the notice issued by the AO under s. 142(1) of the Act. The AO thus has treated the return of income so filed as invalid return in accord with statutory provisions of the Act. In the absence of any valid return, notice under s. 143(2) could not be validly issued and therefore, the objection of the assessee is wholly unjustified. The assessee has made part compliances of the notices issued and provided certain information. Unsatisfied with the information made available, the assessment was framed under s. 144 by making addition under s. 169 of the Act.

8. The scheme of the Act clearly empowers the AO to frame best judgement assessment where the assessee has failed to file return of income or where the information called for under s. 142(1) has not been met. In the facts of the present case, we see no difficulty in accepting the plea of the Revenue. The objections raised by way of grounds of appeal do not hold any water. The Ld.CIT(A) has dealt with the legal objections of the assessee in right perspective and does not call for any interference. The Ld.CIT(A) also has observed that no directions were issued under s. 144A and therefore, the objection of the assessee towards opportunity under s. 144A is without merit. We thus agree with the averment made by the Ld.CIT(A) in all respects. The legal objections raised thus fails.

8.1. However, the additions made under s. 69A amounting to INR 52,34,050/- towards unexplained money is based on material available on record. It is observed that the assessee has made compliances to some extent.

It is not a case where the assessee has been grossly non-compliant assessee. Hence guided by the principles of objectivity, equity, fairness and justice, we consider it expedient to restore the issue of additions under s. 69A for determination of issue on facts afresh to the file of AO. It shall be open to the assessee to adduce evidences and furnish explanations as may be considered expedient to seek appropriate relief from the AO. Needless to say that the proper opportunity shall be given to the assessee to defend its case.

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

Order pronounced in the open Court on 17th January, 2025.

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Amit Kumar, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI