

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष

BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1161/PUN/2017
निर्धारण वर्ष / Assessment Year : 2005-06

Shri Tejrao Bhagaji Arakh,
Samta Nagar, Taluka Sillod,
Aurangabad

PAN : ABBPA3350M

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO (CIB),
Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ganesh Bhalerao
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 14.06.2018
घोषणा की तारीख / Date of Pronouncement : 20.06.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 15-02-2017 for the Assessment Year 2005-06.

2. Grounds raised by the assessee are extracted here as under :

"1. The AO is not justified in adding cash deposited in bank account as unexplained investment of the assessee as the amount deposited by the assessee does not belong to him.

2. The AO did not provide sufficient time for submission of the reply and passed the order u/s.144 of the Income Tax Act, 1961. Hence, he is not justified in passing order u/s.144 of the Income Tax Act, 1961.

3. The assessee prays to delete the additions made by AO on account of explained investment & drop the penalty proceeding.

4. *Applying peak credit theory amounts deposited in the bank account should be reduced by amounts withdrawn and net of that amount only should be considered.*

5. *In view of the above facts & circumstances of the case and since the assessee has no liquid asset to pay the taxes, the demand raised by AO may please be stayed and kept in abeyance till the disposal of the appeal.”*

3. Briefly stated relevant facts include that the assessee is an individual working as an employee in the Agricultural Department of Maharashtra Govt. Assessee derives income from salary. He was incharge of handling cash in the office. Assessee has a bank account in the Malkapur Urban Cooperative Bank Ltd., Sillod bearing Account No.0002155. Assessee deposited cash of Rs.17,27,250/- belonging to his office in his bank account since his office does not have any bank account. Assessee withdrew the cash whenever the payments was required to be made. AO issued notice u/s.142(1) of the Act calling for return of income. Assessee neither appeared before the AO nor filed the return of income. Eventually, the AO completed the assessment u/s.144 of the Act on 27-12-2007 based in the information available with him.

4. In the First Appellate proceedings, assessee filed a letter dated 22-09-2010 stating that, during the period 01-04-2004 to 31-03-2005, he was incharge of handling cash in the Agricultural Department at Sillod. He has bank account with Malkapur Urban Cooperative Bank Ltd. Sillod. As per the assessee, it is a case of depositing the amount for safekeeping of the money temporarily. It was argued that most of the transactions are related to office and very few relates to his personal savings. The CIT(A) called for a remand report from the AO. In response, the AO submitted his remand report dated 12-11-2010. In the said report, it was stated that the Taluka Agricultural Officer, Sillod confirmed that the office did not have any bank account and therefore,

the cash belonging to office was deposited in the savings account with Malkapur Urban Cooperative Bank. He also confirmed the fact that the amount was withdrawn from the said account for office purpose. He also confirmed that cash was utilized for official purpose. Subsequently, an affidavit given by Taluka Agricultural Officer dated 16-07-2016 was filed affirming the statement given by him. Statement of Shri Kautik Laxmanrao Sonawane, Sr. Clerk was also recorded. The CIT(A) after considering the remand report, statements recorded by the AO and opined that assessee was not authorized to take or deposit cash in his personal bank account. He noted that the affidavit of Taluka Agricultural Officer was signed by Shri Kautik Lamanrao Sonwane, Sr. Clerk, and on examination of the facts, he opined that the assessee as well as Shri Kautik Lamanrao Sonwane has failed to explain the difference of opening and closing balance in the said savings bank (details mentioned at page 7 of the order of CIT(A)). The CIT(A) concluded that affidavit of Shri Kautik Laxmanrao Sonwane dated 16-07-2016 was not reliable. Eventually, the CIT(A) upheld the addition made by the AO as unaccounted cash us/.69 of the Act.

5. Aggrieved with the order of CIT(A), the assessee is in appeal before the Tribunal with the grounds mentioned above.

6. Before me, Ld. Counsel for the assessee narrating the facts of the case filed the written submissions along with additional evidences relating to reconciliation of office cash book with the bank statement. It is the prayer of the Ld. Counsel that there is need for appreciating the new facts and arguments by the AO. Ld. Counsel filed additional grounds as well as additional points in his written submissions.

7. Ld. DR for the Revenue relied on the orders of the AO/CIT(A).

8. After hearing both the parties and on perusing the orders of the revenue and the written submissions filed by the assessee, I find there is a need to remand the issues raised in the appeal to the file of AO. The interest of justice is paramount important. The additional points raised by the Ld. Counsel for the assessee in his written submissions are extracted here as under :

“(a) The Bank statement at Opening & Closing Balance is Rs.2,000 & Rs.3,000 respectively, whereas in that period Appellant not made any investment in any of his account or his family member, so income or profit not made by the appellant.

“(b) If the Authorised Officer of the Agricultural Department in his office letter and on the affidavit specifically states that the transactions made in the account of the appellant related to the Agricultural Department & not the personal cash of the Appellant. Due care should be taken into account while making the addition in the hands of appellant.”

Considering the additional points related to the issue under consideration, I find it is a case of ex-parte assessment and no proper reason was recorded by the assessing authorities before making addition of Rs.17,27,250/- by passing a speaking order. Same is the case before the CIT(A) also. The statement recorded by the Department from Shri Kautik Laxmanrao Sonwane is required to be considered in a holistic manner in the light of additional points filed before me. The additional filed by the assessee are required to be considered in view of the peculiar circumstances of the case and in the interest of administration of justice. Therefore, I am of the opinion that the grounds/additional grounds/additional evidences should be remanded to the file of AO. AO is directed to admit the additional grounds/additional evidences and adjudicate the entire issue afresh in accordance with the set principles of natural justice. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 20th day of June, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 20th June, 2018.
Satisb

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Aurangabad
4. आयकर आयुक्त / The Pr.CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
/
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune