

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA Nos. 2085 and 2086/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Mr. Jagannath Sajan Kote,
C/o. Darshan Medical,
Near Nagar Panchayat,
A/P. Shirdi, Taluka Rahata,
Dist. Ahmednagar - 423109

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1,
Ahmednagar

.....प्रत्यर्थी / Respondent

Appellant by : Shri Kishor Phadke
Respondent by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 25.07.2018	घोषणा की तारीख / Date of Pronouncement : 03.08.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM

There are two appeals filed by the assessee under consideration involving A.Y. 2011-12. ITA No.2085/PUN/2016 is filed by the assessee against the order passed by the CIT(A)-2, Pune, dated 25-05-2016 u/s.144 of the Act; whereas the ITA No.2086/PUN/2016 filed by the assessee is against the order passed by CIT(A)-2, Pune, dated 11-05-2016 u/s.271(1)(b) of the Act.

We shall first take up the appeal ITA No.2085/PUN/2016 of the assessee

ITA No.2085/PUN/2016 – Order u/s.143(3) of the Act.
A.Y. 2011-12

2. Facts of the case in brief are that the assessee is an individual and filed the return of income on 31-02-2012 declaring loss of Rs.33,920/-. AO issued various notice u/s.143(2) of the Act on various dates for which there was no response. Based on the information provided by the assessee, bank statement from Axis Bank and the information obtained from the office of Sub-Registrar, Rahata, the AO observed that the assessee sold the property situated at S.No.137/5, Shirdi, admeasuring 1 Hecter and 6R for a consideration of Rs.90,10,000/-. It was also noted that assessee was holding 1 hector and 34R of agricultural land and did not report any income from the same. On getting the information on a sale instance of an Agricultural land at Shirdi for the year 1981/1982, the AO arrived at the cost of acquisition of Rs.1,20,000/- per hector of the assessee for computation of capital gains. Accordingly, the AO worked out the capital gain at Rs.62,38,108/-.

Further, the AO levied the penalty u/s.271(1)(b) of the Act at Rs.60,000/- for 6 instances, i.e. @10,000/- for each of the instance. Eventually, the AO passed an exparte assessment u/s.144 of the Act on 14-03-2014 and made addition of Rs.62,38,108/-.

3. During the First Appellate proceedings also, the assessee remained absent despite issue of notice u/s.250 of the Act. Hence the CIT(A) also passed an exparte order on 25-05-2016 confirming the addition made by the AO. CIT(A) also confirmed the said penalty levied u/s.271(1)(b) of the Act by the AO too.

4. Aggrieved with the orders of CIT(A) the assessee filed the present appeals before the Tribunal with the following grounds :

Grounds in respect of quantum addition :

“1. The Ld.CIT(A)-2, Pune erred in law and on facts in confirming the addition made by the Ld. ITO, Ward-1, Ahmednagar (hereinafter referred to as the Ld.AO) amounting to Rs.62,38,110/- on account of Long Term Capital Gain.

2. The Ld.CIT(a)-2, Pune and the Ld. AO erred in law and on facts in considering the cost of acquisition as on 01-04-1981 as Rs.1,27,200/- instead of Rs.12,72,000/- as determined by the Government Approved Valuer.

3. Alternatively and without prejudice to the above grounds, the Ld.CIT(A)-2, Pune and the Ld. AO erred in law and on facts in not referring to the matter to the valuation officer.

4. The appellant craves, leave to add/modify/delete all or any of the grounds of appeal.”

Grounds in respect of penalty u/s.271(1)(b) of the Act :

“1. The Ld.CIT(A)-2, Pune erred in law and on facts in confirming the penalty levied u/s.271(1)(b) of the ITA, 1961 by the Ld. ITO, Ward-1, Ahmednagar (hereinafter referred to as the Ld. AO) amounting to Rs.60,000/-. Appellant could not make effective compliance before the Ld. AO due to reasonable cause.

2. Alternatively and without prejudice to above grounds, the Ld.CIT(A)-2, Pune and the Ld. AO erred in law and on facts in not restricting the penalty imposed u/s.271(1)(b) of the ITA, 1961 to the first default only, i.e. upto Rs.10,000/-.

3. The appellant craves, leave to add/modify/delete all or any of the grounds of appeal.”

5. Before us, at the outset, Ld. Counsel for the assessee submitted that the Tax consultant of the assessee who was looking after the Tax matters of the assessee was sick and eventually expired on 27-06-2017. Ld. Counsel filed the Death Certificate issued by the Municipal Corporation, Ahmednagar on 11-07-2017. Further, Ld. Counsel submitted that there is irregular attendance of the tax consultant to the assessee's tax matters over the period of time, which led to non-attendance before the assessment as well as appellate proceedings.

Further, on merits, he submitted that the cost of acquisition adopted by the AO is unfair as the valuation report of the assessee was not properly appreciated by the authorities. Asking for one more opportunity, Ld. Counsel made a statement at Bar that he shall appear before the authorities without fail with documents necessary for passing of the proper assessment.

6. On the issue of levy of penalty u/s.271(1)(b) of the Act, Ld. Counsel for the assessee submitted that non-attendance before the authorities is not willful and the same is attributable to the bonafide reasons. Therefore, Ld. Counsel requested for cancelling the penalty considering the reasonable cause of the ill-health of the then tax consultant.

7. Ld. DR for the Revenue submitted that the assessee did not attend to the statutory notices issued by the Department either before the AO or before the CIT(A) and did not cooperate at all. Considering the assessee's conduct and the details available on record, Ld. DR prayed for confirming the orders of AO/CIT(A) on both the quantum addition as well as on the penalty issue.

8. We heard both the sides and perused the exparte orders of the Revenue, i.e. AO and the CIT(A) as well as the papers filed before us. We also noticed the revised Form No.36 filed by the assessee after removal of the defects. Assessee also filed copies of the valuation report which was submitted already before the CIT(A).

Regarding the quantum addition of Rs.62,38,108/-, we are of the opinion that this appeal should be remanded to the file of AO for fresh adjudication. Reasons include (1) there is no representation before the AO as well as CIT(A) and the authorities had to complete the proceedings

in time as they are time barring; (2) when exparte orders are made, it is possible that the documents furnished by the assessee could not be properly defended before the AO/CIT(A); and (3) there is possibility of wrong appreciation of facts generally in any case, when there is no representation by the assessee or his representative. Therefore, the entire appeal along with the issues raised therein stands now remanded to the file of AO fresh adjudication. It goes without saying that AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Assessee is also directed to present before the AO and file the requisite documents relating to the said capital gains. 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.

ITA No.2086/PUN/2016 – Penalty u/s.271(1)(b) of the Act.
A.Y. 2011-12

10. This appeal relates to the penalty levied by the AO u/s.271(1)(b) of the Act on the quantum addition made by the AO. The facts of the quantum addition are already in the preceding paragraphs.

11. After hearing both the sides, we find it is undisputed fact that the tax consultant who was handling the matters was suffering from illness over the period of time and he ultimately passed away in the year 2017. Considering the same, we are of the opinion that assessee has a reasonable cause, in principle. However, it is the duty of the assessee to make an alternate arrangement when the time barring matters are involved. The duty is cast on the assessee to discharge the same. On considering the failure of the assessee on one side and at the same time,

the AO's duty of making assessment on the other side, we find this is a fit case for levy of an exemplary penalty for default of non-attendance before the AO. Therefore, we are of the opinion that the penalty should be restricted to one instance or default and grant relief in respect of the other five instances. Thus, the AO is directed to restrict the penalty to Rs.10,000/- for one instance only. The assessee gets part relief on this penalty issue. Accordingly, the grounds raised by the assessee are partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

13. To sum up, ITA No.2085/PUN/2016 filed by the assessee is allowed for statistical purposes and ITA No.2086/PUN/2016 filed by the assessee is partly allowed.

Order pronounced on 03rd day of August, 2018.

Sd/-

Sd/-

(विकास अवस्थी /VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd August, 2018.

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे/ DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदष्टानुसार / BY ORDER,

// True Copy //

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