

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH “SMC”, PUNE

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA No. 2681/PUN/2016

निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Jyoti Roadlines,
At Post : Shivajinagar,
Malegaon, BK, Baramati,
Dist. Pune-413 102
PAN : AADFJ4523G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-5(4), Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri S.N Puranik

Respondent by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 18.09.2018

घोषणा की तारीख / Date of Pronouncement : 28.09.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Pune dated 29.08.2016 for the assessment year 2008-09.

2. The brief facts of the case as emanating from records are: The assessee is engaged in transport business. The assessee filed return of income for the assessment year 2008-09 on 12.08.2008 declaring total income of Rs.1,27,820/-. The assessment u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was made on 09.12.2010 and the total income of assessee was assessed at Rs.3,53,050/-. Thereafter, the case of the assessee was re-opened and notice u/s.148 of the Act was issued to the assessee. In reassessment proceedings, the Assessing Officer made addition of Rs.9,00,000/- u/s.40A(3) of the Act.

3. Aggrieved by the assessment order dated 03.03.2014 passed u/s. 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer and dismissed the appeal of assessee. Now, the assessee is in second appeal before the Tribunal assailing the findings of the Commissioner of Income Tax (Appeals) by raising following grounds :

- “1. CIT(A) has erred in confirming the validity of reopening and also validity of Assessment u/s.143(3) r.w.s. 147/148, Appellant prays to declare the proceeding without jurisdiction and Assessment is bad in law.*
- 2. CIT(A) has erred in confirming addition of Rs.9,00,000/- u/s.40A(3), same may please be deleted.*
- 3. Appellant prays to cancel interest u/s. 234B, particularly by 234B(3) of the Act.*
- 4. Appellant prays for just and equitable relief.*
- 5. Appellant prays to add, alter, amend, modify and or withdraw the ground/s during the Appellant proceedings.”*

4. Shri S. N. Puranik appearing on behalf of the assessee submitted at the outset that he is not pressing ground No.1 of the appeal. In respect of ground No. 2, the ld. AR submitted that during the course of business operation, assessee had issued bearer cheques in the name of his employees. These

cheques were for withdrawal of cash from bank and not for making any payments to any party/creditors. The cash withdrawal from bank was duly recorded in the cash book on the respective dates. In the assessment proceedings, the Assessing Officer has observed that cash has been withdrawn from the bank for expenditure. However, the Assessing Officer failed to point out any expenditure incurred by the assessee in cash. The ld. AR pointed that before the Assessing Officer, cash book was produced and individual entries were explained. However, the explanation of the assessee was not considered and addition was made. The ld. AR furnished the copy of cash book for the financial year 2007-08 and the Bank Statement. The ld. AR pointed that each withdrawal from the bank has been recorded and the amount has been debited in the cash book.

5. On the other hand, Shri Sudhendu Das representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee being devoid of any merit.

6. Both sides heard. Orders of the Authorities below perused. In respect of ground No. 1 raised in appeal challenging reassessment proceedings, the ld. AR stated at the Bar that he is not pressing ground No. 1. Thus, in view of the statement made by the ld. AR **ground No.1 raised in appeal is dismissed as not pressed.**

7. In ground No.2 of the appeal, the assessee has assailed addition of Rs.9,00,000/- u/s. 40A(3) of the Act. The addition has been made by the Authorities below on presumption that bearer cheques issued by the assessee in the name of employees is towards the payment beyond Rs.20,000/. The ld. AR has drawn my attention to the cash book for the period 01st March, 2007 to 11th March, 2008. The ld. AR pointed that cash withdrawn from the bank

has been debited to the cash book. After perusal of the entries in the cash book, I am satisfied that the amount withdrawn by the assessee by issuing bearer cheques in the name of his employees as mentioned in Para 3 of the assessment order have been duly recorded in the cash book. The addition has been made by the Authorities below merely on presumption and surmises. The Revenue has not brought any evidence on record indicating that the amount withdrawn from the bank has been utilized by the assessee for making cash payments beyond Rs.20,000/-. Therefore, I am of the opinion that addition made u/s.40A(3) is not warranted. Accordingly, the findings of Commissioner of Income Tax (Appeals) on this ground are reversed and **ground No. 2 raised in appeal by the assessee is allowed.**

8. In ground No.3 of the appeal, the assessee has assailed charging of interest u/s.234B. Charging of interest u/s.234B is consequential and mandatory. Accordingly, **ground No. 3 raised in appeal by the assessee is dismissed.**

9. The ground No. 4 and 5 of the appeal are general in nature and hence, requires no adjudication.

10. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced on Friday, the 28th of September, 2018.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th September, 2018.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-7, Pune.
4. The CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.