

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

ITA No.1050/Mum/2014 & 1051/Mum/2014
(Assessment Year :2005-06 & 2007-2008)

Col.Amarjit D. Nagi 5A Sangam Building, Near HDFC Bank, Juhu, Versova, Link Road, Andheri (W), Mumbai	Vs.	ACIT – CC-20, Mumbai
PAN/GIR No.		AAMPN1956A
Appellant)	..	Respondent)

Assessee by	Shri D.A. Shetty
Revenue by	Ms. Savita Bundas
Date of Hearing	29/12/2016
Date of Pronouncement	21/03/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by the assessee against the order of CIT(A) for the assessment year 2005-2006 & 2007-2008 in the matter of order passed u/s. 143(3)/153A of the IT Act.

2. The following grounds have been taken by the assessee:-

A.Y.2005-2006

1. The very assumption that the assessee is a part of the Nagi Group and carrying out search and seizure action by the Income Tax Department is not justified.

2. The assessee had disclosed as much evidence as possible to his complete knowledge and in good faith.

3. The Hon. CIT (Appeals) dismissed the claim of the assessee with respect to credit of Rs. 15,07,761/- in the bank statement of

the assessee that it was part sales proceed despite clear explanation being provided.

A.Y.2007-08

1. The very assumption that the assessee is a part of the Nagi Group and carrying out search and seizure action by the Income Tax Department is not justified.

2. The order passed by the Ld. ACIT Mr. R. P. Rastogi and Hon. CIT (Appeals)-39t6 is inconsiderate because the assessee had, time and again mentioned that all the documentary evidences pertaining to Vouchers and bills could not be produced as they had been misplaced due to constant shifting rented premises and could not be traced.

3. The assessee had disclosed as much evidence as possible to his complete knowledge and in good faith.

4. The Hon CIT (Appeals) is not justified in disallowing of Rs. 4,76,184/- @ 25% of expenses of Rs. 19,04,737/-.

5. The Hon CIT (Appeals) is not justified in disallowing 25 % of Unsecured loans of Rs 532,880/ and sundry creditors of Rs 6,29,985/-

6. The Hon. CIT (Appeals) erred in confirming the credit entries in the bank statement Rs. 22,61,891/- which has already declared by the assessee in his return of income as it was part sales proceed (Rs. 15,21,090/-) and the balance amount of Rs. 7,40,802/- was reflected in the assessee's wife's (Mrs. Chandra Nagi) return of income as it pertains to her.

The appellants crave leave to add and or amend the grounds of appeal, if the facts and circumstance of the case so require.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is an officer from the Indian Army, who has retired after 30 years of service. In 30.05.2008, there was search and seizure action u/s 132(1) carried out by the DDIT (Inv) Unit-II. The assessee derives income from pension & income from other sources and filed the return of income on 30.08.2010 declaring the income of Rs

1,30,774. In the A.Y.2005-06, additions made on account of Unaccounted sales stand deleted by the Hon. Commissioner of Income Tax Appeals 39- vide order dated 07.11.2013. However, revenue is not in appeal before us against the said deletion.

5. The Ld. Asst. Corn of Income Tax added a sum of Rs.15, 07,761/ of credits found in the bank statements as follows:-

a. Global Trust Bank (Oriental Bank of Commerce) Rs 3,56,969/-

b. Central Bank of India - Overdraft. against Fixed Deposit Rs 11,50,792/-

6. Addition was confirmed by CIT(A) against which assessee is in further appeal before us.

7. We have considered rival contentions and found from record that the account was jointly held by assessee with his wife Mrs. Chandra Nagi. Credit amount pertains to the sales/receipt of Hiring and other receipts. Copy of bank account summary and bank statement was filed with lower authorities. Central Bank of India Overdraft account No 303766 Rs.11,50,576/- is an overdraft account against the fixed deposits. The fixed deposits were held in the name of Col Amarjit Nagi and Mrs. Chandra Nagi. The Fixed deposits were made out of the retirement benefits received at the time of retirement. Since Mrs. Chandra Nagi was carrying out her business in her personal name, in order to sustain her business, the overdraft has been availed against the deposit to support her. The overdraft against deposit has been availed by the assessee. However, the account has been jointly held by Col Amarjit Nagi and Mrs. Chandra Nagi. The operation in the accounts pertains to Mrs. Chandra Nagi and she has declared the amount

deposited in the account as her job work/ contract receipt is her profit and loss account and also the expenses incurred by her in this account. It appears that lower authorities have not properly appreciated the documentary evidences as discussed above with regard to the fixed deposit made with the bank out of the retirement benefits. In the fitness of things, we restore the matter back to the file of the AO for deciding afresh. We direct accordingly.

8. During the assessment year 2007-08, the AO found that the assessee had debited expenses aggregating to Rs. 29,88,615/- to the Profit & Loss a/c for the relevant assessment year, however the Id. ACIT disallowed 25% of the claims amounting to Rs. 7,47,153/-. In an appeal filed before CIT(A), the Hon. CIT (Appeals) on perusal of evidences gave a relief in the case of Direct Expenses- Artists and Artisans Rs 10,87,777/- and the relief @' 25 % i.e Rs. 2,70,970/- were allowed. However, payments made for Purchase of Materials of Rs.9,31,920/-and Indirect expenses Rs 9,72,817/- were disallowed on the ground that the appellant could not substantiate the claim and adhoc disallowance of Rs.4 76,184/- ~25 % in respect of expenses of Rs 19,04,737/-' was confirmed.

9. We have considered rival contentions and found that with regard to disallowance of 25% of expenses of Rs.29,88,615/ - claimed by the assessee in the P&L account, the evidences furnished by the assessee before lower authorities were as follows:

The Assessee gave the breakup of expenses as

Purchase of Materials	Rs.9,31,920/-
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Direct Expenses-Artists & Artisans	Rs.10,87,777/-
Indirect Expenses	Rs.9,72,817/-

10. Adhoc disallowance of Rs 6,29,618/- being 25% of the total liabilities (loan & current Liabilities) of Rs. 25,18,473/ - shown in the balance Sheet was made. We found that before the lower authorities assessee submitted the following breakup;

Unsecured Loans	-	Rs. 5, 70,380/-
Sundry Creditors	-	Rs. 6,29,985/-
Provisions	-	Rs. 13, 18,108/-

The assessee further gave a breakup of Rs. 5, 70,380/- as;

a. Unsecured Loan Rs 5, 70,380/- are as follows:

Metro Cinema	Rs.37,500/-
Mrs. Chandra Nagi	Rs. 5,32,880/ -

11. Amount from Metro Cinema of Rs 37500/- was an advance received for their work. However, the work could not be completed and the same is pending in this year. Confirmation of loan amount from Mrs. Chandra Nagi was filed.

12. The Hon. CIT (Appeals) confirmed addition in respect of sundry creditors by observing that assessee could not produce information w. r. t. Sundry creditors and amount received from Metro Cinema.

13. We have considered rival contentions and found that Additions of Rs 22,61,891/- was made under section 68 of the Income Tax Act, 1961 in respect of credit entries found in the assesses bank account statements.

The Assessee gave the breakup as under:-

(Bank Statement- Enclosed)

Current Account 01012880880 (Sai Soham) Rs. 15,21,090/-

O/D Account No. 303766 Rs.7,40,802/ -

13.1 With regards to Rs. 15,21,090/ - the assessee claimed that he had showed sale of Rs. 32,58,000 of which Rs.15,21,090/- is received in the current year and Balance in the next year. In respect to amount of Rs.7,40,802/-, it pertains to Mrs. Chandra Nagi and is reflected in her income tax return.

12. In view of the above discussion, we restore the matter back to the file of AO for deciding afresh in respect of disallowance of Rs.4,76,184/-, Rs.5,32,880/-, Rs.22,61,891 and Rs.7,40,802/-. It appears that lower authorities have not properly appreciated the evidenced filed before them. Accordingly, we restore the matter back to the file of the AO for deciding afresh after considering the above documents.

14. The legal ground taken by assessee to the effect that assessee being part of Nagi group was not pressed by learned AR, the same is therefore dismissed in limini as not pressed.

14. In the result, appeals are allowed in part for statistical purposes.

Order pronounced in the open court on this 21/03/2017

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 21/03/2017
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai