

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

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2714/PUN/2017
निर्धारण वर्ष / Assessment Year : 2008-09

Madhukar Narayan Shahande,
39, Amar Society, Gulmohar Path,
Law College Road, Pune.

PAN : ABEPS4459G

.... अपीलार्थी / Appellant

Vs.

ITO, Ward- 3(1),
Pune.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Suhas P. Bora.
प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 30.10.2018	घोषणा की तारीख / Date of Pronouncement : 28.11.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-3,
Pune dated 18.10.2017 for the Assessment Year 2008-09.

2. The grounds of appeal read as under :-

- “1. The learned CIT(A) erred in holding that the assessment order passed u/s 143(3) r.w.s. 147 is not valid and bad in law.
2. That ld. CIT(A) while confirming the action of the A.O. about reassessment proceedings has not appreciated the submissions made by the appellant on following grounds :
 - a. that the appellant had never challenged the assumption of jurisdiction u/s 148 of the Act before A.O. thus no speaking order was passed.
 - b. The appellant failed to substantiate addition which was made on the basis of notings on the papers seized during search.
 - c. The appellant had never asked for the copies of any documents for cross examination.
3. The learned CIT (Appeals) erred in confirming the addition made by the A.O. at **Rs.25,00,000/- u/sec. 69D** on account of unexplained investment

simply by relying on the notings in the seized documents found during the course of search with Samira Group of companies. The addition was made on the basis of note sheet entries which was without any basis nor it was supported by any evidence, purely on presumption and surmises, in violation of principles of natural justice and without any base, and without appreciating the submissions of the appellant.

*4. The learned CIT (Appeals) erred in confirming the addition made by the A.O. at **Rs.5,10,000/- on account of interest received** on cash loan of Rs.22 lakhs given as income from other sources purely on presumptions and surmises in violation of principles of natural justice and without any base, and without appreciating the submissions of the appellant.*

5. The ld. CIT(A) while confirming the additions has erred in not considering contention of the appellant that if the addition is made on the basis of statement of third party then providing the opportunity of cross examination is must and if the same is denied by the A.O. the addition based on the said statement is not tenable in law and asked to refer the provisions of section 132(4A) of the Act which says that the contents of books of accounts and other documents found during the course of search and seizure operation are presumed to be true and the appellant should rebut the presumption.

6. The appellant may kindly be permitted to add to or alter any of grounds of appeal, if deemed necessary.”

3. Briefly stated relevant facts include that the assessee is an individual having income from salary, remuneration, interest and share of profit from partnership firm and income from other sources. The assessee filed his return of income on 06.03.2009 declaring total income of Rs.2,63,168/-. A search and seizure operation was conducted u/s 132 of the Act at Samira Group of companies on 21.03.2013. During the course of search action, some incriminating documents were found showing that Samira Group of companies took loans from various persons. It was also found from the seized papers that Samira Group of companies took loan in cash of Rs.25,00,000/- from the assessee during the year under consideration. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the source of the said loan. The Assessing Officer was not satisfied with the explanation of the assessee. Therefore, the Assessing Officer added the same to the total income of the assessee. The Assessing Officer further added an amount of Rs.5,10,000/- as undisclosed income on account of interest thereto.

4. Aggrieved with the order of Assessing Officer, the assessee filed an appeal before the CIT(A). Referring to provisions of section 132(4A) of the Act, the CIT(A) confirmed the above additions.

5. Aggrieved with the order of CIT(A) confirming the additions, the assessee is in appeal before me.

6. Before me, at the outset, Id. Counsel for the assessee submitted that this appeal be remanded back to the file of the Assessing Officer for fresh adjudication in view of various reasons. There was a search and seizure action in the case of Samira Group of companies on 21.03.2013. The Id. Counsel for the assessee submitted that the Assessing Officer made addition of Rs.25,00,000/- along with interest accrued of Rs.5,10,000/- thereon by relying on a document seized from the premises of the said Samira Group. The Id. Counsel for the assessee further submitted that the assessee denied giving loan of Rs.25,00,000/- to the said Samira Group in cash and also denied receiving any interest thereon from the said Samira Group of companies. The Assessing Officer rejected the said denial of transaction by the assessee and proceeded to make the re-assessment on the said amount. Further, the Id. Counsel for the assessee submitted that, relying on the said paper, the interest income of Rs.5,10,000/- was repeatedly added in the assessment year 2009-10 as well as in assessment year 2010-11 by the assessing authorities. Further, the Id. Counsel submitted that the said addition in the assessment years 2009-10 and 2010-11 were deleted by the Id. CIT(A) in view of failure of the Assessing Officer to adhere to the said principles of natural justice in the matter relating to giving copy of the statement of Smt. Vijaya Iyer, Executive Director of Sasmira Hebitats (India) Ltd. and also giving an opportunity to

cross-examine the said Executive Director etc. Convening the non-seriousness of the assessee in the matter relates to the validity of the re-assessment proceedings qua the compliance to the Hon'ble Supreme Court judgment in the case of GKN Driveshafts (India) Ltd., 259 ITR 19, 1d. Counsel for the assessee mentioned that the requirement of furnishing the said seized paper, statement of Smt. Vijaya Iyer, providing an opportunity to cross-examination etc. are basic requirement before making addition. The 1d. AR requested for a direction to the Assessing Officer for providing basic requirement.

7. On the other hand, 1d. DR for the Revenue heavily relied on the orders of the Assessing Officer and the CIT(A).

8. I heard both sides on this limited issue of remanding back the issue to the file of the Assessing Officer and find undisputed fact includes making the addition of Rs.5,10,000/-, this accrued interest income on the loan of Rs.25,00,000/-, is common for all the assessment years i.e. A.Y. 2008-09, 2009-10 and 2010-11. The said addition was deleted by the CIT(A) for the assessment years 2009-10 and 2010-11 and there is no appeal filed by the Revenue in this regard. In my view, the same could be due to the limitation of tax limits. Further, the failures to provide the seized papers, the statements taken on oath, non-providing of cross-examination of Smt. Vijaya Iyer etc. to the assessee are undisputed. Considering the same, I am of the opinion that the request of the 1d. AR for the assessee is fairly and unreasonable.

9. Therefore, all the grounds raised by the assessee in this appeal stand remitted to the file of the CIT(A) for fresh adjudication. The Assessing

Officer is hereby directed to furnish the requisite papers, copy of statement, etc, if need be so and the benefit of cross-examination is required to be provided to the assessee in accordance with the said principles of natural justice. With these directions, all the issues raised in the grounds of appeal stand allowed for statistical purposes.

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

Order pronounced on this 28th day of November, 2018.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

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

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

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

आदेशानुसार/ BY ORDER,स

सत्यापित प्रति //True Copy//

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