

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

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 237/PUN/2018

निर्धारण वर्ष / Assessment Year : 2005-06

Mr. Manohar Sitaram Shinde,
At post Belgavade, Tal. Tasgaon,
Dist.- Sangli, Maharashtra.
PAN : BODPS1327G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 1(4), Sangli.

.....प्रत्यर्थी / Respondent

Assessee by : Shri B.C. Malakar

Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 18.03.2019

घोषणा की तारीख / Date of Pronouncement : 18.03.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of Ld. CIT(Appeals)-1, Kolhapur dated 08.11.2017 for the assessment year 2005-06 as per grounds of appeal on record.

2. At the time of hearing, the Ld. AR of the assessee submitted that though the assessee has taken multiple grounds of appeal before the Tribunal, however, the crux of the grievance is that the peak credit was not

calculated properly by the Revenue Authorities and therefore, he prayed that the matter may be restored back to the file of the Assessing Officer for proper calculation of peak credit.

3. The relevant facts in respect of the submissions made by the Ld. AR before us are that the assessee being individual derived income from commission on activity as subagent of Shri R.R. Gorle for grapes and also from agricultural activity. On the basis of AIR information in possession, the Assessing Officer noticed that there was cash deposits to the tune of Rs.34,82,783/- in the bank account of the assessee during the year under consideration. Therefore, the Assessing Officer issued notice u/s.142(1) of the Act on 24.08.2007 and in response to the notice, the assessee filed return of income for assessment year 2005-06 declaring total income of Rs.43,900/- along with agricultural income of Rs. Nil. After hearing the assessee and considering his submissions, the Assessing Officer assessed income of the assessee at Rs.13,87,783/- vide order dated 31.12.2007 on the basis of peak credit. According to the assessee, there was an error in arriving at the peak credit. He approached the Assessing Officer for rectification. The Assessing Officer Ward 1(4), Sangli vide his order u/s.154 dated 27.06.2008 disposed off assessee's request for rectification with the remark that *"it is seen that disallowance of Rs.13,87,783/- on account of unexplained peak deposits in bank account had been made after verifying facts since the assessee failed to explain the sources of deposits made in the bank account. The facts are discussed at length in the body of assessment order u/s.143(3) of the I.T.Act dated 13.12.2007. It is also seen that the assessee has already preferred an appeal against the said order before the CIT(A), Kolhapur. Hence, it is not mistake apparent from the records. Under these circumstances no rectification*

is possible in the issue raised in the application. Therefore, the assessee's application for rectification of mistake is hereby rejected and filed accordingly."

4. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(Appeals). The Ld. CIT(Appeals) after considering the facts, submissions of the assessee and the assessment order made certain concessions on the peak credit as calculated by the Assessing Officer and partly allowed the appeal of the assessee.

5. That in response to the opening submissions made by the Ld. AR of the assessee as hereinabove mentioned, the Ld. DR per contra, placed strong reliance on the order of Sub-ordinate Authorities, however, agreeing on the proposition of restoration of the matter to the file of the Assessing Officer.

6. We have perused the case records and heard the rival contentions. The Assessing Officer has calculated peak credit in the case of assessee and thereafter, the Ld. CIT(Appeals) has made some concessions in the calculation of the peak credit and have given part relief to the assessee. That before us, submissions of the Ld. AR is that the calculation of the peak credit by the Revenue Authorities was not properly carried out and it needs re-verification. It is the prayer of the Ld. AR for restoring the matter back to the file of Assessing Officer for proper calculation of the peak credit. The Ld. DR conceded to the request made by the Ld. AR.

In the interest of justice, we are of the considered view that the order of the Ld. CIT(Appeals) should be set aside and the matter may be restored back to the file of the Assessing Officer for proper calculation of peak credit. We order accordingly. Needless to say, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee.

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

Order pronounced on 18th day of March, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th March, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Kolhapur.
4. The Pr. CIT-1, Kolhapur.
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.

		Date	
1	Draft dictated on	18.03.2019	Sr.PS/PS
2	Draft placed before author	18.03.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		