

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील स / ITA No.185/PUN/2019

निर्धारण वर्ष / Assessment year : 2014-15

Mahadeo Vithhalrao Lokhande,
Flat No.14, Siddhesh Glori,
Opp. Ashoka Garden,
Kurudkar Nagar,
Ravi Shankar Marg,
Nashik – 422 011.

..... अपीलार्थी /
Appellant

PAN : AIBPL6031H.

बनाम v/s

The Income Tax Officer,
Ward 1(5), Nashik.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri P.M. Shingte.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 10.04.2019	घोषणा की तारीख / Date of Pronouncement: 30.04.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of order of Commissioner of Income-Tax (A) – 1, Nashik dated 12.12.2018 for A.Y. 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and is stated to be deriving income from the profits and gains of the business and also income from other sources. Assessee filed his return of income for A.Y. 2014-15 on

31.03.2015 declaring total income at Rs.4,00,470/-. Thereafter, the case was selected under CASS for scrutiny and subsequently assessment was framed u/s 144 of the Act vide order dt.18.11.2016 determining the total income at Rs.20,40,360/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.12.12.2018 (in appeal No.Nsk/CIT(A)-1/301/2016-17) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now before us and has raised the following grounds :

“1. The Learned CIT(A) erred in upholding the action of the Assessing Officer to pass assessment order u/s 144 of the Act without appreciating the fact that appellant could not attend assessment proceedings due to genuine / good and sufficient reasons. Therefore, it is prayed to set aside the order and grant appellant an opportunity to represent and explain his return of income.

2. The Learned CIT(A) erred in confirming addition of cash deposits in bank account amounting to Rs.10,68,200/- to the gross business receipts of the appellant based on pure surmise, conjectures and suspicions and by disregarding the submissions made in this regard. Therefore, it is prayed to cancel the addition of Rs.10,68,200/- made to gross business receipts.

3. The Learned CIT(A) erred in confirming addition of alleged fixed bank deposits of Rs.6,20,000/- to the gross business receipts of the appellant by relying on incorrect information and on pure surmise, conjectures and suspicions. Therefore, it is prayed to cancel the addition of Rs.6,20,000/- made to gross business receipts.

4. Without prejudice to above grounds of appeal, the Learned CIT(A) erred in confirming addition of Rs.4,95,420/- made u/s 68 on account of alleged short business receipts without appreciating the fact that addition ,if any, can be made only of element of profit included in business receipts. Therefore, it is prayed to cancel the addition of Rs.4,95,420/- made.

5. Without prejudice to above grounds of appeal, the Learned CIT(A) erred in confirming addition of Rs.4,95,420/- made u/s 68 on account of alleged short business receipts without appreciating the fact that appellant has declared profit u/s 44AD and profit declared by the appellant is more than 8% of business receipts computed by learned AO. Therefore, it is prayed to cancel the addition of Rs.4,95,420/- made.

6. The Learned CIT(A) erred in confirming addition of Rs. 11,44,470/-being 50% of total expenses without appreciating the fact that appellant has declared profit from business @ 14.99% of Gross receipts under the provisions of Sec. 44AD of the Income Tax Act, 1961 and hence no disallowances of expenses can be made as per provisions of Sec.44AD.”

3. Before us, at the outset, Ld.A.R. submitted that though the assessee has raised various grounds but the main controversy is with respect to the additions of Rs.4,95,420/- on account of unexplained

receipts u/s 68 of the Act and Rs.11,44,470/- being disallowance of 50% of total expenses.

4. During the course of assessment proceedings, AO noticed that assessee had shown receipts including the cash deposits in the Bank for the year under consideration at Rs.31,88,290/- but in his return of income, he had shown the total receipts at Rs.26,92,870/-. AO further noticed that assessee had shown gross profit of Rs.26,92,870/- and net profit of Rs.4,03,929/- after claiming expenses of Rs.22,88,941/-. AO thus noted that assessee had offered the business receipts short by Rs.4,95,420/- and claimed expenses to the tune of Rs.22,88,941/- without filing any supporting documents. The submissions of the assessee were not found acceptable to AO as assessee failed to show the sources of income and to file supporting documents and thereafter he made addition of Rs.4,95,420/- on account of unexplained receipts u/s 68 of the Act and Rs.11,44,470/- being 50% of expenses of Rs.22,88,941/- on account of non-genuine expenses. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

5. Before us, Ld.A.R. at the outset submitted that assessee could not appear before the AO to due to genuine and sufficient reasons. Ld.CIT(A) has confirmed the order of AO. He further submitted that due to unavoidable circumstances, assessee could not appear before AO. He submitted that if given a chance, assessee undertakes to appear before the AO and furnish all the required details to substantiate his case and prayed to set aside the assessment order. Ld.D.R. on the other hand supported the order of AO and Ld.CIT(A) and objected to Ld.A.R.'s prayer for 2nd innings.

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to additions of Rs.4,95,420/- u/s 68 of the Act and Rs.11,44,470/- being 50% of expenses. It is an undisputed fact that despite service of notice of hearing on various occasions, none attended before the AO and Ld.CIT(A) and therefore Ld.CIT(A) has passed an order based on written submissions. However, considering the fact that Ld.A.R. has given an assurance that assessee will co-operate and appear before lower authorities and in view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard, we are of the view that one more opportunity be granted to the assessee to present his case. We therefore restore the matter back to the file of AO to decide the issue on merits in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to both the parties. Assessee is also directed to promptly furnish all the details called for by the lower authorities. In view of our decision to restore the issue to AO, we are not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced on 30th day of April, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 30th April, 2019.
Yamini

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

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

आदेशानुसार/ BY ORDER

// True Copy //

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