

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.1128/PUN/2017

निर्धारण वर्ष / Assessment year : 2012-13

Shri Nilesh Nandkumar Agarwal,
Flat No.1170/15B, Yasholaxmi Apartment,
Revenue Colony, Shivajinagar,
Pune.

..... अपीलार्थी /
Appellant.

PAN : AELPA9995B.

बनाम v/s

The Income Tax Officer,
Ward-2(1), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri K. Srinivasan.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 02.07.2019	घोषणा की तारीख / Date of Pronouncement: 18.07.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 2, Pune dt.13.01.2017 for the assessment year 2012-13.

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

Assessee is an individual who electronically filed his return of income for A.Y. 2012-13 on 14.11.2013 declaring total income of Rs.6,87,660/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.27.03.2015 and the total income was determined at Rs.37,04,600/-. Aggrieved by

the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.13.01.2017 (in appeal No.PN/CIT(A)-2/ITO Wd-2(1)/PN/547/2015-16) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. That the Learned CIT(A)-II has earned error in justification to confirm the addition of rs.30,16,939/- made by the Income Tax Officer, Ward – 2 (1), Pune on account of non-genuine business expenses. The same may be allowed reduced accordingly.

2. During the course of appellate proceeding that the Learned CIT(A)-II has unjustified enhanced the total income equal to Rs.88,66,000/- on account of unexplained money deposited in Saving Bank account. The same may be verified and justified to delete from enhanced total income computed by the A.O.”

3. Both the grounds being inter-connected are considered together.
4. During the course of assessment proceedings, AO noticed that assessee had deposited cash of Rs.88,66,000/- in the Saving Bank account with Cosmos Bank. The assessee was asked to explain the source of cash deposits. Assessee inter-alia submitted that the cash deposits were out of the cash reflected in cash book. AO noted that assessee did not produce the ledger, purchase bills etc. AO noted that in the absence of records, the business activities stated by the assessee were in serious doubt. AO also noted that assessee has shown total sales of Rs.59,28,343/- and the purchases of Rs.27,76,345/- and apart from interest expenses of Rs.24,36,192/- (which was paid by cheque) had also claimed expenditure of Rs.30,16,939/-. He further noted that all the purchase bills were stated to be in cash which according to AO was highly improbable, unusual and difficult to accept. AO therefore concluded that no business activity was carried out by the assessee and the expenditure of Rs.30,16,939/- shown by the assessee was without any supporting evidence and therefore needs to be disallowed. He also

considered the sales of Rs.59,28,343/- as being income from other sources. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO and enhanced the addition made by AO by observing as under :

“4.3 I have gone through the entire facts with regard to cash deposits in the savings bank account maintained by the appellant. The appellant during the assessment proceeding argued that the cash deposits are out of cash book and the same represent sales made in the business of seasonal goods. However, when specifically required to explain the nature of business along with supporting bills, vouchers then it was stated that these files are missing and cannot be produced. During the appellate proceeding as well the appellant reiterated the submission made and stated that the cash deposits are made out of cash balance in the cash book. In reply to the enhancement notice, it was further stated that the cash balance is being carried forward from the preceding year. The Assessing Officer has not properly analyzed the cash deposits and he has incorrectly restricted the disallowance/addition to the extent of Rs. 30,16,939/-. Particularly when he had given clear finding in the assessment order that there is no evidence to show that the assessee is actually carrying on any business activity.

4.3.1 The submission of the appellant that the cash deposits are out of the cash book is not an acceptable proposition. It appears that submission regarding .cash book is an afterthought as because the appellant has failed to prove genuineness of any business activity out of which it claims to have generated the cash. The same status continues during the appellate proceeding also and he has not been able to explain the nature of business activity being carried on over the years along with any supporting details. The cash book which he is referring is nothing but self-made as an afterthought and which is unaudited. Furthermore he, has not been able to correlate the cash balance in the cash book out of any business turnover or any activity. The genuineness of the cash book is therefore doubtful in absence of any supporting evidence. Particularly keeping in view of the fact that it is unaudited and also not supported by any independent evidences reflecting generation of such a huge amount of cash. I therefore find no merit in the contention of the appellant with regard to source of cash deposits for the following reasons :

(i) Cash deposits in the bank accounts have been made at very high figures and it goes up to Rs. 50,00,000/- on 24.03.2012. Considering the meagre turnover of the appellant during the year, the cash deposits are highly disproportionate to the turnover/income shown by the appellant.

(ii) The argument that source of some cash deposits are out of cash book is not an acceptable proposition as because the genuineness of the cash book is itself in doubt as the same is unaudited and self made and also not supported by any independent evidence reflecting generation of so much of cash.

(iii) The appellant has failed to furnish any details such as purchase/sales bills or evidence in support of expenses to prove his argument regarding generation of cash from business. Referring the same to the cash balance of preceding year is nothing but an afterthought and the same cannot be accepted without any supporting evidence.

*4.3.2 The law is well settled that the onus of proving the source of a sum or money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source - **Roshan Di Hatti vs. CIT (107 ITR 938) (SC)**.*

Ld.CIT(A) thereafter referred to various other decision in Para 4.3.3 to 4.3.9 and finally made enhancement by observing as under :

4.3.10 In the light of aforesaid discussion on facts as well as decisions cited, it is held that the appellant has failed to discharge his onus with regard to source of cash deposit in his savings account to the tune of Rs. 88,66,000/- in the light of detailed discussion made in this regard in the preceding paragraphs. Accordingly the amount of Rs.88,66,000/- is treated as unexplained money of the appellant u/s 69A of the I.T. Act. The Assessing Officer is directed to enhance the income of the appellant accordingly. Grounds No.1, 2 and 3 are accordingly dismissed."

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. at the outset submitted that in the group case of Nilesh Nandkumar Agarwal, Anesh Nandkumar Agarwal and Nandkumar Maidhan Agarwal in (ITA Nos.760 to 762/PUN/2018 order dated 21.02.2019) on identical facts, the issue was remanded by the Co-ordinate Bench of the Tribunal to the AO. He also placed on record the copy of the aforesaid order. He submitted that the present case being identical to the group case of Nilesh Nandkumar Agarwal, Anesh Nandkumar Agarwal and Nandkumar Maidhan Agarwal (supra), the matter be remanded to the file of AO. Ld. D.R. on the other hand did

not controvert the submissions made by Ld.A.R. but however supported the order of lower authorities.

6. We have heard the rival submissions and perused the material on record. In the present case, the AO by holding that there was no evidence of any business activity and therefore he disallowed the business expenses of Rs.30,16,939/- that was claimed by assessee and further treated the sales of Rs.59,28,383/- to be "income from other sources". When the matter was carried before Ld.CIT(A) who after analyzing the cash deposits made enhancement and treated the deposits of Rs.88,66,000/- as unexplained money and made addition u/s 69A of the Act.

7. We find that identical issue arose in the case of Nilesh Nandkumar Agarwal, Anesh Nandkumar Agarwal and Nandkumar Maidhan Agarwal (supra), wherein the Co-ordinate Bench of the Tribunal vide order dated 21.02.2019 in ITA Nos.760 to 762/PUN/2018 has remitted the matter back to AO by observing as under :

"3. Briefly stated, the facts of the case are that the assessee made certain cash deposits in his savings bank accounts maintained with Cosmos bank, Bank of India and HDFC Bank. On being called upon to present the source of such deposits, the assessee submitted that the deposits were made out of cash balance in the cash book. The assessee further explained that the receipts in cash book were mainly from cash sales. The Assessing Officer (AO) required the assessee to produce the books of account which the assessee could not. It was however maintained that he made purchases in cash and also effected sales in cash and the deposits in the banks were out of such cash sales. The AO took up the figure of cash sales at Rs.29,20,795/- as "Income from other sources". After allowing deduction on account of interest and considering the profit already shown by the assessee at Rs.12,30,197/- along with certain expenditure booked at Rs.11,54,662/-, the AO made an addition of Rs.23,84,860/-, comprising of disallowance of expenditure at Rs.11.54 lakh and non-genuine sales. The ld. CIT(A) sustained the addition by observing that the assessee could not produce even a single document to show that his bank transactions represented business receipts. The assessee has come up in appeal against the sustenance of such an addition.

4. I have heard both the sides and perused the relevant material on record. The assessee has filed a paper book comprising of 207 pages as additional evidence. The ld. AR contended that the files containing purchase vouchers etc. were misplaced and could not be located during the course of proceedings before the authorities below, as those were kept separate when renovation and construction work was going on. A request was made that a further opportunity should be given to the assessee to adduce evidence in support of genuineness of transactions recorded in his bank accounts, which is now available. In view of the fact that the authorities below have disbelieved the genuineness of transactions of purchases, sales and expenses on the ground that supporting vouchers were not available and the assessee is now claiming to have collected all such evidence, I am of the considered opinion that the ends of justice would meet adequately if the impugned order on this score is set-aside and the matter is restored to the file of AO. I order accordingly and direct him to frame the assessment afresh after allowing reasonable opportunity of hearing to the assessee. It is made clear that the assessee will be at liberty to lead any fresh evidence in support of his claim which he considers expedient.

ITA No. 761/PUN/2018 – Anesh N. Agarwal
ITA No.762/PUN/2018 – Nandkumar M. Agarwal

5. The facts and circumstances of these two appeals are admittedly similar to those of Sh. Nilesh N. Agarwal. In the ITA Nos.760 to 762/PUN/2018 Nilesh N. Agarwal and 2 others 5 case of Sh. Anesh N. Agarwal, the ld. CIT(A) sustained the addition at Rs.10,56,852/-; whereas in the case of Sh. Nandkumar M. Agarwal, he sustained the addition at 13,98,470/-. Sh. Anesh N. Agarwal is brother of Sh. Nilesh N. Agarwal, whose appeal has been disposed off above. Sh. Nandkumar M. Agarwal is father of Sh. Nilesh N. Agarwal. In view of the fact that the facts and circumstances of these two appeals are admittedly similar, following the view taken hereinabove, I set-aside the impugned orders and remit the matter to the file of AO. I order accordingly and direct the AO to frame the assessments afresh in conformity with the directions given in the case of Sh. Nilesh N. Agarwal above.”

Before us, Ld.A.R. submitted that the issue in the present case is identical to the group case of Nilesh Nandkumar Agarwal, Anesh Nandkumar Agarwal and Nandkumar Maidhan Agarwal (supra), wherein the matter has been remanded to the AO. Before us, Revenue has also not pointed out any distinguishing feature in the facts of the present case and in the group case of Nilesh Nandkumar Agarwal, Anesh Nandkumar Agarwal and Nandkumar Maidhan Agarwal (supra). We find that the decision of Tribunal in aforesaid group case has not been set aside, stayed or over-ruled by Higher Judicial Authorities. We therefore respectfully following the decision of Co-ordinate Bench of the Tribunal in the group case of Nilesh Nandkumar Agarwal, Anesh Nandkumar

Agarwal and Nandkumar Maidhan Agarwal (supra) and in view of the fact that the issue in the present case is similar to the issue in the aforesaid case and for similar reasons, restore the issue back to the file of AO with similar directions. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish all the details called for by the lower authorities. **Thus, the grounds of the assessee are allowed for statistical purposes.**

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

Order pronounced on 18th day of July, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 18th July, 2019.

Yamini

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

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

आदेशानुसार/ BY ORDER

// True Copy //

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