

आयकर अपीलीय 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.1140/PUN/2017

निर्धारण वर्ष / Assessment year : 2012-13

Mr. Rajesh Pangal,
Gat No.704, S.No.126,
Kudalwadi, Chinchwad,
Taluka : Haveli,
Pune.

..... अपीलार्थी /
Appellant.

PAN : AIWPP1481A.

बनाम v/s

The Income Tax Officer,
Ward - 8(3), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri C.V. Deshpande.

Revenue by : Shri Pankaj Garg.

सुनवाई की तारीख / Date of Hearing : 17.07.2019	घोषणा की तारीख / Date of Pronouncement: 01.08.2019
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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) – 9, Pune dated 17.02.2017 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 filed his return of income for A.Y. 2012-13 on 27.09.2012 declaring total income at Rs.13,07,580/-. The case was selected for scrutiny and thereafter notice u/s 143(2) of the Act

was issued and served on the assessee. Subsequently, the assessment was framed u/s 143(3) r.w.s. 144 of the Act vide order dt.17.03.2015 and the total income was determined at Rs.2,24,60,040/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.17.02.2017 (in appeal No.PN/CIT(A)-6/ITO, Ward-8(3)/48/2015-16) dismissed the appeal of the assessee on account of non-prosecution. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the grounds which have been later revised and the revised grounds read as under :

“1.On the facts and in the circumstances of the case and in law the lower authorities have erred dismissing the appeal ex-parte, without giving proper opportunity of hearing, the act being in violation of principle of natural justice, it is prayed that appeal may kindly be restored back for reconsideration by lower authorities.

2. On the facts and in the circumstances of the case and in law the lower authorities have erred in making disallowance of Rs 10,00,000/- on ad-hoc basis without appreciating the fact that the assessee's books have been duly audited u/s 44AB of the IT Act.

3. On the facts and in the circumstances of the case and in law the lower authorities have erred in making disallowance of Fixed Assets purchased by the assessee amounting to Rs.7,71,588/- for want of proof of purchase of asset however without appreciating the fact that the assessee's books have been duly audited u/s 44AB of the IT Act.

4. On the facts and in the circumstances of the case and in law the lower authorities have erred in making disallowance of Rs 1,28,95,872/- of unsecured loans for want of proof of unsecured loans.

5. On the facts and in the circumstances of the case and in law the lower authorities have erred in making disallowance of Rs 64,85,000/- by invoking provisions of section 69A of the Income Tax Act 1961.

6. The appellant would like to leave, add, alter, amend, modify, delete, above grounds of appeal before or during the course of hearing in the interest of natural justice.”

3. Before us, at the outset, Ld.A.R. submitted that the then counsel appointed by the assessee never appeared before the AO and Ld.CIT(A) and also never informed the assessee about his non-appearance before the authorities. He therefore submitted that in such a situation, the

lower authorities passed ex-parte order. He further submitted that assessee is a small time scrap dealer and studied upto 7th standard only and he does not have any idea about the Income Tax laws. He therefore submitted that one more opportunity be granted to the assessee to present his case before the lower authorities and further submitted that he undertakes on behalf of the assessee that the assessee will fully cooperate and appear before the lower authorities. In support of his contention, he also filed sworn affidavit of the assessee. Ld.D.R. on the other hand, submitted that there was total non-compliance by the assessee before AO and Ld.CIT(A) and in such a situation, there was no other option left to them but to pass an ex-parte order. He thus supported the order of lower authorities.

4. We have heard the rival submissions and perused the material on record. We find that in the present case, the assessment order was framed by the AO u/s 143(3) r.w.s 144 of the Act whereby against the declared income of Rs.13,07,580/- the total income was assessed at Rs.2,24,60,040/-. Even the order passed by Ld.CIT(A) is an ex-parte order wherein he has dismissed the appeal of the assessee without going into the merits of the case. It is a settled law that ld. CIT(A) has no jurisdiction to dismiss the appeal of the assessee without going into the merits of the issue before him. Even in an ex parte order, the ld. CIT(A) should have decided the grounds of appeal of the assessee on merits thereof. Considering the aforesaid facts, we are of the view that in the interest of justice and fair play, the assessee be given one more opportunity to present his case before AO. We therefore remit the issue back to AO to decide the issue afresh on merits and in accordance with law. Needless to state that AO shall grant adequate opportunity of

hearing to assessee. Assessee is also directed to promptly furnish the details called for by AO. In case, the assessee fails to furnish the required details, AO shall be free to decide the issue based on material on record. In view of our decision to restore the issue back to the file of AO, we are not adjudicating on merits the other grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced on 1st day of August, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 1st August, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-9, 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.