

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.321/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Mohinder Trilokchand Kalani,
3201, Verona, Hiranandani Garens,
Powai, Mumbai-400076

PAN : AJGPK0791D

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Central-3,
Nahik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rakesh Joshi
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 27.08.2019

घोषणा की तारीख / Date of Pronouncement : 04.09.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-13,
Pune dated 31.12.2015 for the Assessment Year 2011-12.

2. The grounds raised by the assessee are as under :-

"1. In the facts and circumstances of the case and in law, the learned C.I.T.[A] has grossly erred in dismissing the appeal on the ground that the same was defective. The impugned order passed by the learned C.I.T.[A] be vacated and the appeal may please be decided on merits.

2. The learned C.I.T.[A] has erred in placing reliance on Rule 8 of the Income Tax [Appellate Tribunal] Rules 1963 when in fact there is no such statutory provision regarding appeal to filed before C.I.T.[A]. The learned C.I.T.[A] ought to have decided the appeal on merits without unnecessarily being hyper technical in the matter. The impugned order passed by the learned C.I.T.[A] be vacated and the appeal may please be decided on merits.

3. *The assessment order passed by the learned Assessing Officer u/s 143[3] r.w.s.153B of the I.T. Act 1961 being without jurisdiction, bad in law, void ab initio and being null and void the same may please be annulled.*

4. *The addition of Rs.3,40,000.00 made by the learned Assessing Officer on the alleged ground of money given out of books of account to M/s Govindram & Sons constituting undisclosed income for the year under consideration being arbitrary, perverse, devoid of merits and being patently illegal the same may please be deleted.*

5. *The addition of Rs.12,31,107.00 made by the learned Assessing Officer on the alleged ground of money given out of books of account to Karda Constructions Pvt. Ltd constituting undisclosed income for the year under consideration being arbitrary, perverse, devoid of merits and being patently illegal the same may please be deleted.*

6. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal”*

3. Before us, at the outset, ld. Counsel for the assessee brought our attention to the legal ground no.1 and submitted that the ground is required to be remitted to the file of the CIT(A) for fresh adjudication. Without going into the merits of the other grounds no.2 to 6 and justifying the above, the ld. Counsel brought out attention to the order of the CIT(A). Going through the narrative/argumentative grounds extracted by the CIT(A) in his order, ld. Counsel submitted that there is requirement of “the concise the grounds”. Further, ld. Counsel submitted that the CIT(A) dismissed the appeal of the assessee without going into the merits only for the reason that the grounds were not properly concised before the CIT(A). Further, also ld. Counsel brought our attention to the affidavit filed by the assessee, Shri Mohinder T. Kalani dated 05.03.2019 and submitted that the assessee never received any communication from the CIT(A) with regard to the above requirement of filing of the concise of grounds.

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

5. We heard both the sides only on the ground no.1. On going through the order of the CIT(A) in this regard, we find the CIT(A) dismissed the appeal of the assessee merely on the issues relating to the opportunity of hearing and assessee's failure to **discharge the onus of concising the grounds**. In this regard, we also perused the said affidavit filed by the assessee and find the contents of para 2 to 4 of the said affidavit are relevant and the same are extracted as under :-

"2. The said appeal disposed off by the Ld. CIT(A) vide order dated 31/12/2015 on technical reason that despite repeated oral reminders, the appellant didn't revised grounds of appeal. There after I filed appeal before Income Tax Appellate Tribunal against the said order which was assigned ITA No.321/Pune/2016.

3. I hereby affirm that I have not been communicated either by the office of CIT(A) or by my counsel to file any such document for the above appeal.

*4. Since the **main reason of disposal of appeal was not communicated to me**, hence the **same was not complied with at my end**. Therefore, I request to the Hon'ble Bench of ITAT to set aside the said appeal to the office of CIT(A) to decide the same on merit."*

6. Considering the above, we are of the opinion that the manner of adjudication of the appeal by the CIT(A) is not proper and it is not tune with the provisions of section 250(6) of the Act. It is reasonable to infer that assessee would have concised the grounds had he been properly informed. What would the assessee gain by not concising the grounds. Accordingly, we remand the entire gamut of issues raised in this appeal to the file of the CIT(A) for one more round of adjudication. The assessee

is directed to make proper representation before the CIT(A) with regard to the concising of grounds. With this remarks, all the issues raised by the assessee are allowed for statistical purposes. Needless to say, the CIT(A) shall pass a speaking order after granting reasonable opportunity of being heard to the assessee in accordance with law.

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

Order pronounced on 04th day of September, 2019.

Sd/-
(विकास अवस्थी /**VIKAS AWASTHY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 04th September, 2019.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune.
4. The CCIT (IT), West Zone, Mumbai.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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