

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

BEFORE
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.953/PUN/2019
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Shaybaz Abdulziz Shaikh,
EON Waterfront Phase-I, Building A Jade,
Flat No. 701, Grant Road, Freezone,
kharadi, Pune – 411016

..... अपीलार्थी /
Appellant

PAN : AEYPS6100H

बनाम v/s

The Income Tax Officer,
Ward – 2, Ahmednagar

..... प्रत्यर्थी /
Respondent

Assessee by : Shri B.C. Malakar
Revenue by : Shri Chandra Bhanu Mandal

सुनवाई की तारीख / Date of Hearing : 30.09.2019	घोषणा की तारीख / Date of Pronouncement: 30.09.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is against the order of Commissioner of Income Tax (Appeals) – 2, Pune for the assessment year 2010-11.

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

Assessee is an individual who filed return of income for A.Y. 2010-11 on 17-02-2011 declaring total income at Rs.3,00,000/-. The return of income was initially processed u/s. 143(1) of the Act.

Thereafter, the case was selected for scrutiny and notices u/s. 143(2) and 142(1) was served on the assessee. The AO has noted that there was non-compliance to the notices by the assessee and therefore, he passed order u/s. 144 of the Act dated 15-02-2013 wherein the total income was determined at Rs.25,48,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 09-05-2016 (in appeal No.PN/CIT(A)-1/ITO Wd-2/AN/252/2013-14) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

- “1. *On the facts and in the circumstances of the case, the Ld. CIT(A)-2, Pune erred in dismissing the appeal of the assessee appellant without serving the notice u/s. 250 of the I. T. Act, 1961 though issued as stated in para 3 of the appellate order, thereby confirming the addition made of Rs. 22,48,000/- by the Ld. Assessing Officer on account of bank deposits as unexplained cash credit in the assessment order passed ex-parte u/s. 144 of the said Act dated 15/02/2013 which was also passed without serving the statutory notices u/s. 143(2) / 142(1) in the given address of the assessee appellant. The appellate order so passed by the Ld. CIT(A) being arbitrary, illegal and bad-in-law confirming the addition as above may therefore be quashed.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A)-2, Pune erred in dismissing the appeal by passing an appellate order in which in the first and last page, Date of Order was given as "09/05/2016", whereas in para 3 of the appellate order the notices u/s. 250 were stated to have been issued fixing the case for hearing on 09/09/2015 and 23/09/2016. Despite the fact that issuing dates of notices were subsequent dates as stated above, prior to such issuing of notice, least to say of service of the same (as not received by the appellant), the appellate order was passed in an earlier date on 09/05/2016 to the date of subsequent notice issued on 23/09/2016. The appellate order passed by the Ld. CIT(A) in pre-determined mind of taking the disposal without giving the opportunity of being heard to the appellant was therefore against the principle of natural justice and hence is arbitrary, illegal and bad-in-law. The appellant prays for quashing/setting aside the said order and restore the matter back to the file of the Ld. Assessing Officer for deciding the case on merit.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A)-2, Pune erred in dismissing the appeal of the appellant thereby confirming the addition made by the Ld. Assessing Officer of Rs. 22,48,000/- as unexplained cash credit, in spite of the fact that the said amount in cash was deposited in the appellant's bank account viz. Royal Bank of Scotland, Pune during FY 2009-10 out of the appellant's regular business transactions of purchase and sale of old cars/vehicles and*

therefore both cash deposits and cash withdrawals made in the said bank for the purpose of business could not be treated as unexplained cash credit as has been held by the Ld. Assessing Officer and so also confirmed by Ld. CIT(A). The addition made being arbitrary by the Assessing Officer and so also the confirming of the said addition by the Ld. CIT(A) being illegal and bad-in-law, the same may please be deleted.

4. *On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in charging interest u/s 234A, 234 B, 234C and 234 D of the I.T. Act, 1961 which may please be deleted.”*

3. Before me, at the outset, Ld. AR submitted that notices issued by the AO were not received by the assessee and therefore assessee could not appear before the AO which resulted into an ex-parte order by the AO. He also submitted that the CIT(A) issued the notices address Raj Chambers, Kothla Road, Ahmednagar which assessee had already left and due to the non-receipt of the notice, the assessee could not appear before the CIT(A). Ld. A.R. further submitted that CIT(A) has passed an ex-parte order without deciding the issue on merits. 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 co-operate and appear before the lower authorities. 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. I have heard the rival submissions and perused the material on record. I find that in the present case, the assessment order was framed by the AO u/s. 144 of the Act whereby against the declared income of Rs.3,00,000/- the total income was assessed at Rs.25,48,000/-. 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 Id. 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 Id. CIT(A) should have decided the grounds of appeal of the assessee on merits thereof. Considering the aforesaid facts, I am of the view that in the interest of justice and fair play, the assessee be given one more opportunity to present his case before lower authorities. I therefore remit the issue back to the file of 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 my decision to restore the issue back to the file of AO, I am 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 the 30th day of September, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 30th September, 2019.

RK

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

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

आदेशानुसार/ BY ORDER

// True Copy //

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