

आयकर अपील[पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.457/PUN/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Ashish Vilas Pundlik,
C/o.Tejas Bunglow,
Plot No.2, Lane 7,
Deep Laxmi Society,
Sahakar Nagar No.2,
Tulsibaugwale Colony,
Pune.

..... अपीलार्थी /
Appellant

PAN : ALLPP0999B.

बनाम v/s

The Income Tax Officer,
Ward 5(2), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Kishore Phadke.

Revenue by : Shri Pravin Chavan.

सुनवाई की तारीख / Date of Hearing : 10.10.2019	घोषणा की तारीख / Date of Pronouncement: 30.10.2019
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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) – 4, Pune dated 23.01.2019 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. In this case, as per AIR information assessment was initially completed u/s 143(3) r.w.s.

147 of the Act on 18.03.2013. Thereafter, assessment was re-opened u/s 147 of the Act by issuing notice u/s 148 of the Act dt.23.03.2015 and was served on assessee on 27.03.2015. In response to notice u/s 148 of the Act, assessee replied that the return of income filed earlier may be treated as return of income filed in response to notice u/s 148 of the Act. Subsequently, notices u/s 143(2) and 142(1) of the Act dated 10.12.2015 were issued. Thereafter, the case was taken up for scrutiny and assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dt.27.01.2016 and the total loss was assessed at Rs.22,76,613/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.23.01.2019 (in appeal No.PN/CIT(A)-4/Wd-5(2), Pune/238/ 2016-17) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has and raised the following grounds :

"1 Appellant contends that, the learned AO erred in law and on facts in assuming jurisdiction u/s 147 of the ITA, 1961, as necessary sanction of the learned JCIT, which is mandatory requirement of section 151 of the ITA, 1961, is not discerning from:

- a) notice u/s 148 of the ITA, 1961;*
- b) reasons record by the learned AO and*
- c) assessment order and assessment records*

As such, appellant contends that, order passed u/s 143(3) r.w.s. 147 of the ITA, 1961 is bad in law.

2. Appellant contends that the reassessment proceedings initiated u/s 147 of the ITA, 1961 by the learned AO were based on mere suspicion and not based on a valid reason to believe escapement of income. From the "reasons" recorded, it reveals, no any conspicuous application of mind is reached to form belief of any escapement of income.

3. Appellant contends that the order passed by the learned AO u/s 143(3) r.w.s. 147 of the ITA, 1961 is bad in law, since, objections raised by the appellant to the reassessment proceedings were not disposed-off by passing a speaking order by the learned AO.

4. Appellant contends that the learned CIT(A)-4, Pune erred in law and on facts in sustaining the addition of Rs. 19,00,000/- u/s 69C of the ITA, 1961 made by the learned AO.

5. Appellant contends that the learned AO erred in law and on facts in invoking provisions of section 69C of the ITA, 1961 though no any expenditure was claimed by the appellant w.r.t. payments made to Mr. Sanjay Wagholikar.

6. Appellant contends that the learned AO erred in law and on facts in making addition of Rs. 19,00,000/- u/s 69C of the ITA, 1961. The learned AO ought to have appreciated the fact that the payments of Rs. 19,00,000/- were made out of withdrawals from the bank.”

4. Ground Nos. 1 to 3 are with respect to the re-opening of assessment proceedings and ground No.4 to 6 are with respect to addition of Rs.19,00,000/- u/s 69C of the Act. All the grounds are considered together.

4.1. During the course of assessment proceedings, on verification of cash books of assessee, AO noticed that assessee had made cash payments aggregating to Rs.19,00,000/-, to Shri Sanjay Wagholikar on different dates which according to AO had escaped assessment. On inquiry assessee submitted that cash payments were made to Shri Sanjay Wagholikar to discharge business liability but failed to prove the nature of business and also could not produce any documentary evidence to prove that there was business exigency with Shri Sanjay Wagholikar. As assessee did not offer any satisfactory explanation in respect of transactions with Shri Sanjay Wagholikar, AO invoked the provisions of Sec.69C of the Act and accordingly made an addition of Rs.19,00,000/- on account of unexplained expenditure to the total income of the assessee. Aggrieved by the order of AO,

assessee carried the matter before Ld.CIT(A), who upheld the order of AO.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

5. Before me, Ld.A.R. submitted that Ld.CIT(A) has passed ex-parte order and has not decided the issue on merits. He submitted that non-attendance on the last date of hearing before Ld.CIT(A) was on account of non-serving of notice. He submitted that the matter may be remitted back to Ld.CIT(A) for adjudication on merits and further assessee undertakes to appear before Ld.CIT(A). Ld. D.R. on the other hand supported the order of lower authorities.

6. I have heard the rival submissions and perused the material on record. The issue in grounds 1 to 3 is with respect to the re-opening of assessment proceedings u/s 143(3) r.w.s 147 of the Act and ground Nos.4 to 6 is with respect to the addition of Rs.19,00,000/- on account of unexplained cash payments made to Shri Sanjay Wagholikar. The perusal of the assessment order reveals that no details were filed by the assessee before AO in respect of cash payments to Shri Sanjay Wagholikar and therefore he considered the entire cash payments as unexplained expenditure and made its addition u/s 69C of the Act. The order of Ld.CIT(A) reveals that Ld.CIT(A) has passed an ex-parte order without deciding the issue on merits. 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 her. 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 and in view of Ld.A.R.'s undertaking that assessee will cooperate and appear before Ld.CIT(A), I am of the view that in the interests of justice and fair play, the assessee be given one more opportunity to present his case before Ld.CIT(A). I therefore remit the issue back to Ld.CIT(A) to decide the issue on merits in accordance with law. Needless to state that Ld.CIT(A) shall grant adequate opportunity of hearing to both the parties. In view of my decision to restore the issue to Ld.CIT(A), I am not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced on 30th day of October, 2019.

Sd/--

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

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

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-4, Pune.
4. Pr. CIT-3, Pune.
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.