

आयकर अपीलीय अधिकरण] 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.399/PUN/2019

निर्धारण वर्ष / Assessment Year : 2008-09

Mayank K. Barjatya,  
25, Samrat Co-operative Housing Society,  
Kalyani Nagar, Yerwada,  
Pune – 411006.

..... अपीलार्थी /  
Appellant

PAN : AESPB4733K.

बनाम v/s

The Dy.Commissioner of Income Tax,  
Circle – 5, Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Harish Chopada.

Revenue by : Shri Vishwas Mundhe.

सुनवाई की तारीख / Date of Hearing : 06.08.2019	घोषणा की तारीख / Date of Pronouncement: 09.10.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 9, Pune dated 15.11.2018 for A.Y. 2008-09.

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

Assessee is an individual and Proprietor of “M/s. Vastu Environmental Services”. Assessee filed his return of income for A.Y.

2008-09 on 30.09.2008 declaring total income at Rs.46,43,580/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 30.12.2010 and the total income was determined at Rs.48,99,480/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide ex-parte order dated 15.11.2018 dismissed the appeal of 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 and in law the lower authorities have erred in adding 31.56% of travelling expenses to income merely on presumption that it appears that appellant incurred personal travel, is not supported by any cogent evidence and therefore such presumption which is based on mere surmises and guesswork is illegal, and therefore entire proceedings needs to be quashed.*

*2. The total travelling expense (Rs. 7.12 lacs) which constitutes 4.86% of total receipts of profession and sales including exports of Rs. 146.32 LACS which are received from services rendered in Indonesia, France and UAE. The revenue from export of Service was Rs.23.22 lacs. From above expenses of Rs.7.12 lacs only Rs.0.17 lacs(2.38%) was in cash for purchase of Fuel for vehicle and rest all were from account payee cheque and credit card (97.62%). Thus contention of AO that the travelling expenses are mostly paid in cash is not valid.*

*3. On the facts and in the circumstances of the case and in law the lower authorities have erred in not giving reasonable opportunity to assessee as well as all the notices by CIT (A) were returned and not delivered to assessee. The notices were not send by email. Thus assessee was deprived for representing before lower authorizes.*

*4. On the facts and in the circumstances of the case and in law, the lower authorities have erred in confirming the addition of Rs.2,25,000/- as personal expenses element in travelling, by disregarding the: nature of work conducted by the assessee and sources of receipt of business income which necessitates extensive travelling for assessee as well as his employees, appellant prays for complete relief as the entire addition is based on surmises and guesswork and presumption which is not supported by any corroborative evidence, and therefore addition needs to be deleted in its entirety.”*

3. Before me, at the outset, Ld.A.R. submitted that he would like to press ground No.1 only and the other grounds i.e., 2 to 4 may be

treated as not pressed. I therefore proceed to decide ground No.1 and dismiss ground Nos.2 to 4 as not pressed.

4. AO on perusing the Profit and Loss Account, noticed that assessee had debited Rs.7,12,857/- towards travelling expenses. AO noted that the expenses have been incurred in cash as well as by cheque. He was of the view that genuineness of all the payments towards travelling could not be verified and the personal travelling of the assessee could not be denied. He accordingly made adhoc disallowance of Rs.2,25,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who dismissed the appeal of the assessee.

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

5. Before me, Ld.A.R. submitted that AO has made an adhoc disallowance and that Ld.CIT(A) has passed an ex-parte order and has not decided the issue on merits. Ld.A.R. further submitted that assessee was not given an opportunity of hearing before the Ld.CIT(A) and that if given a chance, assessee undertakes to appear before lower authorities and furnish all the required details to substantiate his case. He therefore submitted that assessee be granted one more opportunity to explain his case. Ld.D.R. on the other hand supported the order of AO and Ld.CIT(A) and objected to Ld.A.R.'s prayer for 2<sup>nd</sup> innings.

6. I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition of Rs.2,25,000/- on account of travelling expenses. The perusal of order

of Ld.CIT(A) reveals that Ld.CIT(A) has passed an ex-parte order without deciding the issue on merits. In view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard, I am of the view that one more opportunity be granted to the assessee to present his case before the lower authorities. I therefore restore the matter back to the file of 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. Assessee is also directed to promptly furnish all the details called for by the authorities. 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 ground of assessee is allowed for statistical purposes.**

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

Order pronounced on 9<sup>th</sup> day of October, 2019.

**Sd/-**

**(ANIL CHATURVEDI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 9<sup>th</sup> October, 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-7, 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.