

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.1128/PUN/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Mahesh Dnyaneshwar Ghule,
Flat No.2101, Building D,
Shubhkalyan, Nanded City,
Near Lokmat Press, Pune.

..... अपीलार्थी /
Appellant

PAN : AGJPG9010B.

बनाम v/s

The Income Tax Officer,
Ward 6(2), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Rajkumar Doshi.

Revenue by : Shri Dinesh R. Pardeshi.

सुनवाई की तारीख / Date of Hearing : 12.09.2019	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) – 4, Pune dated 21.05.2019 for A.Y. 2010-11.

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

Assessee is an individual stated to be engaged in the business of providing JCB's/Tippers/Dumpers on hire and earns income from rent on godowns and machinery. In this case assessment was re-opened

u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2017. Notice u/s 143(2) and 142(1) of the Act was thereafter issued on 10.10.2017. In response to notice u/s 148 of the Act, assessee filed his return of income for A.Y. 2010-11 on 07.10.2017 declaring total income at Rs.6,33,630/-. Subsequently, assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 20.11.2017 and the total income was determined at Rs.10,48,300/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 21.05.2019 (in appeal No.PN/CIT(A)-4/Ward-6(2), Pune/149/2017-18/60) 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. The learned CIT(A) erred in confirming the addition of Rs.3,50,000/- on account of disallowance of 12% of various expenses.

2. The learned CIT(A) failed to appreciate that appellant had submitted details of allowance of depreciation Rs.6,23,525/-, Interest on loan expenditure Rs.3,19,285/- and salary expenditure Rs.6,27,000/- and no disallowance was warranted out of these allowances and expenses.

3. The learned CIT(A) failed to appreciate that the disallowance of 12% of all the expenses is on higher side and should have restricted to reasonable amount as prayed by appellant.”

3. All the grounds being inter-connected are considered together.
4. Before me, Ld.A.R. at the outset submitted that Ld.CIT(A) has passed an ex-parte order and has not decided the issue on merits. Ld.A.R. also filed the sworn affidavit of assessee wherein assessee submitted that notices of hearing of appeal were served on his wife on 16.11.2018 and 05.02.2019 and that his wife being un-educated did not know the significance of said notices and hence, forgot to handover the same or to intimate the same to him and that he knew about the

same only after receipt of ex-parte order passed by Commissioner of Income Tax (Appeals)-4, Pune. Ld.A.R. submitted 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 2nd innings.

5. 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.3,50,000/- being 12% of various expenses claimed. 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 and in view of the reasons mentioned in the affidavit filed by the assessee, 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 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 9th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 9th 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.