

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA No. 4519/Mum/2017  
Assessment Year : 2009-10

Atul Pawar, 582 Panmala, B-17, Kumar Ashiyana Sinhagad Road, PUNE [PAN : AJDPP2842F]	Vs.	The Asst. Commissioner of Income Tax, Central Circle-6(4), MUMBAI
(Appellant)		(Respondent)

Appellant by : Shri Anuj Kisnadwala, AR  
Respondent by : Shri S. Michael Jerald, DR

Date of Hearing : 19-12-2019	Date of Pronouncement : 20-12-2019
------------------------------	------------------------------------

**ORDER**

**PER VIKAS AWASTHY, J.M:**

This appeal by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-54, Mumbai, dated 20-02-2017 for the AY.2009-10.

2. The brief facts of the case as emanating from records are: The assessee is a salaried employee. The assessee filed his return of income for the impugned assessment year on 31-07-2009 declaring total income at Rs.15,94,840/-. A search action u/s.132 of the Income Tax Act, 1961 (herein after referred to as 'the Act') was carried out in the case of

assessee. During search operation, Fixed Deposits aggregating to Rs.47,50,000/- were found. The Assessing Officer (AO) vide order dt.29-12-2010 passed u/s.143(3) of the Act, made addition of the same as 'un-explained investment' u/s.69 of the Act.

Aggrieved against the assessment order, the assessee filed appeal before the CIT(A).

3. During the first appellate proceedings, the assessee filed additional evidences. The CIT(A) sought report from the AO on additional evidences filed by the assessee. The assessee failed to appear before the AO in remand proceedings, despite service of notices. The CIT(A) rejected additional evidences filed by the assessee and confirmed the addition of Rs.47,50,000/-. Hence, the present appeal by the assessee.

4. Shri Anuj Kisnadwala, appearing on behalf of the assessee, submitted that the assessee has filed additional evidences before the CIT(A) in the form of bank statements and balance sheet of the family members to substantiate the source of funds for Fixed Deposits un-earthed during search. Admittedly, notice of hearing in remand proceedings were received by the assessee. However, due to some misunderstanding between the assessee and the Chartered Accountant, representing the assessee before tax authorities, no one could appear before the AO to explain the additional evidences filed. On the basis of remand report, the CIT(A) has rejected the additional evidences. The ld.AR prayed that if an

opportunity is granted, the assessee would appear before the CIT(A) and explain the additional evidences.

5. *Au contraire* Shri S.Michael Jerald, representing the Department, vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The ld.DR submitted that Fixed Deposits found during survey were not disclosed by the assessee in his return of income. But for survey, these unexplained investments would not have come to the light and would have escaped tax net.

6. We have heard representatives of rival sides and have perused the orders of the authorities below. The short prayer of the assessee is that the matter may be remitted to the file of CIT(A) to re-consider additional evidences filed by the assessee, as they are vital documents in explaining source of investments in the Fixed Deposits. It is an undisputed fact that the additional evidences filed by the assessee were forwarded by the CIT(A) to AO for his comments. The AO in order to seek explanation on additional evidences, the AO had summoned the assessee. However, the assessee failed to appear before the AO, despite service of notices.

Taking into consideration entirety of facts, we are of considered view that one more opportunity be given to the assessee to explain the additional evidences filed by the assessee before the CIT(A). We also observe that there was negligence on the part of assessee in not appearing before the AO in remand proceedings in the first round. Hence, it is a fit case for levy of cost on the assessee for holding the

Government machinery and for disrespecting the quasi-judicial process. The appeal of assessee is thus allowed subject to cost Rs.20,000/-.

7. The cost shall be paid by the assessee within a period of one month from the date of receipt of this order in accordance with Rule 32A(2) of the ITAT Rules, 1963. The assessee shall furnish proof of deposit of the cost to the CIT(A). Upon furnishing the evidence of deposit of cost, the CIT(A) shall *denovo* decide the issue after allowing reasonable opportunity of hearing to the assessee, in accordance with law.

8. It is also made clear that if the assessee fails to deposit the cost in the manner and time prescribed above, the appeal of assessee shall be deemed to be dismissed.

9. In the result, the appeal of assessee is allowed for statistical purposes, in terms aforesaid.

*Order pronounced in the open court on Friday  
the 20<sup>th</sup> day of December, 2019*

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 20-12-2019

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai