

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.1573/PUN/2019

निर्धारण वर्ष / Assessment Year : 2016-17

Sunil Maganlal Patel,
578/2B, Aaykar Sadan,
5th Floor, Room No.511 & 512,
Salisbury Park, Gultekdi,
Pune.

..... अपीलार्थी /
Appellant

PAN : AKSPP6310N.

बनाम v/s

The Income Tax Officer,
Ward 13(3), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : None.

Revenue by : Shri Bharat Deoraj Shegaonkar

सुनवाई की तारीख / Date of Hearing : 22.01.2020	घोषणा की तारीख / Date of Pronouncement: 22.01.2020
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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 (Appeals), Pune – 5, Pune dated 20.06.2019 for A.Y. 2016-17.

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

Assessee is an individual and stated to be running a proprietary concern in the name and style of Sunil M. Patel which was engaged in the business of trading of books. Assessee electronically filed his return of income for A.Y. 2016-17 on 04.08.2016 declaring total income at

Rs.4,77,990/-. The return was processed u/s 143(1) of the Act accepting the return of income filed by the assessee. Thereafter, the assessment was framed u/s 143(3) of the Act vide order dated 31.12.2018 and the total income was determined at Rs.17,30,400/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 20.06.2019 (in appeal No.PN/CIT(A)-5/ITO, Ward 13(3), Pune/10206/2018-19) 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 learned CIT(A) has erred in passing the appellate order in gross violations of 'principle of natural justice.

2. On the facts and in the circumstances of the case and in law the ld CIT(A) erred in passing the order ex-parte without allowing the appellant a proper and reasonable opportunity of being heard and hence, the impugned order passed requires to be set aside/cancelled.

3. On the facts and in the circumstances of the case and in law the action of the ld CIT(A) of not providing proper opportunity of being heard and dismissing the appeal on the basis that no representation has been made by the assessee, despite the fact that an adjournment application dated 03rd June 2019 has been filed and is available on record.

4. On the facts and in the circumstances of the case and in law the ld CIT(A) is not justified in dismissing the appeal on the technical ground that while filing the Appeal in Form 35 the original notice of demand as is required by the I T. Rule No. 45, has not been submitted.

5. On the facts and in the circumstances of the case the action of the Assessing Officer in treating the payment made to City Realty & Development Pvt Ltd of Rs. 17,30,400 from unexplained sources of income in terms of section 68 of the Act is unjust, illogical and arbitrary.

6. The appellant must be provided reasonable opportunity of being heard to provide additional evidences in support of his contention that the amount paid of Rs.17,30,400/- is from the genuine source.”

3. All the grounds being inter-connected are considered together.

4. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed. I therefore proceed to dispose of

the appeal ex-parte qua the assessee based on the material available on record and after hearing the Ld.D.R.

5. Before me, Ld. D.R. supported the order of lower authorities.

6. I have heard the Ld. D.R. and perused the material on record. The assessee is aggrieved by the addition of Rs.17,30,400/- on account of cash deposits from unexplained sources u/s 68 of the Act. The perusal of the 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 its case before the 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. 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.**

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

Order pronounced on 22nd day of January, 2020.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 22nd January, 2020.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A), Pune – 5, Pune.
4. Pr. CIT, Pune – 4, 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.