

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1163/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Suvidha Homes,
Office No.1005/6,
Building No.1,
Siddharth Tower, Sr. No.12/3-B,
Kothrud, Pune-411038.

PAN : AAUFS7603P

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-3,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Alok Malviya

सुनवाई की तारीख / Date of Hearing : 02.06.2020
घोषणा की तारीख / Date of Pronouncement : 02.06.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal filed by the assessee is against the order of the CIT(A)-3, Pune dated 10.05.2018 for the assessment year 2014-15.

2. The grounds raised by the assessee are as under :-

"1. The learned CIT(A)-3, Pune erred in law and on facts in not admitting the additional evidences filed by the appellant on the analogy, that appellant has failed to establish there was sufficient cause for not submitting the documents before the learned A.O. The learned CIT(A)-3, ought to have appreciated that, the requisite documents could not be submitted before the learned A.O., as there was difficulties in getting the said documents, as the same had to be obtained from un-related persons.

2. The learned CIT(A)-3, Pune erred in law and on facts in upholding the disallowance made by the learned A.O. of Rs.15,00,000/- for payment of

commission. The learned CIT(A) and the learned A.O. ought to have appreciated that the commission paid to three brokers was genuine and bonafide and had nexus with sake of tenements, details of which were submitted on record.

3. Appellant craves leave to add/modify/amend/delete all/any of the grounds of appeal.”

3. Briefly stated the relevant facts include that the assessee is a registered partnership firm and is engaged in the business of construction. The assessee filed the return of income declaring total income of Rs.38,96,978/-. The case of the assessee was selected for scrutiny under CASS and the notice u/s 143(2) of the Act was issued on 28.08.2015 served on the assessee. The assessee debited an amount of Rs.15,00,000/- as commission in the P & L Account. The assessment was completed and the Assessing Officer held that the commission expenses of Rs.15,00,000/- were not genuine. The Assessing Officer disallowed the same and added back to the total returned income of the assessee. The contents of para 4 and 4.1 of the assessment order are relevant in this regard. The Ld. CIT(A), as per discussion given in para 5.3.6 of his order, confirmed the addition as made by the Assessing Officer and dismissed the appeal of the assessee. The contents of para 5.3.6 of the order of the Ld. CIT(A) are relevant and the same are extracted as under :-

“5.3.6 It is also relevant here that the language used in Rule 46A of the Rules is “sufficient cause” and not “reasonable cause”. ‘Sufficient cause’ is much more stringent than the term ‘reasonable cause’ and even if a cause is reasonable, it has to be ascertained whether it was a sufficient cause or not. In the instant case, the appellant has failed to establish that there was sufficient cause for not being able to furnish required documents before the AO. The appellant has failed to show as to how his case is covered under conditions provided under Rule 46A(1). In view of this, the additional evidences cannot be admitted. Further, in absence of required documents, the action of the AO is confirmed and Grounds No. 1 & 2 of the appellant are DISMISSED.”

4. Aggrieved with the above decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds.

5. Before us, ld. Counsel for the assessee submitted that the additional evidences were filed by the assessee before the Ld. CIT(A) since the assessee had sufficient cause for not submitting the documents before the Assessing Officer as there were difficulties in getting the said documents. The ld. Counsel for the assessee also submitted that the commission paid to three brokers were genuine and bona-fide. Further, the ld. Counsel for the assessee pleaded for grant of one more opportunity of being heard before the lower authorities for adjudicating the issue afresh.

6. On the other hand, ld. DR for the Revenue relied heavily on the orders of the authorities below.

7. After hearing both the parties and considering the above facts, we are of the opinion that the right of filing the appeal is granted by the Statute to the assessee-taxpayers. The reasons for non-submission of the relevant documents before the lower authorities are bona-fide and genuine taking into consideration the practical aspects involved in the scenario. Therefore, we are of the opinion that an opportunity should be granted to the assessee following principles of natural justice. Accordingly, we remand all the issues raised by the assessee in this appeal to the file of the Ld. CIT(A) for fresh adjudication. The Ld. CIT(A) shall grant reasonable opportunity of being heard to the assessee and adjudicate the issues involved therein considering the relevant evidences filed by the assessee. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 02nd day of June, 2020.

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 02nd June, 2020

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.