

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

**SHRI PARTHA SARATHI CHAUDHURY, JM
AND
DR. DIPAK P. RIPOTE, AM**

**ITA No. 310/PUN/2017
Assessment Year : 2012-13**

Dhairyasheel Prahlad Pawar
249/1/22A Nagala Park,
Kolhapur
PAN ; ALFPP4738C

Appellant

Vs.

Asstt. Commissioner of Income-tax
Kolhapur

Respondent

Appellant by : Shri Kishor B. Phadke
Respondent by : Shri S.P. Walimbe

Date of Hearing : 17-03-2022
Date of Pronouncement : 21-03-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-11, Pune dated 30-11-2016 for A.Y. 2012-13 as per the grounds of appeal on record. The assessee has also filed an additional ground of appeal which reads as follows:

"The appellant contends that based on the Principle of Natural Justice, IT authorities ought to have granted the cross-examination of Shri Govind Kulkarni, based on which the addition is concluded."

2. At the outset, the Id. Counsel for the assessee submitted that he is pressing this additional ground of appeal which is purely a legal ground and goes to the root of the matter since the principles of natural justice have been vitiated in his case. That the Department ought to have granted cross examination of one Mr. Govind Kulkarni to the assessee based on which the assessment has been finalised. The Id. D.R concedes on admission of this additional ground before us.

3. The Id. A.O has discussed this issue at para 10 of his order wherein it has been mentioned that during the course of survey at the premises of Maruti Export Corporation certain loose papers pages 6 and 7 (bundle No. 3) were impounded reflecting unexplained money of Rs. 45,00,000/-. During the assessment proceedings, the Id. A.R of the assessee had not furnished any documentary evidences nor had explained satisfactorily this issue and due to lack of justification regarding unexplained money in the said loose papers impounded an amount of Rs. 45,00,000/- was added to the income of the assessee. That, at the stage of Id. CIT(A), as evident from para 15 onwards, the issue was discussed. That, apart from what was stated in the assessment order, the Id. CIT(A) had also called for a remand report from the Id. A.O and the Id. A.O had submitted his letter dated 13-4-2015 which has been made part of the Id. CIT(A)'s order at para 16. The relevant extract is as follows:

"16. It has to be admitted that the A.O has not made the facts clear in the asstt. order. However, in his letter dated 13-4-2015, the A.O further explained the facts as under:

"During the course of search proceedings in the Mohite group, the loose papers found and seized. The papers and documents were shown to group accountant Shri Govind D. Kulkarni and his statement was recorded u/s 131 of them ct. Shri Kulkarni explained the writings on page No. 7 as under:

'The reverse of page 7 contains the transaction which is in cash amounting to 55 lakh; 45 lakh was received from Dhairyasheel Pawar, 6 lakh from the school and 4 from school bank. Out of the 55 lakh, 50 lakhs have been paid to chavan guru and 5 lakh to Mohite anna. The entire transaction is in cash and no recorded in the books of accounts. The transactions on this page are written by me.'

4. That, in the aforesaid letter of the Id. A.O a statement u/s 131 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was recorded of one Mr. Govind Kulkarni. The Id. A.R submitted that the Id. A.O has not given the assessee an opportunity while finalising the remand proceedings. The assessee was only given a copy of the remand report. However, even the right to cross examine the person making a statement i.e. Mr. Govind Kulkarni was also not provided to the assessee. Further, in the submissions made before

the Id. CIT(A) the assessee had contended that he had made a request to the Id. A.O to give the copies of the said pages 6 and 7 of Bundle No. 3 having reference to addition of Rs. 45,00,000/-. This particular evidence which was used against the assessee for making an addition was also not furnished to the assessee by the Department. The Id. .A.R also submitted that at para 18, the Id. CIT(A) while confirming the addition observes that Mr. Kulkarni who has made the statement u/s 131 of the Act is stated to be the Accountant of the assessee as has been mentioned by the Id. A.O. However, the Id. .A.R made a statement at Bar that said Mr. Govind Kulkarni was not an Accountant of the assessee and he is just a third party who is absolutely unknown to the assessee. Therefore, making an addition relying on the statement of such third party without giving an opportunity of cross examination, in such a scenario, the addition is illegal, invalid and bad in law. At this stage, the Id. D.R could not place on record any new materials or evidences to counter the submissions made by the assessee. In a way, the Id. D.R conceded that as per records, right to cross examination of Mr. Govind Kulkarni was not given to the assessee before making the addition of Rs. 45,00,000/-.

5. We have perused the records, heard the rival contentions and analysed the facts and circumstances in this case. That, on perusal of the assessment order at para 10, an addition has been made by the Id. A.O in respect to unexplained money of Rs. 45,00,000/- which appeared in some loose papers at pages 6 and 7 of Bundle No. 3 and this was recovered during the course of survey in the premises of M/s. Maruti Export Corporation. The assessee was unable to furnish any documentary evidence before the Id. A.O and therefore, the said addition was made. However, at the first appellate stage, as is evident from para 16 that in the letter submitted to the Id. CIT(A) by the Id. A.O dated 13-4-2015, the Id. .A.O states that there was a statement recorded u/s 131 of

the Act of one Mr. Govind Kulkarni. Thereafter, at para 18, the Id. CIT(A) upheld the addition made by the Id. A.O on the presumption that Mr. Govind Kulkarni is the Accountant of assessee. Whereas before us, the Id. A.R has made a statement at Bar saying that Mr. Kulkarni is only a third party and is absolutely unknown to the assessee. That from para 16 in the said order, it is also evident that the assessee was not given an opportunity to cross examine Mr. Govind Kulkarni as regards the statement made by him. That, also at para 17 though the assessee has requested for furnishing of the relevant details in respect of the addition of Rs. 45,00,000/- these details/evidences were not furnished by the Department to the assessee. The Id. D.R could not place on record any materials/documents to demonstrate that the assessee was given an opportunity to cross examine Mr. Govind Kulkarni and that all the evidences/documents which were used against the assessee were also furnished to the assessee for preparing his self-defence. We are of the considered view in this case, therefore, the principles of natural justice have not been complied with by the Department.

6. We find that the Hon'ble Apex Court in the case of Kishinchand Chellaram Vs. CIT Bombay 1981 SCC (1) 720 has held that the assessee must be given an opportunity to cross examine the person with reference to the statement made by him since the Department is proceeding against the assessee on the basis of statement made by the said person. That, without giving an opportunity to the assessee to cross examine the statement made by a person and simply relying on those statements, such proceedings by the Income-tax authorities is devoid of natural justice and thus is invalid and bad in law.

7. The Hon'ble Delhi High Court in the case of CIT Vs. Smc Share Brokers Ltd. (2007) 288 ITR 386 (Del) observed that the assessee had made repeated

requests to the Id. A.O for cross examination of the person on the basis of whose statement proceedings had been launched, so that the assessee could prove its case. These requests were not acceded to by the Id. A.O and the Tribunal had held that this was in complete violation of the principles of natural justice. Hon'ble Delhi High Court held that the Tribunal was right in its view that in absence of the cross examination being made available despite repeated requests by the assessee, the statement of such person cannot be relied upon. The issue was answered in favour of the assessee and against the Revenue. The Revenue's appeal was dismissed.

8. That in the totality of the facts and circumstances and considering aforesaid judicial pronouncements, we set aside the order of the Id. CIT(A) and remand the matter back to the file of the Id. A.O. We direct the Id. A.O to allow the assessee the right to cross examine Mr. Govind Kulkarni relying on whose statement, the additions were upheld by the Id. CIT(A). The Ld. A.O shall comply with the principles of natural justice and re-adjudicate the matter as per law.

9. In the result, the additional ground filed by the assessee is allowed for statistical purposes. The other grounds of appeal in the appeal memo therefore, becomes academic in nature. Without going into the merits of the case, on the legal ground itself the matter is remanded to the file of the Ld. A.O. as indicated hereinabove.

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

Order pronounced in the open Court on this 21st March 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated : 21st March 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT (Central) Pune
4. The CIT(A)-11, Pune
5. The D.R. ITAT Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	31-01-2022	Sr.PS/PS
2	Draft placed before author	01.02.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	21-03-2022	Sr.PS/PS
7	Date of uploading of order	22-03-2022	Sr.PS/PS
8	File sent to Bench Clerk	23-03-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		