

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

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

आयकर अपीलसं. / ITA No.85/PUN/2016
निर्धारण वर्ष / Assessment Year : 2006-07

Maruti Nivrutti Navale, Sinhgad Technical Educational Society, Campus, Vadagaon BK, Pune – 411 011. PAN: AAIPN 0909 R	Vs	The Deputy Commissioner of Income Tax, Central Circle,Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Suhas P. Bora – AR
Revenue by	Smt. Divya Bajpai - DR
Date of hearing	15/03/2022
Date of pronouncement	06/05/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeals)-Central, Pune Appeal No.PN/CIT/CIT(A)C/154/MNN/2014-15/45 dated 15.05.2014 for the Assessment Year 2006-07 passed u/s154 of the Act. The Assessee raised following grounds of appeal:

“On the facts and in the circumstances of the case the ld. CIT(A) has erred in sustaining the addition of Rs.28,70,000/- which represents the alleged advance made to and the interest due from M/s.Surjan Fitness and Ankur Structures Pvt. Ltd. Basically overlooking the fact that the said alleged transaction relates to Sinhgad Technical Education Society and secondly the said allegation and view is based on totally an incorrect appreciation of the facts without attempting to verify the correctness of the explanation offered by the appellant.

The above ground of appeal may kindly be allowed to be amended, altered, modified etc. in the interest of natural justice.”

2. Brief facts of the case are that the assessee is the President of Sinhgad Technical Education Society. A search was carried on assessee. As per the intelligence information gathered by the department, it was revealed that Management's of various educational institutions in and around Pune were accepting hefty amounts towards capitation fee/donation/on money from the prospective candidates for admitting them to the various courses conducted by these Educational Institutions.

2.1 During the search action, it was found that a cash of Rs.1,26,81,775/- and jewellery of Rs.45,92,610/- was found, for which no proper explanation given by the assessee, therefore, the cash of Rs.1,20,00,000/- and Jewellery of Rs.40,90,206/- was seized. Subsequent to this search action, the case was assigned to Id.Dy.Commissioner of Income Tax (Central Circle)2(2), Pune. The Id.Dy.Commissioner of Income Tax (Central Circle)2(2) Pune passed the Assessment Order on 31/12/2007.The Assessing Officer has discussed the issue of Loan transaction with Srujan Fitness Pvt. Ltd., Ankur Structural Pvt. Ltd in para 11 of the order. AO arrived at the decision based on the seized documents that the Assessee had given Loan of Rs.35 lakhs to Srujan Fitness Pvt. Ltd. and Ankur Structural Pvt. Ltd. but assessee failed to explain the source of the cash loan. Therefore, AO added Rs.25,00,000/- during the year under consideration and Rs.10,00,000/- in earlier year. Aggrieved by the Assessment order the Assessee filed appeal before the Commissioner of Income Tax(Appeal),(Central) Pune. The Id.Commissioner of Income Tax(Appeal) passed order on 11/03/2014. However, subsequently the Commissioner of Income Tax (appeal) Central realised that there were some apparent mistakes in the Order dated 11/03/2014. Appellant assessee claimed

that he had filed an application for rectification u/s 154 on 14/5/2014. Therefore, the Commissioner of Income Tax (Appeal) Central passed a rectification order u/s 154 of the Act on 15/5/2014. The CIT(A) confirmed the addition.

2.2 Aggrieved by the Rectification order u/s 154 passed by the Commissioner of Income Tax (Appeal) Central, the Appellant Assessee filed this appeal before this Tribunal.

3. There is delay of 550 days in filing appeal. The Appellant assessee has filed an affidavit with application for condonation of delay. The appellant submitted that he had filed an appeal before the Hon'ble ITAT against the Order of Commissioner of Income Tax(Appeal), Central, dated 11/03/2014 within time, then, on receipt of the rectification order, he amended the grounds. However, subsequently he had been advised that a separate appeal needs to be filed against the Rectification Order dated 15/05/2014. Therefore, he filed the present appeal against the Rectification Order dated 15/05/2014 belatedly.

3.1 The affidavit of the appellant assessee has been considered. There is valid and bonafide reason for delay. Therefore, Delay condoned.

4. The Id.Authorised Representative(ld.AR) made a written submission as under :

“7. CIT(A) in his order dated 11.03.2014 has confirmed the major additions made by AO. However has not decided Ground No.1(d) regarding addition of Rs.28,70,000/- in respect of principal in interest from Srujan Fitness and Ankur Structures Pvt. Ltd. Refer below para 6.2 on page 57 of the CIT A order, No decision was given by CIT(A).

8. CIT(A) has passed Order U/Sec.154 on 15.05.2014 and dismissed the ground No.1(d) by confirming the addition made by the AO.

9. The appellant has filed an appeal before Hon'ble Bench against this addition confirmed by CIT(A) U/Sec. 154 of the Act and taken only 1 ground of appeal and raised following contentions:

2.1 The addition is based on the seized papers found during the course of search, which are enclosed at Page No.1 to 18 of Paper Book submitted on 22.09.2020.

2.2 The transaction is in relation to the STES and not the appellant.

2.3 The learned CIT(A) has not appreciated the facts relating to transaction.

2.4 Similar addition of Rs.10 lakhs were made in AY 2005-06 and Hon'ble Bench has discussed the issue at Para 48 on internal Page 21 and Page 38 of the PB in ITA No.1060/PUN/2014 in the order dated 24.06.2020 and has remanded back the issue to the file of the AO. (Refer operative para 50 of the order.)

2.5 Accordingly, appellant requests Your Honour that since on the basis of similar noting the issue has been remanded back to the file of AO for AY 2005-06, this issue may please be decided by remanding back to the file of the AO."

5. On the other hand, the Ld.Departmental Representative(ld.DR) relied on the orders of the Assessing Officer(AO) and ld.CIT(A).

6. We have considered the submissions of both the parties, analysed the orders of the lower authorities. Hon'ble ITAT Pune in assessee's own case in ITA No.1060/PUN/2014,for AY 2005-06 has observed as under:

Quote

48. Ground no.2 relates to the addition of Rs.10,50,000/- loans given by the assessee to M/s Srujan Fitness Pvt. Ltd.. At the outset, ld. Counsel for the assessee mentioned that this is a case where the addition is made without examining the contents of the seized papers. It is the case of the assessee that it is not a direct case of giving loan to M. N. Navale (Individual). These papers were taken as security for some loan related issues to be obtained STES. There is some problem with the title of lands acquired by STES to match the acquittal loss in future. This kind of arrangement is made by taking an affidavit for some of Rs.10,00,000/- for STES.

49. On the other hand, the case of the Revenue is that the seized page No.20 of the Paper Book is a case of providing loans for interest to the said persons and, therefore, the contents of confirmation given at page 23 of the Paper Book is merely a case of afterthought.

50. After hearing both the sides, we are of the opinion that there is a requirement of investigation into the transactions at length regarding the genuineness of the transactions mentioned at page 20 of the Paper Book. There is also requirement of examining these transactions after confronting the contents to the confirmations filed by Shri Ajay Thosar and others. The discussion given by the Assessing Officer

in para 8.4 of the assessment order and the CIT(A) in para 4.5 of the CIT(A)'s order, does not mention the reasons for rejection of the assessee's explanation and the rejection of the contents of the confirmations. Therefore, in all fairness, we are of the opinion that the ground no.2 should be remanded to the file of the Assessing Officer for fresh adjudication. The Assessing Officer shall decide the issue after granting reasonable opportunity of being heard to the assessee in accordance with set principles of natural justice. Thus, the ground no.2 is allowed for statistical purposes." Unquote.

7. The facts are same in the year under consideration. Therefore, respectfully following the Hon'ble ITAT Pune's order mentioned above, the issue is set aside to the file of the Assessing Officer. The AO shall verify all the facts, provide appropriate opportunity to the Assessee, then decide the issue afresh. Thus, the Ground No.1 is allowed for statistical purpose.

7.1 No adjudication is required for Ground number 2 as the assessee has not amended, modified, altered any ground.

8. Thus, the Appeal of the assessee is Allowed for Statistical Purpose.

Order pronounced in the open Court on 6th May, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 6th May, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned, Pune.
4. The Pr. CIT concerned, Pune.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.