

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
 AND  
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.2592/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13**

Income Tax Officer,  
 Ward – 5(1), Pune

.....अपीलार्थी /  
 Appellant

**बनाम / V/s.**

Sanjeev Laxminarayan Palod,  
 C-301, Sujay Garden,  
 Mukund Nagar,  
 Pune – 411037

PAN : ABDPP3814F

.....प्रत्यर्थी / Respondent

**प्रत्याक्षेप सं. / CO No.10/PUN/2021  
निर्धारण वर्ष / Assessment Year : 2012-13**

Sanjeev Laxminarayan Palod,  
 Marvel Ganga Sangira S. No. 21/1,  
 Mohamadwadi Road, Flat No. 403,  
 P. Dorabjee Mall, Near Clover Hill  
 Plaza, Pune – 411060

PAN : ABDPP3814F

.....अपीलार्थी /  
 Appellant

**बनाम / V/s.**

Income Tax Officer,  
 Ward – 5(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E  
 Revenue by : Shri Piyush Kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing : 11-03-2022  
 घोषणा की तारीख / Date of Pronouncement : 10-05-2022

**आदेश / ORDER****PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the Revenue against the order dated 12-01-2017 passed by the Commissioner of Income Tax (Appeals)-4, Pune [‘CIT(A)’] for assessment year 2012-13. The assessee has filed Cross Objections in the appeal filed by the Revenue.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent and set ex-parte. Therefore, we proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. Upon hearing, we note that the issues raised in appeal and cross objections are similar basing on the same identical facts. Therefore, with the consent of ld. DR, we proceed to dispose off above said appeal and cross objections together and to pass a consolidated order for the sake of convenience.

4. First, we shall take up the appeal by the Revenue in ITA No. 2592/PUN/2017 for the A.Y. 2012-13.

5. Heard ld. DR and perused the material available on record. The main contention of ld. DR is that the assessee could not produce evidences concerning ground Nos. 1 to 4. The assessee furnished the evidences by way of additional evidences before the CIT(A) and considering the same the CIT(A) given relief to the assessee without giving any opportunity to the AO.

The ld. DR drew our attention to ground No. 5 and argued there is a violation of Rule 46A(1) and (2) where the CIT(A) without providing any opportunity to the AO deleted the addition made by the AO. We note that the Revenue raised ground No. 1 challenging the action of CIT(A) in respect of addition of Rs.50,00,000/- made on account of purchase of land. The AO discussed the issue in its order at Page No. 18 and held that the assessee did not show the purchase assets in the Balance sheet to the extent of Rs.50,00,000/- and held the assessee has resorted to undisclosed investment in immovable property by way of purchase of land for an amount of Rs.50,00,000/- which was based on ITS data vide Para No. 20 of the assessment order. We find at Para No. 6.2 of the impugned order that the assessee filed details of source of investment which was reproduced by the CIT(A) in Page Nos. 8 and 9 of the impugned order. According to ld. DR these details were not furnished before the AO during the course of assessment proceedings and same were filed for the first time before the CIT(A) and there was no opportunity for the AO to examine the same. As discussed above, we note in the impugned order the CIT(A) discussed the issue in detail basing on the evidences filed before him for the first time and held the order of AO is not substantiated only on the ground that the assessee has not shown the same in the Balance sheet. There was no contrary submissions by the assessee regarding the additional evidences filed before the CIT(A) and to the submission of ld. DR. Therefore, we find the arguments of ld. DR are correct to the extent that there was no opportunity for the AO regarding the additional evidences filed during the course of appellate proceedings concerning ground No. 1.

6. Regarding ground No. 2 the AO discussed the same at Para Nos. 22 to 26, wherein he denied depreciation by holding that there was no details of ownership in respect of godowns were filed by the assessee. Coming to the impugned order we note that the CIT(A) discussed the same vide Para No. 7. We note that the CIT(A) given relief only on the ground that the AO without discussing the issue in detail only proposed to add Rs.20,67,341/- as undisclosed assets in respect of godowns only on presumption and assumption. It is observed from the assessment order where we note that the assessee has not brought on record any ownership details or construction thereon during the course of assessment proceedings and the order of CIT(A) clearly shows basing on material evidences as produced by the assessee in the First Appellate proceedings as that of ground No. 1, in our opinion, there was no opportunity to the AO for examination of the same.

7. Coming ground Nos. 3 and 4 regarding deletion of addition made on account of peak credits in the undisclosed bank account. We note that the assessee did not give bank details in the assessment proceedings as it is seen from Para No. 35 of the assessment order. The CIT(A) held that the AO without making any investigation or enquiry simply on the basis of bank account was not appearing in the Balance sheet has added an amount of Rs.15,63,249/- considering the same as peak credits. Admittedly, no examination was made by raising query and examining the books of account regarding the entries of such credits and debits had been duly recorded. It was also contended that it was a mistake committed by the Auditor while giving secured loan by not mentioning the bank account of Axis bank in the books. Therefore, we find force in the arguments of ld.

DR that there was no opportunity for the AO in adjudicating the ground Nos. 1 to 4 by the CIT(A) and considering the same in the facts and circumstances of the case, we deem it proper to remand the matter to the file of CIT(A) for its fresh consideration. The assessee is liberty to file evidences, if any, in support of its claim. Thus, the grounds raised by the Revenue are allowed for statistical purpose.

**CO No. 10/PUN/2021 (A.Y. 2012-13) filed by the assessee**

8. We note that the cross objection was filed with a delay of 233 days. The assessee filed an application explaining the reasons for delay. After hearing ld. DR, we find that the reasons stated by the assessee are bonafide which really prevented the assessee to file the present appeal in time. Therefore, the delay of 233 days are condoned.

9. Since, we have taken our view in the appeal of Revenue in aforementioned paragraphs in remanding the matter to the file of CIT(A) for its fresh adjudication, in our opinion, the issue raised in cross objection does not survive and are dismissed as infructuous.

10. In the result, the appeal of Revenue is allowed for statistical purpose and the cross objection raised by the assessee is dismissed.

Order pronounced in the open court on 10<sup>th</sup> May, 2022.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> May, 2022.

रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune