

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1869/PUN/2019
निर्धारण वर्ष / Assessment Year: 2008-09

Rajendra Venkat Reddy, Row House No.7, S.No.39, Sky Aquilaa, Hissa No.2, Baner, Pune-411045. PAN : AIJPR4537L	Vs.	DCIT, Circle-2, Pune.
Appellant		Respondent

Assessee by : Shri Sharad Shah
Revenue by : Shri M. G. Jasnani

Date of hearing : 30.05.2022
Date of pronouncement : 07.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 3, Pune [‘the CIT(A)’] dated 20.09.2019 for the assessment year 2008-09.

2. The appellant raised the following grounds of appeal :-

“1. The learned AO erred in levying & and Id. CIT(A) erred confirming the levy of penalty of Rs. 4,44,018/- u/s 271(1)(c) of the IT Act.

2. The learned AO erred in levying penalty without recording proper satisfaction.

3. The appellant craves its right to add to or alter the grounds of appeal at any time before or after the course of the case.”

3. Briefly, the facts of the case are as under :

The appellant is an individual engaged in the business of dealing in lands. The return of income for the assessment year 2008-09 was filed on 24.10.2010 declaring total income of Rs.4,77,360/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Circle-2, Pune ('the Assessing Officer') vide order dated 30.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.5,22,550/-. Subsequently, on receipt of the information that the assessee made cash deposits to the extent of Rs.18,32,000/- and Rs.16,10,000/- totalling to Rs.34,42,000/- in the two banks accounts held by the appellant with the Axis Bank, Baner Road Branch, Pune, the Assessing Officer issued a notice u/s 148 on 23.03.2015 and finally, the assessment was completed by the Assessing Officer vide order dated 30.03.2016 passed u/s 143(3) at total income of Rs.39,64,550/- after making addition on account of unexplained cash deposit of Rs.34,42,000/-.

On appeal before the ld. CIT(A), the ld. CIT(A) vide order dated 02.08.2017 had partly allowed the appeal by restricting the addition to Rs.15,00,000/- thereby granting relief of Rs.19,42,000/-.

4. While matter stood thus, the Assessing Officer initiated penalty proceedings by issuing of show-cause notice u/s 274 r.w.s.

271(1)(c) of the Act. However, the assessee had not filed any explanation in response to the said show-cause notice. In the circumstances, the Assessing Officer had proceeded with levy of penalty u/s 271(1)(c) by holding that the appellant had furnished inaccurate particulars of income and levied penalty of Rs.4,44,018/- vide order dated 27.03.2018.

5. Being aggrieved by the above penalty order, an appeal was filed before the ld. CIT(A) contenting that the appellant is not guilty of furnishing inaccurate particulars of income. However, the ld. CIT(A) vide impugned order dated 20.09.2019 confirmed the levy of penalty u/s 271(1)(c) of the Act.

6. Being aggrieved by the above decision of the ld. CIT(A), the appellant is in appeal before us with the above extracted grounds of appeal.

7. Before us, ld. AR submitted that the appellant is not guilty of furnishing inaccurate particulars of income as the addition was made based on the information furnished by the assessee before the Assessing Officer. Merely because the addition was made for inability of the assessee to explain the source of cash deposit in the bank accounts, it does not mean that the appellant furnished inaccurate particulars of income.

8. On the other hand, ld. Sr. DR opposed the submissions made by the ld. AR before us. Placing reliance on the orders of the lower authorities, the ld. Sr. DR submitted that even the appellant had not submitted any explanation in support of source of cash deposits nor availed the opportunity of filing the explanation in response to the show-cause notice issued u/s 274 r.w.s. 271(1)(c) of the Act.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271(1)(c) of the Act. The Assessing Officer sought to levy penalty in respect of addition of Rs.15,00,000/- being unexplained cash deposits in the bank accounts held by the appellant. The addition was purportedly made u/s 69 or section 69A of the Act. Merely because, the Assessing Officer made addition does not lead to conclusion that the appellant is guilty of furnishing inaccurate particulars of income. The Assessing Officer had not rendered any finding as to what kind of particulars had been found to be false resulting in the addition to returned income. In the circumstances, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act. Hence, we direct the Assessing Officer to delete the penalty of Rs.4,44,018/- made u/s 271(1)(c) of the Act. Accordingly, the grounds of appeal filed by the assessee stand allowed.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 07th day of June, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07th June, 2022.

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, "B" 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.