

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SH. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.331/NAG/2017
(ASSESSMENT YEAR 1999-2000)

ITA No.332/NAG/2017
(ASSESSMENT YEAR 2000-2001)

ITA No.333/NAG/2017
(ASSESSMENT YEAR 2001-2002)

Sh. Ankush Garibaji Kamble 4B, Bhayalal Wadi, Govind Nagar Wardha Road Nagpur PAN:AKBPK 4004D (APPELLANT)	Vs.	Income Tax Officer, Ward-1(3) Nagpur (RESPONDENT)
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Appellant by	Sh. Ankush Garibaji Kamble, Assessee
Respondent by	Sh. Vitthal M. Bhosale, Jt. CIT-DR

Date of Hearing	08.06.2022
Date of Pronouncement	10.06.2022

ORDER

PER YOGESH KUMAR U.S., JM

The captioned three appeals have been have been filed by the Assessee against the common order passed by the Learned Commissioner of Income Tax (Appeals)-I, Nagpur, ["Ld. CIT(A)", for short], dated 29/06/2027 for Assessment Years 1999-2000 to 2001-2002.

2. The assessee has raised the common grounds in all the three appeals:

"1. The order passed by the CIT(A) is not based upon the facts.

2. While deciding the appeal the learned CIT(A) fully relied the order and finding of A.O., although these finding are based on the statements of erstwhile teachers who have been terminated from service.

3. All the additions are on presumptive and on estimation.

4. That any other ground may be raised during the course of hearing of the appeal."

3. The brief facts of the case are that, the Assessee is a pensioner retired from Police Department. After retirement he is stated to be Director in school named Jayanti Jyoti Muk Badhir Nivasi School run for deaf and dumb children. There has been a Tax Evasion Petition (TEP) received against the Assessee from some staffs of the said School stating that, in the capacity of Secretary of the school, the Assessee has received certain amounts from them for their appointment as teacher/ caretaker / staff.

4. Based on the statements recorded u/s 131 of IT Act, wherein it has been claimed that they have made certain payments to the Assessee, the Assessee was asked by the A.O as to why the said sum shall not be added to the total income of the Assessee. The Assessee has replied, but the AO not satisfied with the explanation given by the assessee, assessed the amount for each of the year under consideration as undisclosed/unexplained income of the year. Accordingly, passed the assessment order by making addition of Rs.2,30,000/-

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for A.Y. 1999-2000, Rs.1,80,000/- for A.Y.2000-01 and Rs.60,000/- for A.Y.2001-02.

5. As against the Assessment Orders, the Assessee has filed three separate appeals for A.Ys.1999 -2000, 2000-01, 2001-02 before the CIT (A). The Ld. CIT(A) has passed the common order vide order dated 28.06.2017 by confirming the additions made by the Ld. AO and dismissed the appeals on 29/06/2017.

6. Aggrieved by the Orders dated 29-06-2017, the Assessee has preferred these Appeals on the grounds mentioned above.

7. During the course of hearing, the assessee has produced the copy of the judgment dated 13.12.2019 passed by the Court of Judicial Magistrate, First Class and also produced the RTI reply issued by the Sub-Inspector of Anti Corruption Bureau dated 18-02-2008 along with the enclosures. The Assessee submitted that the he has been discharged from all the charges levelled against him by the Court of Law and also came out clean in the anti corruption bureau enquiry. The Ld. AO has made additions only based on the statements given by the erstwhile teachers, who have been terminated from the service and the said statements have been given only with the intention set score with the Assessee. Therefore, prayed for allowing the appeal.

8. Per contra, the Ld. DR has relied on the orders of the lower authorities.

9. We have heard the parties, perused the material on record and given our thoughtful consideration. As per the Assessing Officer, the assessee is in capacity of Secretary of the School of Jayant iJyoti Muk Badhir Nivasi School, has received certain amounts during the Financial Years under consideration for appointment of teacher/caretaker/staff. Based on the statement reordereed u/s 131 of the Act from the persons who claimed to have paid the amount to the Assessee, the statement made before Police Authority and based on the statement of one complainant recorded before the Court. The AO has treated the alleged money given to the Assessee in lieu of the job as unexplained/undisclosed income and added to the total income of the assessee.

10. By mere reading of the assessment order, the Ld. AO has not provided any opportunity to the Assessee to dispute or contradict the statement made by the persons who claimed to have paid the amount to the Assessee. Admittedly all the persons who gave given the statements against the Assessee have been dismissed from the service and after dismissal from the service the Tax Evasion Petitions have been filed and thereafter recorded the statements u/s. 131 of the Act have been recorded. Therefore the said statements cannot be believed in the facts and circumstances of the case more so when those statements were not subject to any cross examination by the Assessee.

11. Further, the AO has relied on statements made before the Police Authority and also the statement recorded before the Court by the complainant and the witnesses in the Criminal Trial. It is found that, based on the

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complaint given by one Sh. Mahadeorao Kokate a criminal prosecution has been launched for the offence punishable u/s 420 of IPC against the Assessee. The prosecution has failed to prove the allegations made in the complaint that the complainant and other witnesses have paid money to the Assessee for appointment of teacher/caretaker/ staff. The Ld. Magistrate after conducting the due Trial has acquitted the Assessee from all the charges levelled against him. Further Assessee was also subject to the enquiry conducted by the Anti Corruption bureau, wherein the Assessee has been found not guilty of the allegations of corruption made against him.

12. In view of the above discussion, we are of the considered opinion that the addition made by the Ld. AO which has been upheld by the Ld. CIT(A) is not sustainable under law and the same is deserves to the set aside. Therefore, we allow the grounds of appeal by setting aside the orders passed by the lower authorities by allowing the appeals.

13. In result, ITA Nos.331, 332 &333/Nag/2017 filed by the assessee are allowed.

Order pronounced in the Open Court on this 10th Day of June, 2022.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Dated: 10/06/2022
PK/Sps

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

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1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
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By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur