

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1595/PUN/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Suhas M. Kataria,
5 Sawali Bunglow,
1137 Shivaji Nagar,
Pune – 411016

PAN : AEEP8310H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 3(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 06-06-2022
घोषणा की तारीख / Date of Pronouncement : 13-06-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 05-08-2019 passed by the Commissioner of Income Tax (Appeals)-3, Pune ['CIT(A)'] for assessment year 2009-10.

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. The only issue is to be decided is as to whether the CIT(A) justified in confirming the penalty imposed by the AO u/s. 271(1)(c) of the Act ex-parte of the assessee in the facts and circumstances of the case.

4. Heard ld. DR and perused the material available on record. We note that the AO imposed penalty of Rs.17,11,159/- u/s. 271(1)(c) of the Act. The assessee challenged the same before the CIT(A). We note that the CIT(A) proceeded to dispose of the appeal ex-parte of assessee. Thus, there was no opportunity for the assessee to prosecute the grounds of appeal raised before the AO. We find in the impugned order at Para No. 606 the CIT(A) observed that the AO added opening balance as reflected in the bank account to the total income of the assessee and held that the opening balance cannot be income. He directed the AO to exclude the said amount of Rs.6,10,257/- from concealed income for calculating the tax sought to be evaded. Therefore, when the CIT(A) remanded the issue to the file of AO for its fresh consideration in levying penalty to the extent exclusion of opening balance, in our opinion, the issue raised in the present appeal does not stand, therefore, we deem it proper to remand the matter to the file of AO for its fresh consideration. The ld. DR did not object in remanding the matter to the file of AO for its fresh adjudication.

5. In view of the matter, we set aside the order of ld. CIT(A) and restore the matter to the file of AO for fresh adjudication after providing sufficient

opportunity of hearing to the assessee. The assessee is liberty to file evidences, if any, in support of its claim.

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

Order pronounced in the open court on 13th June, 2022.

Sd/-
(R.S. Syal)
VICE PRESIDENT

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

पुणे / Pune; दिनांक / Dated : 13th June, 2022.
रवि

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, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy//

आदेशानुसार / BY ORDER,

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