

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

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

आयकर अपील सं. / ITA No.1062/PUN/2014
निर्धारण वर्ष / Assessment Year: 2009-10

Maruti Nivrutti Navale, Singhad Technical Education Society, Campus Vadgaon (BK), Pune- 411041. PAN : AAIPN0909R	Vs.	DCIT, Central Circle- 2(2), Pune.
Appellant		Respondent

Assessee by : Shri Suhas P. Bora
Revenue by : Shri S. P. Walimbe

Date of hearing : 01.06.2022
Date of pronouncement : 24.06.2022

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)- Central, Pune [‘the CIT(A)’] dated 11.03.2014 for the assessment year 2009-10.

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

“1) *On the facts and in the circumstances of case the CIT (A) has erred in sustaining the addition of Rs 20,00,000/- as made by the Assessing Officer u/s 69C on the ground of unexplained investment in bank account and disregarding the confirmations, affidavits filed by the parties who made the advance as well as duly confirmed in the statements recorded u/s 131 of the I.T Act, 1961.*

- 2) *On the facts and in the circumstances of case the CIT (A) has erred in directing the Assessing Officer to ascertain the acquisition of property by the smaller HUF on quantification of agricultural income claimed by M.N Navale Bigger HUF until partition and if Assessing Officer satisfies about generating the sufficient income by Bigger HUF, the income in question i.e. Rs.51,64,430/- will be assessed in the hands of the smaller HUF or else in the hands of appellant.*

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

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

The appellant is an individual deriving income from house property and other sources. The return of income for the assessment year 2009-10 was filed on 24.09.2009 declaring total income of Rs.8,92,510/-. While doing so, the Assessing Officer made addition of Rs.20,00,000/- on account of cash deposits made in the Savings Bank Account rejecting the explanation of the appellant that the said money was received from his three brothers namely, (i) Vithoba Nivruti Navale, (ii) Sadashiv Nivrutin Navale and (iii) Madhav Nivruti Navale towards sale of land located at Lonavala. The Assessing Officer also assessed the income shown in the hands of the Shri M. N. Navale (Smaller HUF), doubting the very existence of such HUF, brought to tax of Rs.51,64,430/-.

4. Being aggrieved by the order of assessment, an appeal was filed before the Id. CIT(A) who vide impugned order confirmed the

addition on account of cash deposits in the bank account of the appellant of Rs.20,00,000/- rejecting the explanation of the appellant that the said money was received from his three brothers. The Id. CIT(A) also observed that the probability of assessee having deposited the caption fee received by Singhad Technical Education Society of which the appellant, is an office bearer. He also doubted the creditworthiness of the two brothers from whom the money was stated to have been received. In the circumstances, the Id. CIT(A) confirmed the addition of Rs.20,00,000/-.

As regards to the addition of income belonging to the M.N. Navale (Smaller HUF), the Id. CIT(A) taking into consideration to the finding of this Tribunal vide order dated 30.03.2012 in ITA No.149/PN/2010 in the case of M. N. Navale (Bigger HUF) held that after death of father of the appellant, M.N. Navale (Smaller HUF) came into existence. However, the Tribunal remanded matter to the Assessing Officer to examine the claim of the appellant having regard to the nexus of the nucleus passed on from M.N. Navale (Bigger HUF) to M.N. Navale (Smaller HUF) and the income sought to be assessed in the hands of the appellant.

5. Being aggrieved by the above decision of the Id. CIT(A), the appellant is in appeal before us in the present appeal.

6. Ground of appeal no.1 challenges the decision of the ld. CIT(A) confirming the addition on account of cash deposits made in the banks accounts of the appellant. It is submitted that during the course of assessment proceedings, the Assessing Officer had recorded the statement from three brothers of the appellant who had confirmed the fact that the money had been advanced to the appellant against the sale of the land located at Lonavala. The Assessing Officer doubted the creditworthiness of the said three brothers, as they have not filed any return of income. In the absence of return of income, the loan creditors could not have generated enough income etc. The ld. AR placing reliance on decision of the Hon'ble Supreme Court in the case of CIT vs. Daulat Ram Rawatmull, 87 ITR 349 (SC) submits that merely because the Assessing Officer doubts the explanation given by the creditors, the Assessing Officer cannot make addition in the hands of the appellant u/s 69 of the Act. He also placed reliance on the decision of the Hon'ble Rajasthan High Court in the case of Mangilal Agarwal vs. ACIT, 300 ITR 372 (Raj.) wherein addition made by the Assessing Officer, doubting the creditworthiness of creditors, was held to be unjustified.

7. On the other hand, ld. Sr. DR placing reliance of the decision of the ld. CIT(A) submits that the creditworthiness of brothers of the appellant are doubtful as they have not even filed return of income. He further submitted that in the absence of return of income, it is only make believe story and the explanation rendered by the brothers of the appellant cannot be believed.

8. We heard the rival submissions and perused the material on record. During the course of assessment proceedings, the Assessing Officer found that the appellant made cash deposits in the bank accounts aggregating to Rs.19,52,500/-. When the appellant was called upon to explain the source of cash deposits, it was explained that the cash deposits were made out of the money received as advance against sale of the land located at Lonavala from his three brothers. The Assessing Officer also examined the said persons on oath and who had confirmed the fact that the money was advanced to the appellant against sale of land located at Lonavala. During the course of examination by the Assessing Officer, they could not substantiate the sources of money advanced to the appellant. The Assessing Officer also disbelieved the quantum of agricultural income shown in the hands of said three persons, therefore, he had come to the conclusion that the explanation tendered by the

appellant is not proper and reasonable and made addition. Even on appeal before the ld. CIT(A), the findings of the Assessing Officer was confirmed. It is settled position of law that the addition on account of cash deposits in the bank account can be made only under the provisions of section 69A of the Act. A bare reading of provisions of section 69A makes it clear that where an assessee is found to be owner of the money and assessee offers no explanation or offers explanation which is not found satisfactory, the money is stated to be deemed to the income of the assessee for such financial year. In the present case, the appellant offered explanation in support of the sources for cash deposits made in the two bank accounts. Even the Assessing Officer examined the veracity of the explanation by summoning and recorded the statements from the above said three persons who are stated to have been advanced the money to the appellant. The Assessing Officer disbelieved the story of explanation doubting creditworthiness of the creditors/brothers of the appellant who had stated to have been advanced the money. The opinion of the Assessing Officer is required to be formed objectively with reference to the material on record as held by the Hon'ble Supreme Court in the case of CIT vs. P. Mohanakala, 291 ITR 278 (SC). Merely because the explanation furnished by these

three persons about the creditworthiness for the money advanced to the appellant was found to be unacceptable by the Assessing Officer, cannot be the reasons to disbelieve the explanation given by the appellant in the light of law laid down by the Hon'ble Supreme Court in the case of Daulat Ram Rawatmull (supra) and the Hon'ble Rajasthan High Court in the case of Mangilal Agarwal (supra). Thus, in our considered opinion that the Assessing Officer was not justified in disbelieving the explanation offered by the appellant and making addition of Rs.20,00,000/-. Accordingly, we direct the Assessing Officer to delete the addition of Rs.20,00,000/- on account of deposits made in the banks accounts of the appellant. Thus, the ground of appeal no.1 stands allowed.

9. Ground of appeal no.2 challenges the decision of the ld. CIT(A) remitting the matter to the file of the Assessing Officer to verify the passing on nucleus from M.N. Navale (Bigger HUF) to M. N. Navale (Smaller HUF) and nexus between such nucleus and income sought to be assessed in the hands of the assessee. We make it clear that in the absence of such nucleus, the income is assessable in the hands of appellant. We do not find any infirmity and illegality in the order of the ld. CIT(A). Hence, this ground of appeal no.2 stands dismissed.

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

Order pronounced on this 24th day of June, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th 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)-Central, Pune.
4. The CIT, Central, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.