

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, NAGPUR

(Through Virtual Court)

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.110/NAG/2019
निर्धारण वर्ष / Assessment Year : 2005-06

Shri Krishna Gupta,
Temple Bazar, Sitabuldi,
Nagpur – 440002

PAN : AJRPG2059F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asstt. Commissioner of Income Tax,
Central Circle – 2(3), Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajesh V. Loya

Revenue by : Shri G.J. Ninawe

सुनवाई की तारीख / Date of Hearing : 28-09-2022

घोषणा की तारीख / Date of Pronouncement : 30-09-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 28-02-2019 passed by the Commissioner of Income Tax (Appeals)-3, Nagpur [‘CIT(A)'] for assessment year 2005-06.

2. The assessee raised three grounds of appeal amongst which the only effective ground emanates for my consideration is as to whether the CIT(A)

justified in sustaining the addition of Rs.2,66,586/- in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. I note that the assessee is an individual and derives income from service charges and miscellaneous sources. The assessee initially declared total income of Rs.92,600/- u/s. 139 of the Act on 31-03-2007. The AO determined the total income of the assessee at Rs.4,59,186/- inter alia making addition on account of unexplained opening capital and unexplained investment in shares vide its order dated 10-12-2007. Thereafter, a search and seizure operation was conducted u/s. 132 of the Act in the business premises of Gupta Coal Group and residential premises of assessee on 29-07-2009. According to the AO, there was no seizure of cash and valuables from assessee and no disclosure was made u/s. 132(4) of the Act, but however, several items of books of accounts and incriminating documents were found and seized. In pursuance of the said search, a notice u/s. 153A of the Act was issued to the assessee. In response to the said notice, the assessee filed return of income declaring total income of Rs.92,600/-. The assessee furnished details/explanations as required by the AO and the AO determined the income of the assessee at Rs.4,59,190/-.

4. The contention of Id. AR, Shri Rajesh V. Loya is that the AO determined the same total income in the present proceedings u/s. 153A as was determined in original proceedings u/s. 143(3) and by making the same addition which was made in the said original assessment proceedings. Before the CIT(A), I note that a contention was raised that the assessee has opening capital of Rs.4,30,000/- and the AO did not consider the investment in shares in two companies in A.Ys. 1999-2000 and 2002-

03. Further, income was available to the assessee in the form of capital to the extent of Rs.66,077/- which was recorded by the AO for A.Ys. 2003-04 and 2004-05. I note that the assessee reiterated the same submissions before me as advanced before the CIT(A), but however, the CIT(A) did not accept the submissions of the assessee and proceeded to confirm the order of AO only on the ground that the assessee did not prefer an appeal before the ITAT against the original assessment order passed u/s. 143(3) which was confirmed by the CIT(A) in original First Appellate proceedings. I note that there is no dispute with regard to investment and share in two companies during A.Ys. 1999-2000 and 2002-03 which is evident from the submissions of assessee before the CIT(A) which is reproduced in pages 4 and 5 of the impugned order. Further, I note that the assessee provided the details of such acquisition and which was examined by the Investigation Wing before the completion of proceedings u/s. 153A of the Act. Further, it is also observed copy of share holding of both the companies is also enclosed for the consideration and examination of CIT(A). The CIT(A) neither disputed the said evidences filed on behalf of the assessee in support of its claim nor a reference made in the impugned order. I note that the said details of investments filed before me and on perusal of the same at page 5 of the paper book, discloses that the assessee has share holding to an extent of Rs.2,15,500/- in Gupta Leasing & Finance Ltd. during A.Y. 1999-2000 and Rs.60,000/- in Gupta Coalfields and Washeries Ltd. for A.Y. 2002-03. The ld. AR drew my attention to the working of opening credit balance at page 5 of the impugned order and fairly conceded the assessee is not entitled to get relief to an extent of Rs.88,423/- as it has no evidences in support of the same. Therefore, the details investments of shares in two companies in A.Ys. 1999-2000 and 2002-03 were before the CIT(A) and the opening capital by way of a income for A.Ys. 2003-04 and 2004-05 were available to the

assessee which were, in my opinion, properly explained and no addition is warranted. There is no dispute with regard to credit opening balance to an extent of Rs.4,30,000/- which is supported through assessment order for A.Y. 2005-06 which is placed before me at page 7 of the paper book and also which is not disputed by the ld. DR. Since, the investments and availability of opening capital to the extent of Rs.3,41,577/- is properly explained vide evidences, thus, the addition is confirmed to an extent of Rs.88,423/- as admitted by the ld. AR on account of unexplained opening capital. Therefore, the order of CIT(A) is modified to that extent. Thus, the grounds raised by the assessee are partly allowed.

5. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 30th September, 2022.

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

पुणे / Pune; दिनांक / Dated : 30th September, 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, Nagpur
4. The CIT(Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, नागपुर / DR, ITAT, "SMC" Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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