

**IN THE INCOME TAX APPELLATE TRIBUNAL PUNE BENCHES, PUNE
SINGLE MEMBER CASE**

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1108/PUN/2017 : A.Y. 2009-10

Bharatkumar K. Jain
678 Shukrawar Peth,
Pune-411 002
PAN: ABBPJ 1471 C

:Appellant

Vs.

The Asstt. CIT Cir.5, Pune

:Respondent

Appellant by : Shri M.K. Kulkarni

Respondent by : Shri Piyush Kumar Singh Yadav

Date of Hearing : 19-10-2022

Date of Pronouncement : 21-10-2022

ORDER

This appeal preferred by the assessee emanates from order of the Id. CIT(A)-4, Pune dated 27-02-2017 for A.Y. 2009-10 as per the following grounds of appeal.

1. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in dismissing the Ground of Appeal No. 1 before him claiming that the assessment completed u/s 143(3) r.w.s. 147 was barred by limitation as the same was not completed within the limitation. The consequential assessment being not sustainable in law be quashed.*
2. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in properly applying his mind to the facts pleaded before him that the copy of reasons recorded u/s 148(2) were not supplied to the assessee. Also assessee was not given opportunity to file the fresh Return of Income and was, therefore, deprived of submitting legal objections for the reasons recorded. The A. O.'s action was contrary to principles enunciated by Hon'ble Supreme Court. The Ld. CIT(A) ought to have quashed the assessment for want of A. O. not following the procedure laid down by Hon'ble Supreme Court. The Ld. CIT(A) ought to have quashed the assessment which was vitiated in law. The order of the Ld. CIT(A) be set aside quashing the order of the A.O.*
3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have considered the argument of the assessee that the assessment order framed by the A.O was vitiated in law for want of issue of statutory and mandatory notice u/s 143(2) of the Act. In view of this the order of the Id. CIT(A) be set aside cancelling the unsustainable assessment in law.*

4. *On the facts and in the circumstances of the case and in law the addition made by the A. O. of Rs. 20,00,000/- is illegal and without jurisdiction as there was no iota of evidence in support having received any on money nor any circumstantial evidence pointing out any receipt of on money. The assessee was even not afforded any opportunity to explain the position by the A. O. Therefore, the action of the Ld. CIT(A) in dismissing the grounds of appeal was not according to law. The Ld. CIT(A) failed to appreciate the legal position. The order of the Ld. CIT(A) be set aside also cancelling the assessment.*
5. *The appellant craves to leave, add/amend or alter any of the above grounds of appeal.*

2. In the appeal memo ground of appeal No. 2 it is contended by the assessee that the CIT(A) has not given proper opportunity of hearing to the assessee and the principles of natural justice were not followed. In view of the matter, the Id. A.R prayed that the matter may be remanded back to the file of the Id. CIT(A) for fresh adjudication. The Id. D.R did not raise any objection if the matter was remanded back to the file of the Id. CIT(A).

3. Heard the parties herein and in reference to Ground No. 2 raised by the assessee in the grounds of appeal it is pleaded by the assessee that proper opportunity of hearing was not given to him at the first appellate level. The assessee wishes to represent his case on merits through proper hearing before the Id. CIT(A). The Id. D.R also concedes to this request of the assessee. In the interest of justice, I am of the considered view that the matter may be remanded back to the file of the CIT(A) for re-adjudication of the issue as per law and accordingly I set aside the order of the Id. CIT(A) and remand the matter back to his file for re-adjudication as per law while complying with the principles of natural justice.

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

Order pronounced in the open Court on this 21st October 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 21st day of October 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CCIT Pune .
4. The CIT(A)-4 Pune
5. The D.R. SMC Bench I.T.A.T. Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune

/// TRUE COPY ///

		Date	
1	Draft dictated on	18-10-2022	Sr.PS
2	Draft placed before author	19-10-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	21-10-2022	Sr.PS/PS
7	Date of uploading of order	21-10-2022	Sr.PS/PS
8	File sent to Bench Clerk	<u>21-10-2022</u>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		