

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 Nos.677 & 680/PUN/2021
निर्धारण वर्ष / Assessment Years : 2010-11 & 2012-13

Bablu Kumar Harinarayan Gupta, 01, Bazibazar Panchavati, Nashik- 422005. PAN : AMYPG2695P	Vs.	ITO, Ward-1(2), Nashik.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Ramnath P Murkunde

Date of hearing : 14.11.2022
Date of pronouncement : 15.11.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the separate orders of Id. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['the CIT(A)'] dated 01.09.2021 for the assessment years 2010-11 and 2012-13 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.677/PUN/2021 for the assessment year 2010-11 are stated herein.

ITA No.677/PUN/2021, A.Y. 2010-11 :

4. Briefly, the facts of the case are that the appellant is an individual. The return of income for the assessment year 2010-11 was filed on 29.06.2010 declaring total income of Rs.1,73,260/-. During the course of assessment proceedings, the Assessing Officer found that the appellant had deposited cash in the bank account amounting to Rs.1,48,43,428/-. According to the Assessing Officer, said cash deposit represents the business receipts of the appellant which was not disclosed in the Return of Income. The Assessing Officer accordingly formed an opinion that the cash deposits amounting to Rs.1,48,43,428/- had escaped to the tax and, therefore, issued notice u/s 148 of the Income Tax Act, 1961 ('the Act') on 29.03.2017 after recording the reasons. Thereafter, assessment was completed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act dated 28.12.2018 at total income @ 8% of the cash deposits made by the appellant. Subsequently, the appellant was show-caused as to why a penalty u/s 271B should not be levied on 29.12.2018. In response to the show-cause notice, it was contended that the appellant is only a commission agent for one Mr.

Dinanath Gupta and he was only purchasing fruits for the said Mr. Dinanath Gupta and selling them to traders as per instruction of said person for the purpose of computing the turnover, annual commission alone has to be reckoned as the gross receipts. Rejecting the above contentions, the Assessing Officer levied penalty of Rs.74,210/- u/s 271B of the Act vide order dated 28.06.2019 for failure of assessee to get accounts audited as stipulated under the provisions of section 44AB of Act.

5. Being aggrieved by the order of penalty, an appeal was preferred before the Id. CIT(A), who vide impugned order confirmed the levy of penalty.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. Having heard the rival submissions and perused the material on record, we are of the considered opinion that it is not fit case for levy of penalty u/s 271B merely because the appellant was unable to substantiate the submission that the appellant is only commission agent because there is no obligation on the part of the assessee to get the accounts audited as he was under the bona-fide belief that it is only commission receipt, which can be considered as turnover for the purpose of section 44AB of the Act. Accordingly, we direct the Assessing Officer to delete the penalty u/s 271B of the Act.

8. In the result, the appeal of the assessee in ITA No.677/PUN/2021 stands allowed.

ITA No.680/PUN/2021, A.Y. 2012-13 :

9. Since the facts and issues involved in the above appeal in ITA No.680/PUN/2021 for A.Y. 2012-13 are identical, therefore, our decision in ITA No.677/PUN/2021 for A.Y. 2010-11 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.680/PUN/2021 for A.Y. 2012-13 respectively. Accordingly, the appeal of the assessee in ITA No.680/PUN/2021 for A.Y. 2012-13 stands allowed.

10. To sum up, both the appeals of the assessee stands allowed.

Order pronounced on this 15th day of November, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th November, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-NFAC, Delhi.
4. The Pr. CIT concerned.
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.