

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

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.520/PUN/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Balasaheb Vyankat Gaikwad,
Plot No. 52, Sector 26,
Behind Andhra Bank,
PCNT, Nigdi, Pune-411044

PAN : AFPPG0275B

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,
Circle - 9, Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 13-10-2022
घोषणा की तारीख / Date of Pronouncement : 17-11-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 31-01-2019 passed by the Commissioner of Income Tax (Appeals)-13, Pune [‘CIT(A)'] for assessment year 2013-14.

2. We note that the assessee filed this appeal on 03-04-2019. After scrutiny the appeal fixed for hearing on 12-05-2022 by issuing a notice

dated 01-04-2022 under RPAD. There were no proceedings on the said date and the appeal adjourned to 20-07-2022. We note that no appearance whatsoever made on behalf of the assessee through his authorized representative nor in person and the appeal adjourned to 24-08-2022. Again the Registry, ITAT, Pune Benches issued notice dated 10-08-2022 intimating the date of hearing on 24-08-2022 by RPAD to the address given by the assessee in Form No. 36 Appeal Memo, but however, no appearance whatsoever made by the assessee on 24-08-2022 also. For non-appearance, the appeal adjourned to 13-10-2022 again the Registry, ITAT, Pune Benches notice dated 12-09-2022 by RPAD intimating the date of hearing on 13-10-2022. The Registry received acknowledgment showing the receipt of notice dated 12-09-2022. 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. We note that the assessee is an individual derives income from business as promoter and builder. The assessee is a proprietor of M/s. Uday Construction Company. The assessee filed return of income declaring a total income of Rs.1,56,18,070/-. Under scrutiny notices u/s. 143(2) and 142(1) of the Act were issued. In response to the said notices, the assessee was represented through his authorized representative and filed books of accounts, supporting bills/vouchers etc. On an examination of such details, the AO inter alia made additions on account of cessation of liability, unexplained credits, agricultural income and disallowance u/s. 40a(ia) of the Act and determined the total income of the assessee at Rs.1,95,50,319/- vide its order dated 29-03-2016 passed u/s. 143(3) of the

Act. Having aggrieved by the order of AO, the assessee preferred an appeal before the First Appellate Authority. In pursuance of such appeal, the CIT(A) issued notices dated 18-09-2017, 13-12-2017 and 26-12-2018 intimating the date of hearing on 05-10-2017, 27-12-2017 and 09-01-2019, respectively which is reproduced in page 2 of the impugned order. The CIT(A) observed that there was no representation of the assessee and proceeded to dispose of the appeal ex-parte of the assessee. Aggrieved by the order of CIT(A), now, the assessee is before us.

4. Ground No. 1 raised by the assessee challenging the action of CIT(A) in confirming the addition of Rs.24.84 lakhs u/s. 41(1) of the Act.

5. We note that the AO asked the assessee to furnish the details of creditors. On perusal of such details filed by the assessee, the AO asked the assessee whether the amount of Rs.24,84,000/- outstanding to the account of M/s. Kishor Suppliers still payable as on the last date of the financial year concerning assessment year under consideration. The assessee explained that the said amount still outstanding due to some dispute over the quality of material. According to the AO there were no further details submitted by the assessee regarding the confirmation of said creditor balance outstanding to the account of M/s. Kishor Suppliers and proceeded to add the said amount to the total income of the assessee u/s. 41(1) of the Act. Before the CIT(A) no submissions made specifically in this regard. As discussed above, the CIT(A) confirmed the order of AO in the absence of any evidences in support of ground raised by the assessee in the First Appellate proceedings. We note that the specific ground raised by the assessee before the CIT(A) by stating that there was no sufficient time provided to furnish the evidences in respect of all the additions made

by the AO and the addition made by the AO sought to be nullified violating the fundamental principles of law. Before us also having received the notices issued by the Registry, ITAT, Pune Benches, the assessee could not file any evidence in support of its grounds raised before us. As noted above in the previous two occasions also the appeal was adjourned for non-appearance of the assessee. The ld. DR, Shri Ramnath P. Murkude vehemently supported the order of CIT(A) and submits that the CIT(A) has given ample opportunities to the assessee but no evidences filed. Therefore, we agree with the reasons recorded by the CIT(A), therefore, having no evidence in support of issue raised in ground No. 1, we find no infirmity in the reasons recorded by the CIT(A) in confirming the order of AO. Thus, the ground No. 1 raised by the assessee fails and it is dismissed.

6. Ground No. 2 raised by the assessee challenging the action of CIT(A) in confirming the addition of Rs.7 lakhs made by the AO on account of unsecured loan.

7. According to the AO, the assessee has taken unsecured loans from various persons. On verification of the details as filed by the assessee, the opening credit balance is Rs.1,09,50,000/- against Smt. Meenakshi Gaikwad, wife of the assessee and the loan taken during the year is Rs.7,00,000/-. Further, the AO observed that the assessee had repaid an amount of Rs.1,00,00,000/- to his wife during the year under consideration and held that the assessee failed to prove the identity of the creditor, credit worthiness of the creditor and genuineness of the transaction. The assessee furnished an affidavit dated 28-03-2016 stating that his wife received an amount of Rs.1,00,00,000/- from her father but

however, the AO proceeded to add loan amount taken during the year under consideration to the total income of the assessee by holding that Smt. Meenakshi Gaikwad is not assessed to tax, no PAN, no independent source of income and creditworthiness of her father is not brought out with the cogent evidence. Before CIT(A) no evidences filed no evidences rebutting the addition made u/s. 68 of the Act. Before us also no evidences were filed in support of ground No. 2 raised by the assessee. The ld. DR vehemently supported the order of CIT(A) and submits that the assessee had failed to discharge his onus of proving the unsecured loan to be genuine. Thus, we do not find any infirmity in the order of CIT(A) in confirming the addition made by the AO and it is justified. Thus, ground No. 2 raised by the assessee fails and it is dismissed.

8. Ground No. 3 raised by the assessee challenging the action of CIT(A) in confirming the addition of Rs.6 lakhs out of agriculture income.

9. On perusal of the assessment order, we note that the assessee declared an amount of Rs.12,97,629/- as agricultural income. According to the AO, the assessee has been disclosing agricultural income to an extent of Rs.7,00,000/- in earlier year and taking into consideration the same disallowed Rs.6,00,000/- by holding that the assessee could not prove regarding the sales and expenses. The CIT(A) confirmed the order of AO for not filing any evidence in support of its agricultural income. We note that admittedly the assessee has been declaring agricultural income in earlier year also, which were accepted by the Revenue. We note that the AO made disallowance on ad-hoc basis taking into consideration the agricultural income as declared by the assessee in earlier years. We find that the AO asked the assessee to furnish the details of sales and

expenditure regarding the agricultural income. The assessee sought adjournment in this regard. It is also observed that the assessee filed statement of accounts regarding the claim of agricultural income. The AO did not point out any adverse remarks on the said financials but however, disallowed on ad-hoc basis. The CIT(A) simply confirmed the same without examining the details. The ld. DR vehemently supported the order of CIT(A). Having examination of facts and circumstances emanating from order of CIT(A) and AO, we find no ad-hoc disallowance is justified in the absence of cogent reasons. Thus, the order of CIT(A) is not justified and it is set aside. Thus, ground No. 3 raised by the assessee is allowed.

10. Ground No. 4 raised by the assessee challenging the action of CIT(A) in confirming the addition of Rs.1,48,249/- made by the AO u/s. 40a(ia) of the Act.

11. The AO examined the details of expenditure towards interest debited to the profit and loss account and found that the assessee debited an amount of Rs.1,48,249/- as interest paid to Non-Banking Financial Services (NBFCs). The assessee explained that the tax could not be deducted since the said finance company realized the said payment through post dated cheques. The assessee however made an alternative argument to the effect that the said NBFCs have paid tax due on the interest received by it. The AO disallowed the same for not producing any evidence showing that the said NBFCs recognized the interest receipt as its income in its accounts. The CIT(A) simply confirmed the order of AO for want of evidence in support of its claim. We note that the assessee could not produce any evidence before the CIT(A) nor before us showing any evidence that the said NBFCs recognized the said amount in its account as

its income in their accounts. In the absence of said evidence, we find no infirmity in the order of CIT(A) and it is justified. Thus, ground No. 4 raised by the assessee is dismissed.

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

Order pronounced in the open court on 17th November, 2022.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 17th November, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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