

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.354/PUN/2022
निर्धारण वर्ष / Assessment Year : 2013-14

Anil Harish Vaswani,
Plot No. 313, Pragati,
Hemu Kalani Road,
Pimpri, Pune – 411017

PAN : AEYPV3829A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 8(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N N E
Revenue by : Shri B. Koteswara Rao

सुनवाई की तारीख / Date of Hearing : 25-04-2023
घोषणा की तारीख / Date of Pronouncement : 01-05-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 16-03-2022 passed by the National Faceless Appeal Centre (NFAC), Delhi for assessment year 2013-14.

2. 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. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A), NFAC, Delhi justified in confirming the addition of Rs.7,76,57,951/- on account of unexplained cash credits.

4. The ld. DR, Shri B. Koteswara Rao vehemently argued that the AO conducted the proceedings in detail and given ample opportunity for the assessee. The assessee failed to furnish details before the AO and notices issued to the said 6 parties were denied and notice returned undelivered. He argued that the assessee failed to furnish any substantial evidences in support of its business module having claimed booking/coming agent in the assessment proceedings. The AO further issued enquiry commission to Investigation Wing, Ahmedabad. The said report for Investigation, Ahmedabad held the genuineness of transaction could not be established. The assessee failed to furnish any evidences before the CIT(A) and even as well before this Tribunal. He prayed to confirm the order of CIT(A) as it is reasonable taking into account the facts of the case.

5. Heard ld. DR and perused the material available on record. We find the assessee initially filed return of income declaring a total income of Rs.97,500/- and in view of reopening of assessment, the assessee filed return of income declaring a total income of Rs.15,73,620/- on account of income from other sources. We note that the AO issued notice u/s. 148 of the Act on the basis of information received from ITO (I&CI), Anand, Gujrat regarding cash deposits of Rs.52,49,000/- made by the assessee with Shree Renukamata Multistate Co-op. Urban Credit Society Ltd. and also cash deposits in Cosmos Bank through information from AIMS module during the year under consideration.

6. During the course of said reopening proceedings, the AO asked the assessee, information regarding the cash deposit entries and withdrawals appearing in Shree Renukamata Multistate Co-op. Urban Credit Society Ltd. According to the AO, the assessee explained vide submissions dated 20-12-2017, wherein, he claimed that the assessee used to take orders from various retailers in & around Pimpri and collect cash from them and deposit in the above mentioned accounts, depending on the suppliers/parties from whom the mobiles were to be orders. Once, the payment was made to the respective account, the suppliers would then withdraw money from that account and deliver the mobiles directly to the retailers. The assessee contended that he is merely a booking/commission agent and prayed to apply peak cash theory. The AO issued notice u/s. 133(6) of the Act to 6 parties which are reflected at page 3 of the assessment order. It is noted that 3 parties denied business transaction with the assessee and the notice issued to other 3 parties returned undelivered.

7. Further, it is noted an enquiry commission u/s. 131(d) of the Act, the ITO (Inv.), Ahmedabad Unit-1 furnished its report which is reproduced by the AO at page 4 of the assessment order. On perusal of the same, we note that summons were issued u/s. 131(1) of the Act to all the 6 entities and found genuineness of the transaction not established. In view of the said report, the AO asked the assessee to give point wise reply. The assessee also sought directions u/s. 144A of the Act from Addl. CIT. The directions of Addl. CIT are reproduced from pages 13 to 15 of the assessment order, wherein, it is noted that the Addl. CIT directed the AO to conclude the assessment in the light of the legal and factual position. Accordingly, the AO made addition of Rs.7,92,31,571/- on account of unexplained cash credits vide its order dated 30-12-2017. The CIT(A)

discussed the issue from para 5.1 to 5.2.3 of the impugned order, wherein, it is noted that the assessee challenged the assessment order for not applying peak credit theory in the First Appellate proceedings. The CIT(A) held that no details were furnished in support of the claim of assessee inspite of availing more than one opportunity. The CIT(A) in the absence of any evidences rebutting the finding of AO confirmed the addition made on account of unexplained cash credits. We note that on an examination of assessment and impugned order concurrently held the assessee could not provide satisfactory explanation with regard to unexplained cash credits. As rightly pointed by the ld. DR that no evidences by way of paper book were filed before this Tribunal even to show application of peak credit theory, in the absence of such evidences, we have no option except to confirm the order of CIT(A). Thus, ground Nos. 1 and 2 raised by the assessee are dismissed.

8. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 1st May, 2023.

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

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

पुणे / Pune; दिनांक / Dated : 1st May, 2023.

रवि/GCVSR

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

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

आदेशानुसार / BY ORDER,

//True Copy//

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