

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.89/PUNE/2023
निर्धारण वर्ष / Assessment Year :2012-13

Shivaji Laxman Sahane, Office No.3, Second Floor, B Wing, Sancheti Tower, Ashok Stambh, Nashik – 422001. PAN: AOXPS 7118 G	Vs	The Asst. Commissioner of Income Tax, Circle-2, Nashik.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani - DR
Date of hearing	24/04/2023
Date of pronouncement	08/06/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)[NFAC], dated 23.11.2022 emanating from assessment order dated 20.03.2015 for A.Y.2012-13 passed under section 143(3)of the I.T.Act, 1961. The Assessee has raised the following grounds of appeal:

- "1. On the basis of the facts and in the circumstances of the case the order passed by CIT(A) may please be restored to the file of CIT(A).*
- 2. On the basis of the facts and in the circumstances of the case the CIT(A) is not justified in deciding the appeal ex-parte when an*

application for adjournment was furnished on 21.11.2022, more particularly when written submission along with all evidences was already furnished on 16/01/2017 along with all evidences relied upon by the appellant, which is not considered by the CIT(A).

3. *On the basis of facts and in the circumstances of the case as well as as per law, the additions made by the Assessing Officer of Rs. 97,78,000/- on account of unsecured loan obtained by the appellant from Mr. Rangnath Gadekar and of Rs.32,21,090/- on account of interest paid to Mr. Rangnath Gadekar, please be deleted.*

4. *The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal.”*

Submission of Id.Authorised Representative(ld.AR) :

2. The ld.AR of the assessee submitted that the ld.CIT(A) has not considered submission made by assessee. The ld.AR stated that assessee had made written submissions(page 1 to 8 of the paper book). However, the ld.CIT(A) has mentioned in the order that no submission was made. The ld.AR invited our attention to Ground No.1 and 2 of the assessee which is about ex-parte order passed by ld.CIT(A).

Submission of Id.Departmental Representative (Revenue) :

3. The ld.DR for the Revenue read out the assessment order. The ld.DR invited our attention to order passed by this ITAT in assessee's own case in ITA No.534/PUN/2015 for A.Y. 2010-11 dated 01.08.2022. The ld.DR submitted that ITAT has categorically held that the loans were not genuine and therefore confirmed the

additions made by the Assessing Officer under section 68 of the amount claimed to be received from Ranganath Dattatreya Gadekar. The Id.DR further submitted that identical facts are involved in A.Y.2012-13. In A.Y.2012-13, the Assessing Officer(AO) has made an addition of Rs.97,78,000/- under section 68 of the impugned loan claimed to have been received from Ranganath Dattatreya Gadekar. Therefore, the Id.DR stated that this is a covered case and addition needs to be confirmed.

Findings and Analysis :

3. We have heard both the parties and perused the records. On perusal of the Id.CIT(A)'s order, it is observed that Id.CIT(A) has not discussed the submissions made by assessee. In para 3.1 of the Id.CIT(A)'s order, it is mentioned that assessee has not submitted any evidence during appellate proceedings. However, before us, it was pleaded that assessee had made submissions before the Id.CIT(A). Page 1 to 8 of the paper book was the submission made by the assessee before Id.CIT(A) and it has stamp of Commissioner of Income Tax(Appeal)-II, Nashik dated 16.01.2017. Thus, it seems that assessee had made submission before the Id.CIT(A). We are aware of the fact that ITAT Pune in assessee's own case for A.Y.2010-11 has confirmed the addition made by the Assessing Officer under section 68 of the impugned loan claimed to be obtained

from Ranganath Dattatreya Gadekar. However, it is also a fact that ld.CIT(A) failed to consider submission made by the assessee. Therefore, in the interest of justice, we set-aside the order of the ld.CIT(A) to ld.CIT(A) for denovo adjudication. The ld.CIT(A) is directed to consider the submission made by the assessee and he shall provide the appropriate opportunity to the assessee. Accordingly, Ground No.1 and 2 raised by the assessee are allowed for statistical purpose.

4. The Ground No.3 is regarding merits of the case. Since we have set-aside the issue to ld.CIT(A) for denovo adjudication, hence, we do not adjudicate Ground No.3. Therefore, Ground No.3 is dismissed as not adjudicated.

5. Ground No.4 is general in nature and does not need any adjudication. Accordingly, Ground No.4 is dismissed.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 8th June, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 8th June, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.