

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.91/Ind/2023
Assessment Year: 2011-12

Shri Shabbir Lohar, 79, Pancheshwar Marg, Alirajpur (M.P.)	बनम/ Vs.	ITO, Jhabua
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ABJPL7048P		
Assessee by	Shri Santosh Deshmukh & Parth Jhawar, Ld. AR	
Revenue by	Shri Ashish Porwal, Ld. Sr. DR	
Date of Hearing	15.05.2023	
Date of Pronouncement	16.05.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 04.10.2022 passed by learned Commissioner of Income-Tax (Appeals)-National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 06.12.2018 passed by learned ITO, Jhabua ["Ld. AO"] u/s 147 read with section 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on various grounds mentioned in Appeal-Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The registry has informed that present appeal is filed after a delay of 110 days and therefore time-barred. Ld. AR representing the assessee submitted that the assessee has filed a written-application requesting for condonation of delay. Drawing our attention to same, Ld. AR submitted that the assessee is a semi-educated person; engaged in a very small business of agricultural implements/equipments; and not well-versed with viewing of notices/orders on IT portal. Therefore, he was not aware of the impugned order having been passed by CIT(A). It is further submitted that after receiving message from department for recovery of tax in the end of February, 2023, the assessee approached counsel and then only came to know that his first-appeal had been dismissed and the only remedy is to file next appeal to ITAT. Ld. AR submitted that as soon as the assessee came to know of this, he immediately took necessary steps for filing of present appeal on 23.03.2023. Ld. AR that the assessee is a person of very low means and very much concerned due to the high-pitched assessment made by revenue-authorities. With folded hands on behalf of assessee, Ld. AR made a very humble prayer to condone the delay and decide the case of merit. We confronted Ld. DR who was fair enough to leave it to the wisdom of bench. On perusal of the order of first-appeal, we find that the CIT(A) has conducted hearings of appeal in a faceless manner by serving notices upon IT portal. Ld. AR further asserts that the order of first-appeal was also

served upon IT portal only and there is no physical service upon assessee. We rely on the written-submission made by assessee that he is not versed with IT systems and that he came to know of the impugned order in the end of February, 2023 only. Therefore, taking a holistic and judicious view of the situation, we condone the delay of 110 days in filing of appeal. The appeal is admitted and proceeded for hearing.

4. Briefly stated the facts leading to present appeal are such that the Income-tax Department received an information that the assessee had deposited a cash of Rs. 11,50,000/- in account with State Bank of India during financial year 2010-11 relevant to AY 2011-12 under consideration. To verify transactions, the department issued certain letters to assessee which remained uncompiled with. This state led to forming a belief that the cash-deposits in bank a/c represented income which had escaped assessment; accordingly the case was proceeded u/s 147 by issuing notice dated 30.03.2018 u/s 148 whereby the assessee was called upon to file a return of income. Ld. AO also issued certain statutory notices u/s 142(1) which too remained uncompiled with. Finally, the AO completed assessment u/s 144 to the best of his judgement whereby and wherein the entire cash deposit of Rs. 11,50,000/- was treated as unexplained and addition was made. Aggrieved, the assessee filed first-appeal but could not succeed. Now, the assessee has come in next appeal before us assailing the orders of lower authorities.

5. Ld. AR representing the assessee submitted that the sole grievance of assessee is the high-pitched addition of Rs. 11,50,000/- treating the cash-deposits in bank a/c as unexplained. Ld. AR drew our attention to the assessment-order and the papers filed by him in the Paper-Book. He pointed out that the AO has wrongly observed/noted that the assessee has made the impugned deposit of Rs. 11,50,000/- [2,50,000 on 17.06.2010 + 2,50,000 on 30.08.2010 + 2,00,000 on 22.09.2010 + 4,50,000 on 21.03.2011] in Saving Bank A/c. He carried us to Page No. 6 to 8 of the Paper-Book where a copy of the Bank A/c No. 53038644621 of the A/c with State Bank of India in which the impugned cash-deposits on different dates were made, is filed. Referring to the same, Ld. AR pointed out that the bank has marked a/c as "Product-MC-CC S.B. Credit Card (SBF)" wherein "CC" refers to "Cash-Credit" and "SBF" refers to "Small Business Finance". Further, there are debit entries of monthly interest debited by bank in the a/c at the end of each month throughout the year. Further there is also an entry of inspection charges of Rs. 2,000/- debited by bank on 16.03.2011. Further, the a/c is having both debit balances and credit balances on different dates. From these facts, Ld. AR demonstrated that the impugned bank a/c is not a Saving Bank A/c as alleged by Ld. AO; it is a Cash-Credit (C/C) A/c of small business carried on by assessee. Ld. AR submitted that the impugned cash-deposits of Rs. 11,50,000/- made in this a/c are part of the sales-turnover of assessee's business. Ld. AR submitted that the assessee's turnover during the year relevant to AY 2011-12 under consideration was Rs. 19,98,560/-

which the assessee has declared in the return of income filed on 02.12.2018 in response to the notice u/s 148 vide acknowledgement No. 383833660021218 to ITO-2, Ratlam, a copy of the same is placed at Page No. 1 and 2 of the Paper-Book. Ld. AR submitted that the assessee has declared taxable income of Rs. 1,59,885/- @ 8% of 19,98,560/- in accordance with section 44AD of Income-tax Act, 1961.

6. While explaining above facts, Ld. AR also carried us to various papers filed in the Paper-Book to demonstrate that the notice u/s 142(1) dated 24.10.2018 was issued by ITO-Ratlam (Page No. 14 to 16); the assessee filed return of income to ITO, Ratlam on 02.12.2018 (Page No. 1); and the assessee also filed reply-letter dated 03.12.2018 in response to notice u/s 142(1) to ITO, Ratlam which is evident from tracking report of speed-post (Page No. 17 to 20). Further, in the aforesaid notice dated 24.10.2018 u/s 142(1) issued by ITO, Ratlam, it is clearly mentioned in the first-paragraph itself *“Your case has been assigned to the undersigned by the Joint Commissioner of Income-tax Ratlam Range, Ratlam’s order u/s 120(5) of the I.T. Act, 1961 issued vide letter F.No. Jt. CIT/RTLM/Assignment/57/2018-19 dated 09.10.2018.”* Thus, the Ld. AR demonstrated that the assessee has filed return of income dated 02.12.2018 and reply letter dated 03.12.2018 to jurisdictional ITO, Ratlam. However, the assessment-order is passed by Ld. AO who happens to be ITO, Jhabua and not ITO, Ratlam. Ld. AR emphasized these facts to demonstrate that the Ld. AO (ITO, Jhabua) has

wrongly mentioned that no return of income was filed and no compliance of notice u/s 142(1) was made.

7. Ld. DR representing the revenue fairly urged that the present appeal relates to a very old assessment-year 2011-12 and the issue involved is also very small; therefore instead of going into the controversy of ITO-Ratlam or ITO-Jhabua, the case may be decided on merit taking into account the return of income and submission filed by assessee to ITO, Ratlam.

8. We have considered the orders of lower-authorities and the documents filed in the Paper-Book. After a mindful consideration we observe (i) that the assessee is engaged in a small business of agricultural implements/equipments; (ii) that the bank a/c in which impugned cash-deposits of Rs. 11,50,000/- were made, was a Cash-Credit A/c business and not a personal saving bank account of assessee; (iii) that the assessee has filed return of income to ITO, Ratlam declaring a turnover of Rs. 19,98,560/- and presumptive income of Rs. 1,59,885/- @ 8% u/s 44AD and also mentioned these facts in the reply letter dated 03.12.2018 submitted to ITO, Ratlam. Thus, we observe that the cash-deposit of Rs. 11,50,000/- made by assessee in bank a/c of business is covered by turnover of Rs. 19,98,560/- declared in the return. Further, we do not find any objection from Ld. DR representing the revenue on the net profit of 8% declared by assessee u/s 44AD. Faced with this situation, we are persuaded to hold that the taxable income of assessee should be 8% of Rs. 19,98,560/- as declared by assessee in the return of income and no separate addition of cash-deposit of Rs.

11,50,000/- in bank a/c is warranted. We direct the Ld. AO to make assessment accordingly and pass a needful order.

9. Resultantly, this appeal of assessee is allowed in terms indicated above.

Order pronounced in the open court on 15/05/2023.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15.05.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*