

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.101/Ind/2023
Assessment Year: 2008-09

Shri Ameen Uddin, 11, Kumharpura Road, Galla Bazar, Shahjahanabad, Bhopal	<u>बनाम/</u> Vs.	I.T.O., 3(4), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AAUPU 8393 G		
Assessee by	Shri S.S. Deshpande, C.A.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.05.2023	
Date of Pronouncement	19.07.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 03.02.2023 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, ["Ld. CIT(A)-NFAC"], which in turn arises out of assessment-order dated 26.02.2016 passed by learned ITO, Ward-3(4), Bhopal ["Ld. AO"] u/s 147 read with section 144 of Income-tax Act, 1961 ["the Act"] for assessment year 2008-09, on the grounds mentioned in appeal memo.


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

3. Brief facts leading to present appeal are such that the Department received information from "Non-PAN AIR data" that the assessee deposited a sum of Rs. 10,09,000/- in S.B. A/c maintained with Union Bank of India, Arera Hills, Bhopal. Based on such information, the AO issued notice u/s 148 on 27.03.2015 followed by statutory notices u/s 142(1) of the Act. However, finding no response from assessee, the AO framed assessment u/s 144 to the best of his judgement wherein he made an addition of Rs. 10,09,000/- u/s 69A equivalent to the amount of cash-deposits made by assessee in Bank A/c. Aggrieved, the assessee carried the matter in first appeal and made submissions but the CIT(A)-NFAC was not convinced and he upheld the AO's action. Still aggrieved, the assessee has come in this appeal before us.

4. The Ld. AR for assessee straightaway drew our attention to para no. 2 of assessment-order and submitted that the AO has himself noted that the notices dated 12.10.2015 and 26.10.2015 u/s 142(1) were returned by notice-server with the remarks that there were four Houses of same No. 11 (assessee's house is also No. 11) and the assessee could not be located. The AO has further noted that the Inspector of Income-tax Department was also deputed to serve another notice dated 17.12.2015 u/s 142(1) but even the Inspector could not find address despite making all efforts. This way, Ld. AR demonstrated that the notices issued by AO did not reach to assessee. He submitted that the subsequent notices dated 11.02.2016 and 19.02.2016 mentioned by AO to have been served through speed-post were also not received by assessee. Therefore, the assessee could not make compliance to any of the notices issued by AO. Further, the assessment-order passed by AO came to the knowledge of the assessee only when he received the penalty-orders passed u/s 271(1)(c) and 271(1)(b) of the Act, thereafter the assessee filed application to AO to supply certified copy of assessment-order. Ld. AR submitted that the assessee also apprised these facts to CIT(A)-NFAC during first appeal (Para No. 2 / Page No. 5 of order of first-appeal). Ld. AR submitted that the AO had to make assessment u/s 144 because the

assessee did not receive notices and consequently could not file details/documents/evidences.

5. Having explained the background of assessment u/s 144, Ld. AR submitted that during first appeal, the assessee filed an application dated 25.10.2017 to CIT(A)-II, Bhopal under Rule 46A of Income Tax Rules, 1962 for admission of additional evidences (Paper Book Page nos. 3 & 4). Thereafter, the CIT(A)-II, Bhopal called remand-report from AO vide his letter dated 22.05.2018 and in response to same, the AO filed his remand-report dated 24.08.2018 alongwith a forwarding letter dated 29.08.2018, which was received by office of CIT(A)-II, Bhopal on 30.08.2018 as is evident from inward-seal affixed by office of CIT(A)-II, Bhopal on top of the forwarding letter. Copies of forwarding-letter and remand-report are reproduced below:

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भारत सरकार
Government of India

कार्यालय
आयकर आयुक्त (अपील)-2
20 AUG 2018
भोपाल (म.प्र.)

वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Department of Revenue)
कार्यालय संयुक्त आयकर आयुक्त, परिक्षेत्र-3
Office of the Joint Commissioner of Income tax, Range-3
कमरा नं. 216, द्वितीय तल, मेट्रो वॉक बिल्डिंग, ई-5, अरेरा कॉलोनी, बिट्टन मार्केट, भोपाल
Room No. 216, 2nd Floor, Metro Walk Building, E-5, Arera Colony, Bitten Market, Bhopal
Telephone No.: 0755-2426426, Fax: 0755-2426428

F. No. JCIT/R-3/BPL/2018-19/1114

dated: 29/08/2018

To,
The Commissioner of Income tax (Appeals)-2,
Bhopal.

Sir/Madam,

Sub:- Report in the case of Shri Ameen Uddin, 11-12, Old Gaila Bazar, Kumharpura Road, Shahjahanabad, Bhopal in Appeal No. IT-371/16-17 u/s 147 r.w.s. 144 of the Income Tax Act, 1961 for A.Y. 2008-09 - regarding.

Ref.: The CIT(A)-2, Bhopal's letter F.No. CIT(A)-2/BPL/RR/18-19 dated 22/05/2018.

Kindly find enclosed herewith a copy of remand report submitted by the Income Tax Officer-3(2), Bhopal's vide letter F.No. ITO-3(2)/BPL/Remand Report/2018-19 dated 24/08/2018 in the above mentioned case for further necessary action.

Yours faithfully,

Encl: As above.

Sme.
(सतीश सोलंकी)
(Satish Solanki)

संयुक्त आयकर आयुक्त, परिक्षेत्र-3, भोपाल
Joint Commissioner of Income Tax,
Range-3, Bhopal

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भारत सरकार
GOVERNMENT OF INDIA
वित्त मंत्रालय (राजस्व विभाग)
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)
कार्यालय आयकर अधिकारी 3(2)

OFFICE OF THE INCOME TAX OFFICER-3(2)
कक्ष क्र.221 द्वितीय तल, "भद्रो वॉक" बिट्टन मार्केट, भोपाल (म.प्र.)-462016
Room 221, IIInd Floor, Metro Walk, Bittan Market, Bhopal (M.P.)-462016

F.No. ITO-3(2)/Bpl/remand report/2018-19

Dated: 24.08.2018

To,
The Commissioner of Income Tax(Appeals)-II
Aayakar Bhawan, Bhopal.

//Through proper Channel //

Sir,
Sub: Report in the case of Shri Ameen Uddin, 11-12, Old Galla Bazar,
Kumharpura Road, Shahjahanabad, Bhopal in Appeal No. IT-371/16-17
u/s 147 r.w.s. 144 of the Income Tax Act,1961 for A.Y. 2008-09 – regarding.

Kindly refer to your office letter F.No.CIT(A) -2/Bpl/RR/18-19 dated 22.05.2018 on the above subject.

As per the directions of the above referred letter, this office has given an opportunity to the assessee vide letter dated 14.06.2018 to produce the supporting documents in respect of additional evidences submitted before Ld. CIT(A)-2, Bhopal, but assessee neither appeared nor filed any written submission in respect of his case within the stipulated date. Another opportunity was provided to the assessee vide letter dated 16.07.2018. In response to letter dated 16.07.2018, Shri Aminuddin attended before the undersigned and has stated that out of total cash deposit of Rs. 10,09,000/- Rs. 8,50,000/- was given by Sardar Rizwan Mohd. Khan and Shri Javed Mohammad Khan to him for construction work on their agricultural land.

To verify the facts this office has issued summons u/s 131(1) of the Income Tax Act,1961 to Sardar Rizwan Mohd. Khan and Shri Javed Mohammad Khan on 09.08.2018.

In response to the summons Shri Sardar Rizwan Mohammad Khan attend the office. A statement on oath was recorded of Shri Sardar Rizwan Mohammad Khan and he has stated that Shri Aminuddin is his family friend and he has also confirmed that he has given an amount of Rs. 4,50,000/- to Shri Aminuddin for construction of Godown and house on his agricultural land which is situated at village- Mogra Teh. Rehti. He has also stated that his family has total land of 64 Acre. (approx.) and his only source of Income is Agricultural Income. He has also submitted copies of loan books and photographs of construction work done on their agricultural land. He has also stated that he has filed an affidavit before Ld. CIT(A)-2, Bhopal which is true.

Shri Sardar Rizwan Mohammad Khan has also stated that Shri Javed Mohammad Khan is his elder brother and he is not physically fit so he could not attend the office in response to the summon issued u/s 131(1). On behalf of the Shri Javed Mohammad Khan,

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(6)

Shri Sardar Mohammad Khan has given statement on oath and stated that his brother Shri Javed Mohammad Khan is also a farmer and his land is situated beside his agriculture land and he has also given Rs. 4,00,000/- to Shri Aminuddin for construction of godown and house on his agricultural land and his affidavit in this regard which was filed before Ld. CIT(A)-2, Bhopal is also true.

The evidence filed by the assessee u/r 46A has been verified. The additional evidences submitted by the assessee may be considered on merits.

Submitted for kind information and necessary action.

Yours faithfully,



(Vilas Dharmadhikari)
Income Tax Officer-3(2)
Bhopal

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6. Referring to the contents of remand-report, Ld. AR successfully demonstrated that the assessee received cash sums of Rs. 4,50,000/- from Shri Sardar Rizwan Mohd. Khan and Rs. 4,00,000/- from Shri Javed Mohd. Khan for doing construction work, which the Ld. AO verified from additional evidences submitted by assessee during remand-proceeding before AO. Thereafter, in the last para of remand-report, the AO himself reported to CIT(A)-II, Bhopal to consider additional evidences on merit. Therefore, while deciding first-appeal of assessee, it was incumbent upon the CIT(A)-NFAC to consider the remand-report filed by AO. But, the CIT(A)-NFAC, in para no. "ix" on page no. 11 of his order, has mentioned that there is no evidence to support the case of assessee. Ld. AR submitted that this noting by CIT(A)-NFAC clearly shows that the remand-report is not considered by CIT(A)-NFAC; therefore the order passed by CIT(A)-NFAC is not an appropriate order and deserves to be set aside and the assessee's case needs to be decided properly in the light of remand-report.

7. Ld. DR for the Revenue fairly accepted that the AO has reported in the remand-report to CIT(A)-II, Bhopal to consider the additional evidences but it appears from the appeal-order that the same has not been considered by CIT(A)-NFAC. Ld. DR left the matter to the wisdom of Bench.

8. We have considered the submissions of both sides. On a closer look, we find that initially the first-appeal was dealt by CIT(A)-II, Bhopal in manual system and thereafter the case was migrated to CIT(A)-NFAC (Para No. 1 on Page No. 2 of appeal-order), who passed final order disposing of first-appeal. Therefore, there might have occurred some lapse in communication in-between CIT(A)-II, Bhopal and CIT(A)-NFAC which has led to non-consideration of remand-report. Therefore, in the present case, it is most appropriate to remit this case back to the file of CIT(A)-NFAC who would decide the first appeal afresh after taking into account the remand-report and other submissions of assessee without being influenced by his earlier decision. Needless to mention that the CIT(A)-NFAC shall give

reasonable opportunities to assessee to make submissions and the assessee shall also participate in the proceedings.

9. Resultantly, this appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 19/07/2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 19.07.2023

CPU/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*