

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER

ITA No.157/PUN/2023
(A.Y. 2015-16)

Sachin Vasant Jare, Gat No.1333, Manisha Housing Society, Morewasti Chikhali, Pune. PAN: AJHPJ 7629 Q	vs	ACIT, Circle-9, Pune.
Appellant		Respondent

Assessee by	:	Shri B.C. Malakar, Advocate
Revenue by	:	Shri Ajay Kumar Kesari, DR
Date of hearing	:	17/07/2023
Date of pronouncement	:	20/07/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 30.12.2022 for A.Y.2015-16 as per the grounds of appeal on record.

2. In this case, the assessee is proprietor of S.V. Enterprises. The assessee is engaged in the business of construction. During the year under consideration, the assessee has derived income under the head 'income from business or profession', 'income from capital gains' & 'income from other sources'. During the year under consideration, the assessee had shown large increase in his capital account and on verification, it was noticed by the AO as per Schedule No.A of capital account that there is an addition of Rs. 1,00,24,373/- to the capital

account of the assessee. The assessee was asked to explain the source of such increase in capital account and in response thereof, the AR of the assessee submitted documents relating to sundry creditors and also furnished details of unsecured loans. Ld.AR of the assessee during the assessment proceedings explained introduction of capital but could not explain introduction of Rs.70.00 lakhs and another opportunity was given to the assessee to submit confirmation in case of randomly selected creditors and unsecured loans. Ld.AR of the assessee had attended on 26/12/2017 and submitted few more confirmations of sundry creditors from whom unsecured loans were taken. For the balance confirmations, Ld.AR accepted the fact that Rs.70.00 lakhs is the income which was not offered for taxation and the same was directly added to the capital account. Hence, amount of Rs.70.00 lakhs introduced in the capital account was treated as unexplained investment and added to the total income of the assessee by the AO.

3. It is seen from the order of the NFAC that once the appeal was transferred to NFAC, various notices u/sec. 250 were issued to the assessee as is evident at para 4 of the order. There were at least 04 opportunities given to the assessee and all the notices were duly served on the registered email ID of the assessee. Thereafter, on 01/11/2022 another opportunity was also provided to the assessee which was duly delivered also on the registered email ID of the

assessee, but in all these hearing opportunities given to the assessee, he failed to avail the benefit in compliance of natural justice and eventually, the NFAC was left with no alternative, but to pass an order *ex-parte* considering the assessment order and the annexures in Form-35 i.e. the grounds of appeal, statements of facts etc.

4. At the time of hearing before us, Id.AR for the assessee submitted that they have got adequate evidences to justify the increase in capital account as disputed by the AO and it was prayed that one final opportunity may be provided to the assessee to represent his case on merits with all details before the NFAC. Ld.DR did not raise objection, if the matter would be remanded to the file of the NFAC.

5. Having heard the submissions of the parties herein, considering the facts and circumstances in this case, we observe that before the AO, the assessee was unable to furnish any evidence regarding the sudden increase in the capital account and it is also on record that for certain amount, which is the disputed amount in this case, it was also accepted from the assessee's side by his Id.AR that this amount of Rs.70.00 lakhs is the income which was not offered for taxation and the same was directly added to the capital account. That, at the first appellate stage, the assessee irrespective of being given several opportunities have not appeared and therefore have also not availed the benefit of opportunity of hearing provided to the assessee at least

on 05 occasions. At the time of hearing, though, Id.AR submitted that they have got sufficient evidence to justify the increase in the capital account during the year and prayed for one opportunity to represent the case of the assessee on merits before the NFAC. We are of the considered view that the rights and liabilities of the parties herein are yet to be decided substantially by the NFAC, who had only relied on the materials/documents on record, but the assessee was not able to provide his submissions before the NFAC. In the light of the fact that Income-tax Act is a welfare legislation and even principles of natural justice demands that the taxpayer/assessee should be heard as far as reasonably possible, therefore one final opportunity is provided to the assessee and in view thereof, we set aside the order of the NFAC and remand the matter back to its file for re-adjudication as per law complying with the principles of natural justice and at the same time, we direct the assessee to represent his case on merits by filing all relevant details/documents before the NFAC. Grounds of appeal of the assessee are allowed for statistical purposes.

6. In the result, appeal of the assessee stands allowed for statistical purposes.

Order pronounced in open Court on 20th July, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 20th July, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.