

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.341/NAG/2016
निर्धारण वर्ष / Assessment Year : 2004-05

Deputy Commissioner of Income Tax,
Central Circle – 1(1), Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

Late Shri Narayandas T. Rathi,
L/H Shri Ashok Kumar Rathi,
232, Trimurti Sadan,
Old Bagadganj, Shastri Nagar,
Nagpur

PAN : ABNPR0839Q

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.55/NAG/2018
निर्धारण वर्ष / Assessment Year : 2004-05

M/s. Narayan Brothers,
UG-10, Jagat Chamber,
Ambedkar Chowk, Nagpur

PAN : AAAFN6130C

.....अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,
Central Circle – 1(1), Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Maurya Pratap

सुनवाई की तारीख / Date of Hearing : 18-07-2023
घोषणा की तारीख / Date of Pronouncement : 31-07-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These cross appeals by the Revenue and assessee against the separate orders dated 07-04-2016 and 06-04-2016 passed by the Commissioner of Income Tax (Appeals)-3, Nagpur [‘CIT(A)'] for assessment year 2004-05.

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 off the appeal by hearing the ld. DR and perusing the material available on record.

3. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of ld. DR, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

4. First, we shall take up appeal of Revenue in ITA No. 341/NAG/2016 for A.Y. 2004-05.

5. The sole ground raised by the Revenue challenging the action of CIT(A) in deleting the addition made on account of protective basis u/s. 69A of the Act.

6. Heard ld. DR and perused the material available on record. We note that the assessee is an individual engaged in the business of bardana, DOC and poultry feed. The assessee filed return of income declaring a total income of Rs.2,45,870/- on 17-11-2004. A search and seizure

operation was carried out at the residence and business premises of the assessee of Rana-Maven Group, Nagpur on 27-03-2008 u/s. 132(1) of the Act. According to the AO, Xerox copies of the seized documents were provided to assessee on his request on 15-06-2009 and asked the assessee to file return of income vide notice dated 03-10-2008 u/s. 153C of the Act within 30 days. The assessee vide its letter dated 31-07-2009 requested the AO to treat the return of income filed on 17-11-2004 in response to the notice u/s. 153C of the Act. The AO sought explanations of the assessee along with detailed questionnaire regarding seized/impounded material vide notices u/s. 142(1) and 132(2) of the Act. In response to the said notices, the assessee being represented through his authorized representative before the AO from time to time.

7. According to the AO, three books of account/documents in the form of two notebooks were seized during the course of search and notings in the said diaries are in the handwriting of Late Shri Narayandas Rathi. The cash transactions by the assessee for the period 01-04-2003 to 31-10-2003 and 01-11-2003 to 31-03-2004 were found on his own account and also on account of M/s. Narayan Brothers. Further, according to the AO, the peak of the cash payments/receipts were worked out during the course of search. The AO further explains the minimum peak found as on 16-03-2004 to which the Late Shri Narayandas Rathi made payment of Rs.6,44,35,566.50/- remained unexplained. The AO observed that the assessee offered Rs.50,00,000/- as and above the regular income as peak balance as additional income to buy peace of mind. We note that the assessee during the course of assessment proceedings denied the contents of two seized diaries containing the transaction of M/s. Narayan Brothers. The AO did not accept the submission of the assessee and proceeded to add an amount of Rs.6,44,35,566.50/- as undisclosed and unrecorded

income of Late Shri Narayandas Rathi for A.Y. 2004-05 and treated the same as assessee's unexplained money within the meaning of section 69A of the Act and added the same to the total income of the assessee on protective basis vide its order dated 21-12-2009.

8. The CIT(A) discussed the facts of the case and taking into account the addition made in the hands of M/s. Narayan Brothers for A.Y. 2004-05 deleted the addition of Rs.6,44,35,566.50/- in the hands of the assessee made on account of protective basis. We note that admittedly a substantive addition was made in the hands of M/s. Narayan Brothers for the same A.Y. 2004-05 by the AO and find no infirmity in the order of CIT(A) in deleting the addition made on account of protective basis in the hands of the assessee. Thus, the order of CIT(A) is justified in deleting the addition of Rs.6,44,35,566.50/- in the hands of the assessee. Thus, sole ground raised by the Revenue fails and it is dismissed.

9. In the result, the appeal of Revenue is dismissed.

Now, we shall take up the appeal of assessee in ITA No. 55/NAG/2018 for A.Y. 2004-05

10. On perusal of the record, we note that this appeal came up for hearing on 09-11-2022 and we find letter dated 02-11-2022 of Deputy Commissioner of Income Tax (Central), Circle-1(1), Nagpur stating that the notice could not be served on the assessee at the given address at 232, Trimurti Sadan, Old Bagadgunj, Shastri Nagar, Nagpur as no person residing at the said address. Shri Abhay Agarwal, Advocate, took notice on behalf of the assessee on 09-11-2022 and on this day 18-07-2023 Shri Abhay Agarwal prayed to permit him to withdraw its letter of authority as the assessee was not providing relevant documents and details.

Accordingly, Shri Abhay Agarwal, Advocate permitted to withdraw his power of attorney. Thus, the assessee called absent and set ex-parte. Therefore, we proceed to dispose off the appeal by hearing the ld. DR and perusing the material available on record.

11. We find this appeal was filed with a delay of 651 days. The assessee filed notarized affidavit dated 19-03-2018 explaining the reasons in filing the appeal with delay. On perusal of the same, we note that the affairs of the assessee were looked after by Shri Ashok Rathi who is the partner of the assessee. Further, it is stated that the assessee and other business group suffered huge losses during F.Y. 2011-12 and due to which the business was practically closed and plant/offices were shut down. Further, it is stated the various regulatory authorities initiated adverse proceedings against the assessee and the CBI also filed chargesheet in the month of January, 2016. The partner Shri Ashok Rathi was in judicial custody for approx 180 days and due to all these adverse circumstances, Shri Ashok Rathi developed psychiatric problems and was undergoing treatment with a psychiatrist during February, 2016. We note that the impugned order was passed on 06-04-2016 and adverse proceedings sated to have been initiated against the assessee by various regulatory authorities were during April, 2015 and January, 2016. It is pertinent to note that the assessee requires to file evidences corroborating the averments made in the notarized affidavit but no supporting documents etc. were filed before us. The settled principle is that the assessee requires to explain the delay on daily basis, but however, we find no such reasons explained in the notarized affidavit. Further, we note that the appeal requires to be filed before this Tribunal against the order of CIT(A) within 60 days from the date of receipt of impugned order. The date of impugned order is 06-04-2016 and assessee received the same on 07-04-2016,

requires to file the appeal within 60 days from the date of receipt i.e. 06-06-2016, but however, the assessee filed this appeal on 19-03-2018 with delay of 651 days. Therefore, we are of the view that the assessee failed to explain the sufficient cause which really prevented the assessee to file the appeal in time. Thus, notarized affidavit explaining the reasons is rejected and the delay of 651 days not condoned. In view of the same, the grounds raised by the assessee becomes infructuous, requiring no adjudication.

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

13. To sum up, both the appeals of Revenue and assessee are dismissed.

Order pronounced in the open court on 31st July, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 31st July, 2023.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Nagpur
4. The CIT (Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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