

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.170/CTK/2023

(निर्धारण वर्ष / Assessment Year :2017-2018)

Mrinal Mehta, Iswar Dham, Alamchand Bazar, Cuttack	Vs	ITO, Ward-2(4), Cuttack
PAN No. :AFUPM 1868 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से /Assessee by	:	Shri Mohit Sheth, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	09/08/2023
घोषणा की तारीख/Date of Pronouncement	:	09/08/2023

आदेश / O R D E R

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 28/04/2023, passed in ITBA/NFAC/S/250/2023-24/1052428107(1) for the assessment year 2017-2018.

2. Ld. AR has filed his written submissions, which read as under :-

WRITTEN SUBMISSION

Facts of the Case --

The appellant is an individual deriving income from business. The appellant filed his audited Return of Income for the aforesaid assessment year. The appellant's return was selected for scrutiny by CASS on reason for substantial cash deposits in banks. Notices were served on appellant regarding the matter for verification. In response to the notices and show cause notices the appellant produced all the materials alongwith books of accounts and all the bank accounts statement for verification. The same was duly verified by the Assessing Officer and assessment was completed u/s 143(3) on 31/12/2019.

The AO on verification of bank accounts found that the assessee has deposited Rs.58,65,000/- in the bank account with ICICI Bank Ltd. and treated as an unaccounted cash sales of the assessee and thus gross profit of the assessee was estimated @ 8% on the total

amount of Rs.58,65,000/- which comes to Rs.4,69,200/- and the same was added to the total income declared by the assessee.

Penalty was imposed u/s.270A for under reporting of income of Rs.4,69,200/-.

The penalty imposed by the AO was on account of estimated profit from the alleged undisclosed sales. The additions on account of transactions has been made on estimated basis by applying GP @ 8% on the sales.

The learned CIT(A) erred in not dealing properly with the appeal filed by the appellant and was also not justified to confirm the penalty order and dismiss the appeal without justifying and just following the order of the AO. The AO has also stated that since the appellant has not filed appeal against the aforesaid additions as made in the assessment order it shows that the appellant has no plea to offer and concluded that the above transactions is concealed.

The learned CIT(A) following the order of the AO confirmed the penalty.

Appellant Contentions:

The Assessment was made on the additions on account by estimating the GP @ 8% on the sales. Penalty was imposed on under reporting of income. It is a trite law that any additions made on account of estimated rate of profit does not amounts to under reporting or concealment of income as such there can be no question of imposing of penalty. Moreover, merely because the appellant had not filed any appeal against the additions cannot be a ground for imposing penalty. There are plethora of case laws which held that when income is estimated, then, there can be no question of imposing penalty.

PRAYER:

In the circumstances, it is a clear that on the basis of estimation addition made cannot lead to penalty and as such the same should be deleted in the interest of justice.

3. It was the submission by the Id. AR that the original assessment in the case of assessee came to be completed u/s.143(3) of the Act on 31.12.2019. It was the submission that in the course of assessment the AO had made an addition by estimating the income of the assessee at 8% of the undisclosed cash deposit treating the same as turnover in ICICI bank, Ahmadabad, Gujarat. It was the submission that the transactions in

the bank account were part of the turnover of the assessee and the same was also been disclosed in the turnover of the assessee. It was the submission that the addition by estimation of the income in respect of the alleged cash deposit being only to an extent of less than Rs.5 lakhs of the tax effect, is being less than Rs.50,000/-. Considering the economics of fighting an appeal the assessee had not contested the issue. It was the submission that the cash deposits are out of the business of the assessee and the cash deposits are also reflected in the bank account of the assessee. No difference in the stock maintained by the assessee has also been pointed out nor has any undisclosed transaction being found. It was the submission that just because the income of the assessee has been estimated, it cannot be held that the assessee has under reported its income.

4. In reply, Id. Sr. DR submitted that the fact that the assessee has not filed an appeal shows that he has accepted the addition and acceptance of the addition is in effect the acceptance of the fact that his income was under reported and the penalty levied u/s.270A of the Act and as confirmed by the Id. CIT(A) is liable to be upheld. It was also further clarified by the Id. Sr. DR that after the original assessment order the assessment had been reopened and the reassessment had also been completed on 30.03.2022, wherein additions have been made, which was the subject matter of an appeal before the Tribunal in ITA No.169/CTK/2023. It was the submission that the Tribunal has quashed the reopening of the assessment, consequently the original assessment

becomes live and the present penalty u/s.270A of the Act having been levied in respect of the estimation of income as done in the original assessment, the same is liable to be upheld.

5. I have considered the rival submissions. A perusal of the provisions of Section270A(6)(a) of the Act, the requirement is that the assessee should have offered an explanation and the explanation must be bonafide and that the assessee should have disclosed all the material facts to substantiate the explanation offered. In the present case, the addition is admittedly on estimated basis on account of cash deposit in the bank account maintained by the assessee and disclosed in his regular books of accounts. The addition has been made only because it is a cash deposit. The assessee has not suppressed to the deposits nor has he suppressed the bank accounts nor there any allegation that the said amount has not been included in the turnover of the assessee for the purpose of determining the income disclosed by the assessee in the return of income. Thus, clearly the assessee has disclosed all the material facts in regard to the determination of the income of the assessee. The explanation of the assessee that he did not challenge the addition because of the economical criteria, the said amount would lead a far greater expenditure than paying the tax itself is also bonafide. The explanation given by the assessee is also bonafide and this explanation given by the assessee has not been found to be false. This being so, I am of the view that the penalty levied u/s.270A of the Act by the AO and as

confirmed by the Id. CIT(A) is unsustainable and consequently the same is deleted.

6. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 09/08/2023.

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 09/08/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Mrinal Mehta,
Iswar Dham, Alamchand Bazar, Cuttack
2. प्रत्यर्थी / The Respondent-
ITO Ward-2(4), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack