

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.199 & 200/NAG/2023

निर्धारण वर्ष / Assessment Years : 2014-15 & 2015-16

Pravin Shrawanlal Sahu, Plot No.517, Sahu Bhawan, Chandabai Layout, Chandan Nagar, medical Square, Nagpur – 440009. PAN: BBMPS2413P	V s	The Assessing Officer- NFAC.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Kapil Hirani – CA
Revenue by	Shri Abhay Y. Marathe – Sr.DR
Date of hearing	29/11/2023
Date of pronouncement	27/12/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These are two appeals of the assessee i.e.Mr.Praveen Shrawanlal Sahu for A.Y.2014-15 & 2015-16. The issue involved is identical i.e. Cash Deposits. Since issue involved is same, both these appeals were heard together and decided

by this consolidated order. We treat appeal for A.Y.2014-15 as a lead case.

ITA No.199/NAG/2023 for A.Y.2014-15 :

2. This is an appeal filed by the assessee against the order of Id.Commissioner of Income Tax(Appeals)[NFAC] under section 250 of the Income Tax Act, 1961 for A.Y.2014-15 dated 02.06.2023 emanating from assessment order under section 147 r.w.s. 144 r.w.s. 144B of the Act dated 28.03.2022. The assessee for the A.Y.2014-15 has raised the following grounds of appeal :

“1. The re-opening of assessment and the assessment as completed is illegal, invalid and which deserves to be quashed as per law.

2. On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming the addition of Rs.1,48,5,766 allegedly representing cash deposited in bank account as undisclosed income of the Appellant ignoring the facts and circumstances of case and the evidence on record. The addition of Rs.1,48,57,766 is grossly illegal and which deserves to be deleted in the interest of justice.

3. On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming the addition of Rs.1,48,57,766 allegedly representing cash deposited in bank account ignoring the fact that the

Appellant has justified the source of the cash so deposited and the same cannot be treated as unexplained. The cash deposited in bank account being out of explained sources, the addition of Rs.1,48,57,766 deserves to be deleted in the interest of justice.

4. The Appellant craves leave to add, amend, alter, vary and / or withdraw the above grounds of appeal with the kind permission of the Hon'ble Tribunal.”

Brief facts of the case :

3. Assessee is an individual and he had not filed Return of Income under section 139 of the Act. The Assessing Officer(AO) received information regarding cash deposits by the assessee. Accordingly, after recording reasons as per law, AO issued notice under section 148 of the Act dated 24.03.2021. However, assessee had not filed Return of Income in response to notice under section 148 of the Act. Subsequently, AO issued noticed under section 142(1) on various dates, but assessee failed to comply any of the notices. Therefore, AO passed ex-parte order. The relevant paragraph of the assessment order is reproduced here as under :

“ In harmony with principle of natural justice and fair play as a last resort show cause notice dated 21.03.2022 was issued on the last known registered email id, requesting the assessee to submit his explanation. Assessee vide his reply dated 23.03.2022 submitted that he has earned income from salary from a

company namely VS Verma Intranet Pvt. Ltd. and had submitted computation of income showing his income as below taxable limit as prescribed under I.T. Act, 1961. The reply of assessee is considered but not found acceptable as the assessee has failed to submit any proof of his prudence and could not substantiate his reply so submitted. In view of above, I am left with no option but to complete the assessment on the basis of available information with the income tax department and to decide the case on its merit.

On perusal of the bank account no. 043205300002025 of the assessee for F.Y. 2013-14 in the South Indian Bank, Nagpur it was found that the assessee has cash deposit amounting to Rs.1,48,57,766/-. On perusal of the bank account it does not appear that the assessee is engaged in some kind of business activities. Therefore whole credits/cash deposit of Rs.1,48,57,766/- is considered as income of the assessee and is being added to the total income as undisclosed income.

(Addition of Rs.1,48,57,766/-)

In view of above discussion, non-compliance continuously exhibited by assessee, material available on record and based on the merits of the case, the income is assessed at Rs.1,48,57,766/- u/s 147 r.w.s. 144B of the I.T. Act under best judgment assessment as no return has been filed by the assessee. The assessee has concealed particulars of his income. Therefore, show cause notice for initiation of penalty u/s 271(1)(c) for concealing the particulars of his income and penalty u/s 271F for non-filing of return are issued separately. Interest u/s 234A, 234B and 234C is being charged. Notice of demand being made the integral part of this order is being issued.”

4. Aggrieved by the assessment order, assessee carried appeal before the ld.CIT(A). Before the ld.CIT(A) assessee submitted that he was employee of V.S.Varma Infratel Private Limited. He claimed that he used to receive cash on behalf of company which has been deposited in his bank account as instructed by the Company. However, ld.CIT(A) upheld the addition. The relevant paragraph of the ld.CIT(A) is reproduced here as under :

“5.4 The contentions of appellant are considered but not found to be acceptable. On perusal of the supporting documents filed by the appellant it is nowhere evidenced that the underlined cash belonged to the company and the same has been offered to tax by said company. In no circumstances any person would agree upon allowing on personal bank account for dealing on behalf of a third party.

5.5 In view of the above I am of the considerate view in absence of any satisfactory explanation coupled with appropriate documentation the contention of appellant cannot be accepted therefore the addition made by learned AO for sum of Rs.1,48,57,766/- is found to be correct and being upheld.”

4.1 Aggrieved by the order of the ld.CIT(A), the assessee has filed appeal before this Tribunal.

Submission of Id.Authorised Representative(Id.AR) :

5. The Id.AR of the assessee filed paper book for A.Y.2014-15 & A.Y. 2015-16. The paper book containing copy of ledger, copy of letter from V.S.Varma Infranet Pvt. Ltd., copy of bank statements, copies of emails written by assessee. Ld.AR submitted that V.S.Varma Infranet Pvt. Limited used to deposit cash in the assessee's bank account maintained with South Indian Bank, this cash was for the payment towards the expenditure of maintenance of towers. The Id.AR referred to the letter of V.S.Varma Infranet Pvt. Ltd., Ld.AR read out the relevant part of the letter which is as under :

“ During the FY: 2013-14, we were having our Indus tower project in the Maharashtra region for which we have employed Mr. Pravin Sarvanlal Sahu for the salary of Rs, 50,000/- per month. Mr. Sahu was in charge and was responsible for the maintenance of the towers in the Maharashtra Region.

We had authorized him as authorized person on our behalf for the maintenance of the tower in Maharashtra Region. He makes expenditure on behalf of the company for the maintenance of the tower after the approval from our head office at Hyderabad.

He sends the requests for the approval of expenditure to our office at Hyderabad through the e-mail, after the approval we

deposit cash in his bank account maintained with South Indian Bank (Account No. 0432053000002025). The cash so deposited in his bank account has been paid by him to the vendors as per the approvals for which cash has been deposited. During the relevant period he has purchased spare parts and has taken the services of various vendors on behalf of our company for the purpose of maintaining the tower. The expenditure made by him has been duly recorded in the books of accountants maintained by the company.”

Submission of Id.Departmental Representative (Id.DR) :

6. The Id.DR vehemently relied on the order of AO and Id.CIT(A). Ld.DR specifically pleaded that the so-called company V.S.Varma Infranet Private Limited is situated in Hyderabad which is a city having good banking facility. Assessee is in Nagpur which has got good banking facility, therefore, the explanation given by assessee is not a plausible explanation.

Findings & Analysis :

6. We have heard both the parties and perused the records. It is an admitted fact that assessee had not filed Return of Income. It is observed that as per assessment order for A.Y.2014-15, there were cash deposits of Rs.1,48,57,766/- in

the account which was in the name of assessee maintained with South Indian Bank.

6.1 It has been pleaded on behalf of the assessee that V.S.Varma Infranet Private Limited had deposited the said cash in assessee's bank account. We specifically ld.AR that when V.S.Varma Infranet Pvt. Ltd., has a bank account, why money was not transferred through banking channel to the assessee's bank account. However, ld.AR could not answer to this question satisfactorily. On perusal of the bank account, it is observed that on 24.06.2013 V.S.Varma Infranet Pvt. Ltd., had transferred to assessee's impugned Bank Account No.0432053000002025 an amount of Rs.43,500/-. This entry explains that it was possible for V.S.Varma Infranet Pvt. Ltd., to transfer the money through banking channel as it had done 24.06.2013. Similar entries are there on 26.04.2014 of Rs.52,600/-.

6.2 On perusal of the bank statement, it is observed that almost every day there are cash deposits of amounts like Rs.20,000/-, Rs.25,000/- etc., and immediately there are withdrawals.

6.3 The entry appearing on 08.04.2013 is stand and reproduced here as under :

DATE	PARTICULARS	CHQ.NO.	WITHDRAWALS	DEPOSITS	BALANCE
08-04-13	BY CASH			13,194.00	13,860.65Cr
08-04-13	BY CASH			78,300.00	92,160.65Cr
09-04-13	SELF		90,000.00		2,160.65Cr
09-04-13	ATM Withdrawal: AXIS BANK LIMITED NA		1,000.00		1,160.65Cr
10-04-13	BY CASH			10,000.00	11,160.65Cr
10-04-13	BY CASH			10,000.00	21,160.65Cr
11-04-13	ATM Withdrawal: AXIS BANK LIMITED NA		10,000.00		11,160.65Cr

6.4 Thus, it can be observed that on 08.04.2013, there are two independent cash deposits i.e. i) Rs.13,194/- and ii)Rs.78,300/-. If the so-called V.S.Varma Infranet Pvt. Ltd., wanted to deposit in assessee's bank account, we failed to understand why a private limited company could not have deposited in one go and why an odd amount of Rs.13,194/- was deposited. There was no logical explanation for these deposits. These kind of odd deposits are appearing on various dates. For example, on 29.04.2013 cash deposits of Rs.6,371/- ; on 07.05.2013 Rs.8,965/-. No person which is the private limited company will make such kind of deposits.

6.5 The assessee has offered only one explanation that these amounts were deposited by V.S.Varma Infranet Pvt. Ltd.

Assessee failed to explain why assessee had not filed Return of Income, when it is claimed that assessee was given a salary of Rs.50,000/- per month.

6.6 In these facts and circumstances of the case, we are of the considered opinion that assessee had failed to explain the cash deposits of Rs.1,48,57,766/- appearing in his bank account. The explanation offered by the assessee is without any basis. The so-called letter issued by V.S.Varma Infranet Pvt. Ltd., which is at page 9 of the paper book does not even contain a date. Thus, it is nothing but a self-serving document without any basis. As mentioned earlier on 24.06.2013, V.S.Varma Infranet Pvt. Ltd., has transferred money through Banking Channel to Assessee's Bank Account. No explanation has been provided by V.S.Varma Infranet Pvt. Ltd., for so-called cash deposits when transfer through banking channel was possible. No cash book of V.S.Varma Infranet Pvt. Ltd., was filed to demonstrate the cash deposits. Therefore, the explanation of the assessee is not acceptable. Therefore, we uphold the addition of Rs.1,48,57,766/-.

Accordingly, Ground No.2 & 3 raised by the assessee are dismissed.

6.7 The assessee in Ground No.1 has pleaded that assessment is illegal, invalid. However, during the proceedings, no specific pleadings have been made. Ld.AR has not made any pleading how assessment is illegal and invalid! No document has been filed to prove that assessment is illegal and invalid. We have perused the assessment order and we do not find it to be illegal and invalid. Thus, we uphold the assessment order. Therefore, Ground No.1 is dismissed.

7. Ground No.4 is general in nature and does not need any adjudication, hence, dismissed.

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

ITA No.200/NAG/2023 for A.Y. 2015-16 :

9. This is an appeal filed by the assessee against the order of Id.Commissioner of Income Tax(Appeals)[NFAC] under section 250 of the Income Tax Act, 1961 for A.Y.2015-16 dated 02.06.2023 emanating from assessment order under

section 147 r.w.s. 144 r.w.s. 144B of the Act dated 28.03.2022. The assessee for the A.Y.2015-16 has raised the following grounds of appeal :

“1. The re-opening of assessment and the assessment as completed is illegal, invalid and which deserves to be quashed as per law.

2. On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming the addition of Rs.1,34,67,675 allegedly representing cash deposited in bank account as undisclosed income of the Appellant ignoring the facts and circumstances of case and the evidence on record. The addition of Rs.1,34,67,675 is grossly illegal and which deserves to be deleted in the interest of justice.

3. On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming the addition of Rs.1,34,67,675 allegedly representing cash deposited in bank account ignoring the fact that the Appellant has justified the source of the cash so deposited and the same cannot be treated as unexplained. The cash deposited in bank account being out of explained sources, the addition of Rs.1,34,67,675 deserves to be deleted in the interest of justice.

4. On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming the addition of Rs.1,34,67,675 allegedly representing cash deposited in bank account ignoring the fact that the amount deposited in the bank account was only Rs.1,08,16,476 and not Rs.1,34,67,675 as wrongly assessed by the AO and further

wrongly confirmed by the CIT(A). The addition, if any, deserves to be restricted to the correct amount as computed under law.

5. The Appellant craves leave to add, amend, alter, vary and / or withdraw the above grounds of appeal with the kind permission of the Hon'ble Tribunal.”

Brief facts of the case :

10. No Return of Income has been filed by the assessee under section 139 of the Act and in response to notice under section 148 of the Act. There were cash deposits of Rs.1,34,67,675/- in the Bank Account No.0432053000002025 of South Indian Bank, Nagpur during the A.Y.2015-16. The assessee had not filed any explanation during assessment proceedings. The AO made addition of Rs.1,34,67,675/-. Assessee file appeal before the Id.CIT(A) with the same explanation which was given for A.Y.2014-15. The Id.CIT(A) confirmed the addition made by the AO. Aggrieved by the order of the Id.CIT(A), assessee filed appeal before this Tribunal.

11. Since we have already discussed the issue of cash deposits above in ITA No.199/NAG/2023 for A.Y.2014-15 at length and upheld the addition, the same will apply mutatis-mutandis to this appeal also in ITA No.200/NAG/2023 for A.Y.2015-16. Accordingly, grounds of appeal raised by the assessee in ITA No.200/NAG/2023 are dismissed.

Ground No.4 :

12. The assessee has claimed that actual cash deposit was only Rs.1,08,16,476/-, whereas the Assessing Officer has made an addition of Rs.1,34,67,675/-. The assessee had filed copy of Bank Statements. Since this is the question of factual verification, we direct the Assessing Officer to verify the exact figure of cash deposits. In principle, we have sustained the addition of cash deposits as discussed in earlier paragraphs, accordingly, the AO shall verify the exact amount of cash deposited in the bank account and make the addition of the exact amount of cash deposits to that extent, accordingly, Ground No.4 is allowed for statistical purpose.

12 In the result, appeal of the assessee in ITA No.200/NAG/2023 is Partly Allowed for Statistical Purpose.

13. To sum up, appeal of the assessee in ITA No.199/NAG/2023 is Dismissed and appeal in ITA No.200/NAG/2023 is Partly Allowed for Statistical Purpose.

Order pronounced in the open Court on 27th December, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 27th Dec, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.