

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.313/Ind/2023
(Assessment Year: 2010-11)

Aatmaram Baraskar 15, Vrandavan Nagar, Ayodhya bypass, Bhopal	Vs.	ITO- ward 5(3) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AGNPB 7088C		
Assessee by	Shri Manoj Fadnis AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.01.2024	
Date of Pronouncement	04.01.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Assessee is directed against the order dated 15.06.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) arising from penalty order passed u/s 271(1)(c) of the Act for A.Y.2010-11.

2. There is a delay of four days in filing the present appeal. The assessee has filed an affidavit to explain cause of delay. Ld. AR of the assessee has submitted that after receiving the impugned order on

15th June 2023 the assessee filed an application u/s 154 of the Act for rectification of the mistake. The said application was not decided by the CIT(A), NFAC till the first week of August 2023 and then the assessee realize that the limitation for filing the appeal is also going to expire shortly. The assessee took steps for filing the appeal before this tribunal but due to the time consumed in the proceedings u/s 154 as well as the Holidays on 12th August to 15th August 2023 the present appeal could be filed only on 18th August 2023. Thus, Ld. AR of the assessee has pleaded that the delay of four days is neither intentional nor deliberately but due to circumstances beyond the control of the assessee and therefore, the same may be condoned.

3. On the other hand, ld. DR has not raised any serious objection to the condonation of delay in filing the present appeal.

4. We have considered the rival submission as well as the reasons explained by the assessee in para 2 & 3 of the affidavit which reads as under:

“2.The order of National Faceless Appeal Centre (NFAC), Delhi was received on 15th June 2023.Accordingly, the appeal was to be filed before Income Tax Appellate Tribunal, Indore on or before 14th August 2023. As against this the appeal is filed on 18th August 2023, resulting in a delay of 4 (Four) days.

3. The delay in filing the appeal is on account of pursuing with National Faceless Appeal Centre (NFAC), Delhi by way of application for rectification of mistake under section 154 of the Income Tax Act. In the first week of August 2023, I realised that my application for rectification of mistake was not being disposed off and therefore, to safeguard my legal rights I rushed to file the present appeal before

the Hon'ble Tribunal. Due to holidays on 12th, 13th and 15th August 2023, the appeal memo in Form 36 could not be presented on my behalf within the prescribed time period.”

5. There is no dispute that after impugned order passed by the CIT(A), NFAC the assessee filed an application for rectification of mistake which was finally allowed by the AO to the extent of relief granted by the Tribunal in the quantum appeal and thereby restricted the penalty only against addition sustained by the tribunal as against the original addition made by the AO. Hence in the facts and circumstances of the case we are satisfied that the assessee was having reasonable cause for delay of four days in filing the present appeal; the same is condoned. The assessee has raised following grounds of appeal:

“1. That in the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law by ignoring the fact that the penalty proceedings u/s 271(1)(c) of the Income Tax Act 1961, initiated by notice dated 6/1 / 2016 is illegal as the notice does not specify the reason of issuance of notice, whether the same is for concealment of income or for furnishing inaccurate particulars of income.

2. That the ld. CIT(A) has not considered that the ld. AO has modified his order u / s 254 dated 1.11.2017 whereby he has reduced the penalty from Rs 6 lakhs to Rs 32172/-.

3. That the order of the ld. CIT(A) is bad in law and may be set aside.”

6. The Ld. AR of the assessee has submitted that the AO has made the addition on account of unexplained deposits in the bank account as well as treating agricultural income as undisclosed source of income u/s 68 of the Act total amounting to

Rs.17,74,500/-. In the quantum appeal the Tribunal has granted relief to the assessee to the extent of deleting the addition of Rs.38,300/- on account of agricultural income and further granting the relief by taking peak credit of deposits in the bank account and thereby the addition of Rs.1,98,363/- is sustained as against the total addition of Rs.17,36,200/-. Thus, Ld. AR has submitted that the Tribunal has sustained the addition on estimation basis by taking peak credit/deposit in the bank account of the assessee instead of the entire deposit was added by the AO and therefore, the penalty u/s 271(1)(c) is not sustainable on such addition based on peak credit. In support of his contention he has relied upon the order of the Chennai Benches of the Tribunal dated 28th July 2023 in case of Edward Sam vs. ITO in ITANo.728/Chny/2023.

7. On the other hand, ld. DR has submitted that the addition sustained by the Tribunal is not based on estimation but it is based on the proper working of the peak credit and benefit is granted only in respect of the withdrawal made by the assessee from the bank account prior to the deposits. He has relied upon the orders of the authorities below and submitted that the AO has already granted the relief to the assessee in the order passed u/s 154 of the Act and reduced the penalty only to the extent of the addition of Rs.1,98,363/-.

7. We have considered rival submissions as well as relevant material on record. The AO has made the addition on account of

deposits in the bank account as well as agricultural income declared by the assessee. The details of additions are as under:

S. No.	Particulars	Amount
1.	Unexplained cash deposited into bank account	Rs.17,36,200/-
2.	Addition on account of undisclosed source of income u/s 68	Rs.38,300/-
	Total	Rs.17,74,500/-

7.1 The Ld. AO has levied the penalty u/s 271(1)(c) against the said addition of Rs.17,74,500/- while passing the order u/s 271(1)(c) on 28.02.2017. We further note that in the quantum appeal this tribunal has deleted the addition made by the AO on account of agricultural income and also restricted the addition in respect of the deposits in the bank account to Rs.1,98,363/- by taking only peak credit/deposit in the bank accounts vide order dated 27th July 2017 in ITANo.56/Ind/2015. The relevant finding of the Tribunal in para 8 & 12 are as under:

“8. We have considered the facts on the record. We have also gone through the copy of bank account filed before us and placed in the paper book which shows that the amount of cash deposits is ranging from Rs.5,000/- to Rs.30,000/- mostly and there is only maximum amount of cash deposited at Rs.1,14,000/- on 17.2.2009 only once. It is also noticed that in most of the amount was deposited in cash and was withdrawn by cash withdrawal or by ATM withdrawal in the denomination mostly Rs. 15,000/- to Rs.20,000/- on various dates during the assessment year under consideration. It is also not disputed by the A.O that the assessee besides working as Accountant to M/s. Chhabra Timber Stores also done work as

commission agent in timber market and supervision work in construction field for maintenance of his household expenses. The assessee has also not maintaining any books of accounts as his turn over does not exceed from the prescribed limit hence his case could be considered u/s 44AD of the Income Tax Act. Although the assessee has failed to produce necessary evidences in support of his claim that source of cash deposit of Rs. 17,36,200/- but it cannot be ruled out that the cash deposits and withdrawals made on or behalf of clients. It is also undeniable fact that the assessee had got expertise being an accountant to a firm which engaged in the timber marketing. Therefore accepting the nature of cash deposits which is ranged between Rs.5,000/- to Rs.30,000/- mostly and in some cases Rs.50,000/- to Rs.55,000/- during the financial year relevant assessment year under consideration and equal withdrawal of cash, therefore the contention of the assessee that he was doing unorganized activity as commission and brokerage agent for the small traders/contractors could not be ruled out. In view of these facts, we are of the considered view that the cash deposits. made in the specified bank account is out of from the activities as claimed by the assessee. Therefore, in view of fair play it would be reasonable to sustained the addition of 1,98,636/- being the peak credit in respect, of these deposits in his saving bank account with SBI and Syndicate Bank. Therefore, the addition of Rs. 1,98,363/- is confirmed out of the total addition of Rs. 17,38,200/-. Accordingly the assessee gets relief of Rs.15,37,837/- out of total addition of Rs. 17,30,200/-. This ground of appeal is therefore partially allowed in favour of the assessee.”

9. xxxxxxxx

10. xxxxxxxxxx

11. xxxxxxxxxxxx

12. We find that during the course of assessment proceedings and appeal proceedings the assessee has filed evidences in support of his land holding ownership but the same was not accepted on the ground that the has not filed supporting evidences of agriculture income of Rs.38,300/-.. However, considering the facts of the case and taking holistic view of the matter, we find that the assessee family was traditional agriculturist holding agriculture land around 8.5 acres in Maharashtra. The agriculture operations on the said land was being looked after by his younger brother and assessee was to receive net income of agriculture from his younger brother. Therefore, considering the land holdings and the evidence of the ownership of land in the form of khasra, none of the information with

the lower authorities were being justified in treating small amount of Rs.38,300/- as from undisclosed income, therefore, the said addition is directed to be deleted. This ground of appeal is allowed.”

7.2 Thus the addition made by the AO on account of agricultural income was deleted by this tribunal whereas the addition made by the AO on account of cash deposit in the bank account to the tune of Rs.17,36,200/- was restricted to peak credit to Rs.1,98,363/-. The Tribunal has observed in the quantum order that the deposit in the bank account representing the amounts received from the clients and withdrawal from the bank accounts used for purchase of timber on behalf of client is not ruled out. Thus, though the explanation of the assessee regarding source of the deposits to the tune of Rs.1,98,363/- was not accepted but at the same time the activities of the assessee of doing service of purchasing of timber from Forest Department Depot on behalf of the petty traders/contractors was also not ruled out. Therefore, the said explanation though was not found to be fully satisfactory yet the same would not ipso facto amount to concealment of income or furnishing inaccurate particulars of income when the assessee has disclosed all relevant facts regarding the said deposits in the bank accounts of the assessee. The tribunal in the quantum appeal has specifically mentioned that the source of deposit as amount received from the client in respect of purchase of timber from Forest Department Depot is not ruled out. The AO has reproduced the explanation of the assessee in reply to notice u/s 271(1)(c) wherein the assessee has explained the source of deposit as amount received

from the small traders/businessmen for purchase of the wooden products material on commission basis. In this process the assessee is making payment to the transporters as well as for purchase of goods and therefore, there are contra entries in the bank account for deposit of cash as well as withdrawal of cash. Once the bank account in which deposit was made by the assessee was disclosed by the assessee and was very much available before the AO then the case would not fall in the category for concealment of income or furnishing inaccurate particulars of income merely because the explanation of the assessee for the source of the said deposit was not accepted by the AO as satisfactory. Accordingly in the facts and circumstances of the case the addition sustained by this tribunal on the basis of the peak credit in the bank account of the assessee would not ipso facto lead to the conclusion that the assessee has concealed particulars of income or furnishing inaccurated particulars of income attracting the penalty u/s 271(1)(c) of the Act. Hence the penalty levied by the AO is deleted.

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

Order pronounced in the open court on 04.01.2024.

Sd/-
(MANISH BORAD)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 04.01.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore