

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE SMC BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.522/Ind/2023
(Assessment Years:2009-10)

Renuka Ansingkar 168, Indus Empire, Near Rajiv Gandhi College, Trilanga Bhopal	Vs.	ITO-2(4) Bhopal
(Appellant / Assessee)		(Revenue)
PAN: AESPA6372 D		
Assessee by	Ms. Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.02.2024	
Date of Pronouncement	19.02.2024	

ORDER

This appeal by the Assessee is directed against the order dated 26.10.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2009-10. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the assessment order passed by Ld. AO under section 144 which is contrary to the material on records and provisions of the Act, unjust and bad in law.

2. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in not providing the copy of the reasons to believe recorded to issue notice u/s 148

3. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in not providing the copy of the approval obtained for issuing notice u/s 148

4. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining addition made on account of unexplained cash deposit in the joint savings bank account of Rs.11,53,820.

5. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining addition made on account of unexplained cash deposit in the joint savings bank account of Rs. 11,53,820 without considering the fact that the same has already been reported in the return of income of the husband, Makarand Ansingkar

6. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining addition made on account of commission income of Rs. 10,18,314 without considering the fact that the same is already forming part of the income reported in the return of income.

7. On the facts and circumstances of the case and applicable law, both Ld. AO and Ld. CIT(A) erred in not giving the credit of TDS while computing the demand.

8. On the facts and circumstances of the case and applicable law the Ld. CIT(A) erred in not giving reasonable opportunity of being heard.”

2. At the time of hearing Ld. AR of the assessee has submitted that the AO as well as CIT(A) has passed ex-parte order due to non-appearance on behalf of the assessee. She has further submitted that the AO has made additions on account of cash deposit in the bank account as well as unexplained commission income in the absence of explanation on behalf of the assessee and supporting evidence. The CIT(A) has confirmed these additions while passing ex-parte order. Thus, the appeal of the assessee was dismissed for non-prosecution. Ld. AR has thus pleaded that the impugned order of CIT(A) may be set aside and matter may be remanded to the record of the AO for fresh adjudication after verification and consideration of the explanation and relevant record to be produced by the assessee.

3. On the other hand, ld. DR has not raised any serious objection if matter is remanded to the record of the AO for fresh adjudication.

4. I have considered the rival submission as well as relevant material on record. At the outset, it is noted that the CIT(A) has dismissed the appeal of the assessee due to non-prosecution in para 5.1 as under:

“5.1 Respectfully, following these judicial pronouncements (supra), the appeal filed by the appellant is treated as dismissed for non-prosecution. On merit also, the appellant has failed to disprove the source of cash deposits made during the year under consideration in the saving Bank account maintained by the assessee with Kotak Mahindra Bank as well as failed to offer commission income received from Kotak Mahindra Bank. Neither any satisfactory explanation was furnished by the assessee before the AO in the assessment proceedings nor before the appellate proceedings with regard to the above two additions. This is a clear case where no satisfactory explanation with supporting evidence was submitted by the appellant. In view of the facts and circumstances of the case and considering the above cited decisions, the additions made on account of unexplained cash deposit of Rs.11,53,820/- and on account of unexplained commission income of Rs. 10,18,314/- were rightly made by the AO. Therefore, it is held that decision of the Ld. AO was fully justified and hence uphold the above additions. In view of the above, on merits also appeal deserves to be dismissed. Hence, appeal is dismissed for non-prosecution as well as on merits too. All the grounds of appeal are treated as dismissed.”

5. Therefore, the CIT(A) has not decided the issues raised in the appeal on merits. The appeal of the assessee was dismissed for non-prosecution. Even otherwise both AO and CIT(A) have concluded that the assessee has failed to produce any evidence to explain source of cash deposit as well as undisclosed commission income. Ld. AR of the assessee has pleaded that the assessee be given one more opportunity to produce relevant record and explanation. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the AO for fresh adjudication

after verification and consideration of relevant record and explanation to be produced by the assessee.

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

Order pronounced in the open court on conclusion of hearing on 19.02.2024.

Sd/-

(VIJAY PAL RAO)

JUDICIAL MEMBER

Indore; दिनांक Dated : 19/02/2024

Patel/Sr. P.S.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT
(DR)/Guard file.

By order
Sr. Private Secretary

ITAT, Indore