

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.548/Ind/2023
(Assessment Years:2012-13)

Shri Ashish Gehlot 177, Radio Colony Indore	Vs.	ITO-4(2) Indore
(Appellant / Assessee)		(Revenue)
PAN: AMOPG1266A		
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.02.2024	
Date of Pronouncement	20.02.2024	

ORDER

This appeal by the Assessee is directed against the order dated 06.11.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

“1That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deciding the appeal ex-parte without giving proper opportunity of being heard to the appellant.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the validity of reassessment proceedings initiated under section 147 of the Income-Tax Act, 1961 even when notice under section 148 of the Income- tax Act, 1961 was not actually served to the appellant.

3.That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the validity of reassessment

proceedings initiated under section 147 of the Income-Tax Act, 1961 even when reopening was done in absence of any tangible material and live link of concealment of income and merely for verification of source of cash deposits in the bank account.

4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the validity of reassessment proceedings initiated under section 147 of the Income-Tax Act, 1961 even when the case of the appellant was merely reopened on the basis of AIR/CIB data without any independent application of mind

5. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.32,80,000/- made by the Assessing Officer to the total income of the appellant on account of cash deposit in bank account of the appellant even when the said amount of cash deposits were made by the appellant out of cash withdrawn from his bank accounts on prior occasions, out of current year income and past savings.”

2. At the time of hearing Ld. AR of the assessee has submitted that the AO has passed an ex-parte order u/s 144 r.w. section 147 of the Act which was challenged by the assessee before the CIT(A) however, the CIT(A) has also passed ex-parte order and dismissed the appeal of the assessee. He has pointed out that the AO has given the wrong address of the assessee in the order and therefore, alleged notices issued by the AO were not received by the assessee the assessee could not participate in the re-assessment proceedings initiated by the AO by issuing notice u/s 148 of the Act. The assessee has given the correct address in the memo of appeal in form 35 before the CIT(A). However, the notices sent to the E-mail could not be noticed by the assessee and therefore, there was no representation before the CIT(A). Thus, ld. AR has pleaded that the impugned order passed by the CIT(A) ex-parte may be set aside and the matter may be remanded to the record of the AO for fresh adjudication after verification and consideration of the

relevant record for explaining the source of cash deposited in the bank account of the assessee.

3. On the other hand, ld. DR has relied upon the orders of the authorities below.

4. I have considered the rival submission as well as relevant material on record. The AO has initiated reassessment proceedings by issuing notice u/s 148 on 20.03.2019 for assessing the income escaped assessment on account of cash deposit of Rs.32,80,000/- in the bank account of the assessee as per the information available in AIR/CIB data. There was no response to the notices issued by the AO and consequently the AO has passed ex-part order u/s 144 r.w.section 147 and assessed the total income of the assessee at Rs.32,80,000/- being the cash deposited in the bank account. Ld. AR has pointed out the AO has given the address of the assessee without mentioning PAN number of the assessee and the said address is not correct address of the assessee and therefore, the assessee did not receive the notices issued by the AO. It is noted that the assessee filed return of income for the year under consideration on 29.03.2013 declaring total income of Rs.5,43,640/- which was not taken into consideration by the AO at the time of initiation of proceedings u/s 147 of the Act. The CIT(A) has dismissed the appeal of the assessee due to non-prosecution as the assessee did not response to the various notices issued by the CIT(A). Therefore, the explanation for source of cash deposit as well as relevant details and evidences were neither before the AO nor before the CIT(A).

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 the explanation of the assessee along with supporting evidences for deposit of cash in the bank account.

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

Order pronounced in the open court on conclusion of hearing on 20.02.2024.

Sd/-

(VIJAY PAL RAO)

JUDICIAL MEMBER

Indore; दिनांक Dated : 20/02/2024

Patel/Sr. P.S.

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

By order
Sr. Private Secretary

ITAT, Indore