

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'SMC' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.1221/PUN/2023
(A.Y. 2017-18)

Jitendra Arvind Pathak, 7, Madhura Apartments, Lane No.10, Prabhat Road, Deccan Gymkhana, Pune. PAN: AHRPP 6664 P	vs	ITO, Ward-3(1), Pune.
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Gaurav K. Singh, DR
Date of hearing	:	20/02/2024
Date of pronouncement	:	21/02/2024

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 25.09.2023 for A.Y.2017-18 as per the grounds of appeal on record.

2. Brief facts of the case are that assessee is an individual deriving income from business in the capacity of partner in two firms. He e-filed his return of income declaring total income of Rs. 10,08,520/-. The case of the assessee was selected for scrutiny under CASS. The AO noted from the ITS data that assessee had deposited cash in Saraswat Bank of Rs.21,51,450/-. On perusal of the bank statements maintained with Sarawswat Bank, it was revealed that assessee had

deposited cash in his three bank accounts of Rs. 21,51,450/-. The assessee's explanation did not find favour with the AO. Therefore, the AO added the same to the total income of the assessee u/sec. 69A of the Act as unexplained money.

3. Being aggrieved by the order of the AO, the assessee filed appeal before the NFAC. As the assessee failed to substantiate his claim with documentary evidences, the NFAC dismissed the appeal of the assessee. Now, the assessee is in appeal before this Tribunal.

4. We have heard the submissions of the parties, considered the materials/documents on record and have analysed the facts and circumstances in this case. That, as evident from record, the assessee claimed to have been involved in a sale transaction of property and therein, the prospective buyer of the property had made the payment through cheque which was bounced and, therefore, the proposed buyer had made the payment in cash to the assessee which was deposited in his bank account. That, as evident from para 5.7 of the NFAC's order that assessee could not furnish any evidence in support of the source of such cash deposit. It was not demonstrated by the assessee whether these cash deposits were from the prospective buyer of the same property for which the earlier cheque got bounced. The assessee also could not explain through evidences whether these cash payments were made by the prospective buyer and when this money

has been routed through bank account of the assessee and what is the tax implication and whether the payable amount of tax has been carefully offered to the Department or not, has also not been explained by the assessee. Accordingly, the appeal of the assessee was dismissed by the NFAC. The relevant para 5.7 is extracted, for the sake of completeness, as follows:-

"5.7 The contention of the appellant that due to cheque bounce the proposed buyer of the property made the payment in cash is not substantiated by any documentary evidence. The appellant simply claimed that the cash is related to his firm's business activities while the same is not justified and substantiated by any documentary evidence. The appellant has submitted various documents which are examined but it is seen that even during the appellate proceedings, the appellant has failed to furnish any explanation/evidence in support of the sources of cash deposits. There is no evidence to substantiate that the prospective buyer made the cash payments against the bounced cheques to the appellant. It is also not understandable as to why the money has been routed through the bank account of the appellant. Therefore, the undersigned finds that there is no reason to interfere in the order passed by the AO. Accordingly, the ground raised by the appellant is dismissed."

5. We are of the considered view, in the facts and circumstances that one final opportunity should be given to the assessee to explain the source of cash deposit in the bank account and whether at all it has been paid by the prospective buyer of the property. If it has been paid by the buyer to the assessee, the requisite taxes shall be levied and if in case the source of cash deposit is not explained, then the entire amount has to be added as unexplained money of the assessee u/sec. 69A of the Act. In view thereof, we set aside the order of NFAC and remand the matter back to its file for *de novo* adjudication complying with the principles of natural justice and at the same time,

we direct the assessee to file all relevant details/documents before NFAC and represent his case on merits as being the final opportunity. The grounds of appeal stands allowed for statistical purposes.

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

Order pronounced in open Court on 21st February, 2024.

Sd/-
(G.D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 21st February, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "SMC" Bench Pune.
5. Guard File.

By Order

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Senior Private Secretary
ITAT, Pune.