

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.895/PUN/2023
(A.Y. 2011-12)

Shashikant Baburao Bhosale, 766/1A, Opp. Old Octroi Naka, Sai Prasad Nivas, Kalamba Road, Kolhapur. PAN: AGWPB 3883 E	Vs	ITO, Ward-1(5), Kolhapur.
Appellant		Respondent

Assessee by	:	Shri Mahesh Samant, AR
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 11.07.2023 for A.Y.2011-12 as per the grounds of appeal on record.

2. In this case, assessee had not filed his return of income for the A.Y. 2011-12. The case of the assessee was reopened u/sec. 147 after taking necessary approval of the competent authority. The reason for reopening of the case was that assessee had purchased motor vehicle for Rs. 5,41,997/-, which was confirmed by the motor showroom - Sai Service Station Ltd. Notice u/sec. 148 was issued, but no explanation filed by the assessee. Therefore, the Assessing Officer

(AO) by making the addition of Rs. 5,41,997/- as unexplained income u/sec. 69A of the Act, completed the assessment u/sec. 143(3) r.w.s. 147 of the Act .

3. Being aggrieved by the order of the AO, the assessee filed appeal before the NFAC, where also, assessee remained absent though many opportunities had been granted to him. Therefore, NFAC following the decision of the Hon'ble Delhi High Court in the case of *CIT v. Gold Leaf Capital Corporation Ltd.* in ITA No. 798/2009, dated 02/09/2011 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. The assessee had not filed original return of income for the relevant A.Y. 2011-12. The case of the assessee was reopened u/sec. 147 of the Act with proper statutory approval; and reasons for reopening was that the assessee had purchased a motor vehicle for Rs. 5,41,997/-, but not filed his return of income for the relevant assessment year. That, as appearing from the assessment order, there were opportunities of hearing given to the assessee, which he failed to attend, and accordingly the assessment was completed u/sec. 144 r.w.s. 147 of the Act. We further observe from the order of NFAC specifically at para 3.1 that in spite of 06

opportunities of hearing, the assessee had not complied, as stated therein, with any of the hearing notices. However, at the time of hearing before this bench, Id.AR submitted that the first two dates of hearing i.e. 26/03/2020 & 21/09/2020 were covered in Covid-19 pandemic period, similarly for the next date of hearing i.e. 27/01/2021 that was also covered in Covid-19 pandemic period, and thereafter, two dates of hearing was there i.e. 08/06/2023 & 27/06/2023 for which the assessee had not received the hearing notices, but for the final date of hearing on 10/07/2023, the assessee did file the relevant details, however, the same have not been brought on record. These facts could hardly be refuted by the Id.DR. We further observe from the entire case records that the only addition in this case has been regarding purchase of motor vehicle and non-filing of income tax return. It is observed that there was no compliance from the assessee at both the levels of revenue authorities. Before us Id.AR submitted that they are willing to produce necessary evidences as would be called for by the Department, if one final opportunity is given to them.

5. Considering the totality of the facts and circumstances, we are of the considered view that even if one final opportunity is given to the assessee to substantiate his case on merits regarding the purchase of vehicle before the NFAC, the Revenue will not be jeopardized by any means and rather the principles of natural justice would be upheld where the assessee will get one final opportunity to make an effective

representation before the Department. In view thereof, we set aside the order of NFAC and remand the matter back to its file for *de novo* adjudication complying with principles of natural justice and at the same time, we direct the assessee, this being the final opportunity, he should file all relevant documents/details which will be necessary to make a representation of his case on merits before the Department. Grounds of appeal, accordingly, 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

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.