

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.452/PUN/2022

निर्धारण वर्ष / Assessment Year : 2009-10

Jamlappa Dattatray Battul, C/o. Ajay Agrawal, Ug-105, Akrti Sankul, 2059, Sadashiv Peth, Next to Bank of Maharashtra, Tilak Road, Pune 411 030 PAN : AIEPB9282D	Vs.	ITO, Ward-5(2), Pune
Appellant		Respondent

Assessee by : Shri Mihir Naniwadekar &
Shri Kedarnath Uddhav Ghungurde
Revenue by : Shri Ganesh B. Budruk
Date of hearing : 23.02.2024
Date of pronouncement : 23.02.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the CIT(A)-13, Pune dt. 29.04.2022 for the Assessment year 2009-10.

2. Briefly the facts of the case are as under :

The appellant is an individual deriving income from the profession of Chartered Accountancy. Return of income for the A.Y. 2009-10 was filed on 01.08.2009 disclosing total income of Rs.2,58,400/-. Against the said return of income, the assessment was

completed by the Assessing Officer (AO) vide order dt. 30.12.2011 passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter also called 'the Act') determining total income of Rs.20,58,400/-.

3. While doing so, the Id. AO brought to tax a sum of Rs.18.00 lakh being the amount of cash deposited in the savings bank account maintained with The Karad Urban Coop. Bank Ltd., Laxmi Road Branch, Pune. The factual background leading to the above addition is as under :

During the course of assessment proceedings, the AO noticed that the appellant deposited a sum of Rs.25,20,610/- in the said bank on 15.05.2008 and the same was utilised for payment of insurance premium to M/s. Met Life Insurance Co. Ltd. When the appellant was called upon to explain the sources of the above cash deposit, the appellant filed an explanation stating that, out of the above cash deposit, an amount of Rs.7.00 lakh was out of own resources, contribution of spouse and brother which came to be accepted by the AO. However, the source for the balance amount of Rs.18.00 lakh was explained as compensation received from two of his clients namely; (1) Mr. Nirmal D. Sirmokadam and (2) Mr. Madhukar Dive for relinquishment of his Right to sue for

defamation. In support of this contention, the appellant had filed a Settlement Agreement dated 05.05.2008 entered into between Mr. Nirmal D. Sirmokadam & Mr. Madhukar Dive. The AO, in an attempt to test the truthfulness of this explanation, had issued summons to both the parties u/s.131 of the Act which remained uncomplished with. The AO also had returned a finding that the addresses given in the Settlement Agreement did not match with the addresses of the PAN of those two parties. The appellant had pleaded ignorance as to whereabouts of these two persons. In the circumstances, the AO drew adverse inference that the appellant could not explain the source for the said cash deposit of Rs.18.00 lakh, accordingly brought to tax the same.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide order dt. 25.09.2017 dismissed the appeal *ex parte* for non-prosecution. Against the said order of CIT(A), an appeal was filed before this Tribunal. The Tribunal vide order dt. 18.03.2019 in ITA No.138/PUN/2018 remanded the matter to the file of CIT(A) for *denovo* adjudication in accordance with law.

5. Pursuant to the remand order passed by the Tribunal, the CIT(A) passed the impugned order dt. 29.04.2022 partly allowing the appeal

by rejecting the explanation of the appellant tendered in support of the sources of cash deposit holding that the appellant had failed to discharge the burden of proof lying upon him. Accordingly, he confirmed the addition of Rs.18.00 lakh.

6. Being aggrieved, the appellant is in the present appeal before this Tribunal.

7. Before me, the Id. AR Mr.Mihir Naniwadekar submits that during the course of second round of proceedings before the CIT(A), the CIT(A) called for a remand report from the AO on the submission of the appellant that one of the two parties who was stated to have paid the compensation to the appellant had filed a letter with the office of the AO on 24.01.2012 confirming the payment of compensation. On receipt of the remand report from the AO, the CIT(A) had issued a letter dt. 25.04.2022 calling upon the appellant to offer the comments on the AO's remand report on or before 09.05.2022. However, the CIT(A) had proceeded to dispose of the appeal on 29.04.2022 without waiting for the reply of the assessee. Therefore, he submits that the order of the CIT(A) be set-aside and order of remand be made for denovo adjudication by the CIT(A).

8. On the other hand, the Id. DR has no serious objection for remanding the matter to the file of CIT(A) for denovo adjudication in accordance with law.

9. I have considered the rival submissions and perused the material on record. I find merit in the submission of the Id. Counsel that the order of the CIT(A) suffers from infirmity and arbitrariness as the CIT(A) had disposed of the appeal on 29.04.2022 without waiting for the reply of Appellant to the notice issued by him on 25.04.2022 requiring the appellant to file the comments on the remand report submitted by the AO on or before 09.05.2022. Thus, the order passed by CIT(A) suffers from the vice of arbitrariness. Therefore, the order of the CIT(A) is hereby set-aside to CIT(A) to the stage of receipt of remand report from the AO. Needless to say, the CIT(A) shall afford reasonable opportunity of being heard to the appellant.

9. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced on this 23rd day of February, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd February, 2024.

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1.	Draft dictated on	23-02-2024	Sr.PS
2.	Draft placed before author	23-02-2024	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		