

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

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.1274/PUN/2023
(A.Y. 2018-19)

ITO, Ward-1(1), Kolhapur.	vs	Sadanand Shankarrao Korgaonkar, 1356 C Ward, Laxmipuri, Kolhapur (MH)
		PAN : AAWPK 6188 K
Appellant		Respondent

Assessee by	:	Shri Pramod S. Shingte, CA
Revenue by	:	Shri Keyur Patel, DR
Date of hearing	:	14/03/2024
Date of pronouncement	:	19/03/2024

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 13.09.2023 for A.Y.2018-19 as per the following revised grounds of appeal:-

- i. *The CIT(A) has erred in deleting the addition of Rs. 8,17,55,763/- of unexplained cash deposits.*
- ii. *The CIT(A) has erred in not following the procedure laid down under Rule 46A as he has accepted the additional evidences without giving the opportunity to the AO.*
- iii. *The CIT(A) has erred in not holding that the cash deposits in the account of firm may be held to be partner's cash. Firm and its partners are integral part.*
- iv. *The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary."*

2. The relevant facts are that the Assessing Officer (AO) in his assessment order has stated that assessee during the course of assessment proceedings submitted statement of bank account No. 60112920559 maintained with Bank of Maharashtra, in which only

Rs.731/- were credited during the year. The AO further stated that as per the ITS details of the Department, it was seen that assessee was holding another bank account with Palus Sahakari Bank Ltd. bearing No.50046, in which cash of Rs. 8,17,55,763 was deposited. The AO asked the assessee to explain the source of the same and as no reply was received from the assessee, the AO added Rs.8,17,55,763/- to the returned income of the assessee.

3. The assessee in the course of appellate proceedings had submitted that the said bank account was not of him, but it belonged to the firm M/s. G.S. Trading Company, in which he and his wife were partners with 50% share in the profit and loss. The bank account No.5000000046 with Palus Sahakari Bank Ltd., Branch Laxmipuri, Kolhapur, is accounted for in the audited books of accounts of the said firm. The said firm is engaged in wholesale and retail trade of food grains and related items. The assessee in support of his claim filed the following documents:

1. Partnership Deed for M/s. G.S. Trading Company
2. Income tax return for A.Y. 2018-19 of the above firm
3. Audited final accounts and tax audit report of the said firm
4. Bank statement of impugned account with Palus Sahakari Bank Ltd.
5. Ledger of the said bank in the books of the said firm
6. Cash book of the firm for the F.Y. 2017-18.
7. Letter from the bank explaining the mistake done by them in reporting the transaction in the name of the assessee instead of in the name of the firm.

That, after perusal of these evidences, at para 6.6 the NFAC has provided relief to the assessee.

4. The basic crux of the facts in this case are that the bank instead of recording PAN no. of the assessee, has inadvertently recorded the PAN no. of the firm and, therefore, whatever the receipts came inside, it was registered in the personal name of the assessee, but as evident from the declaration of the bank that it was the mistake done by it in reporting the transactions in the name of the assessee instead of firm. That, on the basis of these evidences, the NFAC had provided relief to the assessee. Now, in the grounds of appeal, the Revenue specifically at ground No.2 has contended that AO was not given any opportunity for verification of these evidences which were filed for the first time before the NFAC. That, Rule 46A(3) of the Income Tax Rules, 1962 (IT Rules) provides any evidence if it is to be accepted for the first time by the Commissioner (Appeals) submitted by the assessee, then he must forward the same to the AO calling for a remand report from him. This opportunity was not provided to the AO in this case.

5. We are of the considered view, considering the entire facts and circumstances that as per the declaration from the bank, there appears to be some mistake committed by the bank, however, as mandated by Rule 46A(3), since the specific evidences relying on which the NFAC had provided relief, was produced for the first time by the assessee and it was therefore the duty of the NFAC to take a

report from the AO regarding these evidences before accepting them. In view thereof, we set aside the order of NFAC and remand the matter back to its file to comply with the provisions of Rule 46A(3) of the IT Rules providing an opportunity to the AO to file a report on the evidences that had been filed by the assessee before the NFAC and then adjudicate the matter as per law complying with the principles of natural justice. The grounds stands allowed for statistical purposes.

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

Order pronounced in open Court on 19th March, 2024.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 19th March, 2024

vr/-

Copy to :

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

By Order

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Senior Private Secretary
ITAT, Pune.