

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 397/Ind/2023
Assessment Year:2007-08

Shri Ravindra Pratap Singh Jat, H.No.1, Nishtpura Berasia Road, Bhopal (Appellant/Assessee)	बनाम/ Vs.	Dy. Commissioner of Income-tax, Bhopal (Respondent/Revenue)
PAN: BDWPS2747C		
Assessee by	Shri Manoj Fadnis, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.04.2024	
Date of Pronouncement	16.04.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 05.09.2023 passed by learned Commissioner of Income-Tax (Appeals), N.F.A.C., Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 16.03.2015 passed by learned ITO-3(1), Bhopal ["AO"] u/s 147 read with Section 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2007-08, the assessee has filed this appeal.

2. The background facts are such that the assessee-individual is claiming to have income from sale of milk produce and agriculture. For AY 2007-08, the assessee filed original return on 20.09.2007 declaring a total income of Rs. 37,697/- and agricultural income of Rs. 3,64,821/- which was duly assessed by AO vide assessment-order dated 15.07.2009 u/s 143(3) of the Act. Subsequently, the AO noticed from AIR data that the assessee made deposits in Bhopal Co-operative Central Bank Ltd. during the relevant year. Based thereon, the AO issued notice u/s 148 dated 28.02.2014 to re-open assessment u/s 147. Thereafter, the AO issued statutory notices fixing hearings from time to time but due to non-compliances by assessee, ultimately framed assessment u/s 147 read with section 144 wherein he made addition of Rs. 35,70,050/- u/s 68 on account of unexplained deposits in Bank. Aggrieved, the assessee carried matter in first-appeal before CIT(A). The CIT(A) dismissed assessee's appeal for non-prosecution and upholding the addition made by AO. Now, the assessee has come in next appeal before us.

3. Ld. AR for assessee firstly submitted that the CIT(A) issued notice of hearing dated 28.08.2023 fixing the hearing on 05.09.2023. In compliance thereof, the assessee e-filed reply in the evening of 05.09.2023 at the designated portal of Income-tax Department, copy of e-filing acknowledgement is brought on record. However, the CIT(A) passed the impugned order at 12:47:57 IST on 05.09.2023 before assessee's reply. Therefore, the assessee's reply remained unconsidered by CIT(A) which has

led to passing of ex-parte order. Hence, certain documents as filed by assessee could not have been considered by CIT(A). The assessee has filed an application under Rule 29 of Income-tax (Appellate Tribunal) Rules, 1963 for admission of (i) Sale-agreement of Jeep, and (ii) Bank-Statement as additional evidences to prove the sources of deposits in Bank A/c, which are the same documents as were filed to CIT(A) in the e-filed reply.

4. Then, Ld. AR briefed that the first document being sale-agreement of jeep shows that the assessee sold a jeep for Rs. 3,38,000/- in cash and the second document being bank-statement shows that the assessee has made cash withdrawals of Rs. 27,53,000/- from the bank; these were available for deposit in bank. That apart, the assessee also has income from milk selling as well as agriculture which was also available for making deposits. Therefore, Ld. AR submitted, the source of impugned addition of Rs. 35,70,050/- made by AO is clearly explainable. Hence, the assessee must be given opportunity to explain the same to lower-authorities.

5. Ld. DR for revenue proposed that the case of assessee be set aside to Jurisdictional AO for examination of evidences and adjudication afresh. He further requested that the assessee should be directed to represent his case before AO and do not seek unnecessary adjournments.

6. Considering the facts narrated and submissions made by both sides and also having regard to the principle of natural justice and fair play, we deem it fit to give one more opportunity to assessee so that the assessee can

represent his case before jurisdictional AO for a proper adjudication. Accordingly, we remand this matter back to the file of jurisdictional AO for a fresh adjudication after giving opportunity of hearing to assessee. The assessee is also directed to ensure participation in the hearings fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass ex-parte order.

7. Resultantly, this appeal of assessee is allowed for statistical purpose.

Order pronounced in open court on 16.04.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 16.04.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore