

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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1049/PUN/2023
निर्धारण वर्ष / Assessment Year: 2017-18

Ganesh Sudhakar Suryawanshi, Prop. No.606/1, Plot No.1, Pahur Road, Shendurni, Tal. Jamner, Jalgaon- 424205. PAN : BJEPS3666N	Vs.	DCIT, Circle-1, Jalgaon.
Appellant		Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Ramnath P. Murkunde
Date of hearing : 17.04.2024
Date of pronouncement : 17.04.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 01.09.2023 passed by CIT(A) ['NFAC'] for the assessment year 2017-18.

2. The appellant has raised the following grounds of appeal :-

"1. The Learned CIT(A) erred in confirming the action of the ld AO to tax the sum Rs. 1,36,04,000/- to tax as Unexplained credits in the books of account under section 68 of the Act. On the facts and in the circumstances of the case, the said addition of Rs.1,36,04,000/- be deleted.

2. *The ld CIT(A) failed to appreciate that all the cash deposits in to bank accounts are out of business transaction only to make payments to the suppliers and the source of business is substantiated by filing regular income tax return for other years.*

3. *Without Prejudice to the above, the ld CIT(A) failed to accept that out of total cash deposits of Rs 1,09,18,500/-, an amount of Rs.33,15,000/- was considered twice and hence needs to be reduced from total cash deposits.*

4. *The appellant craves leave to add, amend, alter or delete any one or more of the grounds of appeal as may be required in the nature and circumstances of the case.*

5. *The appellant prays leave to adduce such further evidence to substantiate her case as the Occasion may demand.”*

3. Briefly, the facts of the case are that the appellant has not furnished return of income for the asstt year under consideration i.e. for Asstt Year 2017-18. Information was available with the Department that the appellant had made a cash deposit of Rs.1,36,04,000/- into his bank account during the year under consideration and also earned Rs 48,597/- as interest income on which Union bank of India also deducted TDS. After recording reasons the Assessing Officer reopened the case u/s.147 and accordingly issued notice u/s.148. Thereafter, statutory notice u/s.142(1) of the IT Act was also issued. However, there was no compliance to the said notices issued u/s.148 & 142(1) of the Act. Since the assessee failed to furnish any details to substantiate the source of such cash deposit, the Assessing Officer in the order passed by him u/s.144/147/144B, determined the total income of

the assessee at 1,36,52,600/- by treating the cash deposit of Rs.1,36,04,000/- and the interest income of Rs.48,597/- as unexplained.

4. In appeal, the ld. CIT(A)/NFAC confirmed the order of the AO.

5. Being aggrieved by the decision of the CIT(A)/NFAC, the appellant is in appeal before us.

6. We have heard the rival submissions made by both sides and perused the material available on record. The ld. counsel for the assessee submitted that the assessee is only 10th pass and was not well conversant with the technology for which he was unable to see the notices sent by mail to him. Therefore, for the purposes of income tax hearing notices etc., he was totally dependent on the tax consultant who failed in his duty. She accordingly requested for one more opportunity to submit relevant documents & explanations before the AO.

7. The DR on the other hand submitted that several opportunities were given by the AO to submit the reply but assessee remained absent. He accordingly submitted that the order of the ld. CIT(A) be confirmed.

8. After hearing both the sides, we find the appellant did not appear before the AO despite several opportunities granted by the AO for which he passed the order *exparte*. The email id of the tax consultant was mentioned on the portal. It is true that the notices were sent on the email id of the consultant who at that point of time has left the work of the assessee due to some dispute with the assessee, and therefore the consultant did not inform the assessee about the notices of hearing. We, therefore, find merit in the explanation of the *ld.* counsel for the assessee that there was no malafide intention in not appearing before the AO. We find during the course of proceedings before the CIT(A)/NFAC a written submission was furnished, wherein apart from other submissions, it was also contended that an amount of Rs.33,15,000/- was considered twice by the AO, but the CIT(A)/NFAC was not convinced with the arguments of the appellant and accordingly confirmed the addition. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of AO with the direction to grant one more opportunity to the assessee to substantiate his case by filing requisite details. The AO shall decide the issue as per fact & law after giving due opportunity of being heard to the assessee. The

assessee is also hereby directed to submit the details before the AO on the appointed day without seeking any adjournment under any pretext failing which the AO is at liberty to pass appropriate order as per law. We hold & direct accordingly. The appeal filed by the assessee is accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Open Court at the time of hearing itself, i.e. on 17.04.2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th April, 2024.
Sujeet/Satish

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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