

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.588/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

The Muslim Education Soc., Saitavade, Ratnagiri- 415613 PAN : AAATT8659C	Vs.	ITO, Ratnagiri.
Appellant		Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Manoj Tripathi
Date of hearing : 30.04.2024
Date of pronouncement : 16.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 11.03.2024 passed by Ld ADDL/JCIT(A)-2, Ahmedabad for the assessment year 2014-15.

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

"1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition by the A.O. u/s 69A of Rs. 13,17,470/- as unexplained money in respect of cash deposited in bank account, in spite of the appellant having a clear explanation for the source of investment.

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing."

3. The facts, in brief are, that the assessee is an educational society namely Muslim Education Society, has not furnished return of income for Asstt Year 2014-15. On the basis of information that the assessee deposited cash of Rs.11,62,022/- in the accounts maintained with central bank of India , the AO had reason to believe within the meaning of section 147 of the IT Act that the assessee's income chargeable to tax to the extent of Rs.1,00,000/- or more for the Asstt Year 2014-15 had escaped assessment by reason of the failure on the part of the assessee to make a return u/s 139(1) of the IT Act. Therefore a notice u/s 148 was issued after recording reasons in writing & after obtaining approval of competent authority. Notices u/s 142(1) were also issued. The assessee furnished return declaring income of Rs.2,45,280/-. Accordingly notice u/s 143(2) was issued & served upon him. On the basis of bank statement obtained u/s 133(6) of the IT Act it was seen that the assessee made cash deposit of Rs.13,17,470/- in the bank account maintained with Central Bank of India. Further notice u/s 142(1) was issued asking amongst other things, explanation as to the nature & source of cash deposit of Rs.13,17,470/-. But the assessee instead asked 2 - 3 more days to furnish reply. Even after further six days the assessee did not complied with the said notice. The AO

therefore added Rs.13,17,470/- as unexplained money u/s 69A of the IT Act & passed the assessment order dated 26-12-2019 u/s 143(3)/147 of the IT Act by determining taxable income at Rs.15,62,750/-.

4. Being aggrieved the assessee preferred first appeal. Since the appellant assessee remained absent even after various opportunities provided to furnish reply in support of the grounds of appeal, vide order dated 11-03-2024 Addl/JCIT(A)- 2, Ahmedabad dismissed the appeal of the assessee by observing as under :-

“6.11 In view of the facts and legal position discussed above, it is presumed that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus has not discharged the onus to substantiate the grounds. It is seen that no written submission filed till date despite multiple opportunities. In view of the lack of prosecution by the appellant, I proceed to decide the appeal in view of the discussion made above.

7. The appellant has failed to furnish any material evidences or documents or even the written submission either with its appeal or during the appellate proceedings to substantiate the grounds of appeal. In view of the discussions in the preceding paras, the clear position of law and respectfully relying upon the judgments of Hon'ble High Courts as above I do not find merit in the grounds of appeal. Therefore, the appeal is dismissed on this count.

8. In the result, appeal of the appellant is dismissed in above terms.”

5. Against this order the appellant assessee is in appeal before this Tribunal.

6. LD AR of the assessee submitted before the bench that the assessee is an educational society running an unaided school namely New Era English Medium School. The school is providing various facilities to the students & therefore accepted various types of fees from the students such as Book Fees, Uniform Fees, Term Fees, School Fees & Donations & Zakat funds receipt from public at large & the same was deposited in the bank, therefore the cash deposit is fully explained. Regarding non appearance before LD ADDL/JCIT(A)-2, Ahmedabad, it was submitted that the notices were issued electronically through ITBA & no email or physical notice was sent to the assessee. The assessee was not a regular income tax assessee & could not see notices sent through ITBA & therefore there was no mala-fide intention in not appearing before the ADDL/JCIT(A)-2, Ahmedabad for hearing of appeal. LD counsel of the assessee also relied on decision of coordinate bench of this Tribunal in ITA No.84/CHD/2023 order dated 23-08-2023 passed in the case of Sant Kabir Mahasabha vs. CIT(E) wherein the *ex-parte* order was set-a-side by observing as under :-

“5. We have heard the rival contentions. Merely uploading of information about the date of hearing on the Income Tax Portal is not an effective service of notice as per the provisions of Section 282 of the Income Tax Act. The impugned order of ld. CIT(E) is, therefore, not sustainable in the eyes of law. The same is hereby set aside with a

direction to the ld. CIT(E) to decide the appeal of the assessee afresh after giving proper and adequate opportunity to the assessee to present its case. The ld. CIT(E) will serve notice of hearing through physical mode as well as through electronic mode upon the assessee.”

7. Apart from above LD counsel of the assessee also relied on a Judgement of Hon’ble Punjab & Haryana High Court at Chandigarh in CWP-21028-2023(O & M) order dated 04-03-2024, wherein the Hon’ble High Court was pleased to hold that the service of notice must be in accordance with the provisions of section 282 of the IT Act & it was further observed by Hon’ble High Court that the communication cannot be presumed by placing notice on the e-portal. It was therefore requested before the bench to set-a-side the order passed by LD ADDL/JCIT(A)-2, Ahmedabad & remand the matter back to the file of LD ADDL/JCIT(A)-2, Ahmedabad to provide another opportunity of hearing to the appellant, to submit his explanation with regard to the grounds of appeal.

8. The LD DR on the other hand supported the order passed by subordinate authorities but could not controvert the fact that the notices were sent only through ITBA portal.

9. We have heard LD counsels from both the sides & perused the material available on the record. We find that the notices of appeal hearing were sent through ITBA portal only & neither physical

notice nor on email was sent to the appellant regarding dates of hearing. In such situation the service of notice cannot be deemed to be complete & therefore we find force in the argument of the counsel of the assessee that dates of hearing were not known to the assessee & there was no mala-fide intention in not appearing before LD ADDL/JCIT(A)-2, Ahmedabad. Under these circumstances, we deem it proper to set-a-side the order passed by LD ADDL/JCIT(A)-2, Ahmedabad & remand the matter back to the file of LD ADDL/JCIT(A)-2, Ahmedabad to decide the matter a fresh on merits after providing reasonable opportunity of being heard to the assessee. LD ADDL/JCIT(A)-2, Ahmedabad shall decide the appeal as per fact & Law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to submit the details/ explanations in support of the grounds of appeal on merit before LD ADDL/JCIT(A)-2, Ahmedabad on the appointed day without seeking any adjournment under any pretext, failing which LD ADDL/JCIT(A)-2, Ahmedabad is at liberty to pass appropriate orders as per law. We hold & direct accordingly. Thus, the ground of appeal filed by the assessee is accordingly allowed for statistical purposes.

10. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 16th day of May, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th May, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) ADDL/JCIT (A)-2, Ahmedabad.
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.