

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

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.316/PUN/2024
Assessment Year : 2015-16**

Shri Devendra Swarupchand Shingavi 161/162, Dwarika Apts, Mukund Nagar, Pune – 411037	Vs.	CIT(A), Pune -11, Pune
PAN : AULPS9948J		
(Appellant)		(Respondent)

Assessee by : Shri B C Malakar
Department by : Shri Uma Shankar Prasad
Date of hearing : 20-05-2024
Date of pronouncement : 20-05-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the *ex-parte* order dated 20.12.2023 of the CIT(A), Pune-11 relating to assessment year 2015-16.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of CIT(A) in confirming the penalty of Rs.3,13,946/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts of the case, in brief, are that the assessee is an individual and derives income from rental income from house property and income from other sources. A search and seizure action was conducted u/s 132 of the Act in the case of assessee

on 04.11.2017. In response to notice issued u/s 153A of the Act on 19.01.2018, the assessee filed his return of income on 11.10.2019 declaring total income of Rs.15,99,340/-. The Assessing Officer completed the assessment u/s 153A r.w.s. 143(3) on 31.12.2019 accepting the returned income.

4. The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee and observing that the assessee was a non filer of tax return since assessment year 2011-12 onwards and such rental income was disclosed by the assessee only due to the search action u/s 132 carried out on him, the Assessing Officer levied penalty of Rs.3,13,946/- u/s 271(1)(c) being 100% of the tax sought to be evaded.

5. Since the assessee did not appear before the CIT(A) despite number of opportunities granted by him, the Id. CIT(A) relying on the decision of Hon'ble Supreme Court in the case of MAK Data (P) Limited vs. CIT 38 taxmann.com 448 (SC) and the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Dr. Vandana Gupta vide ITA No.219/2017 (Delhi HC) upheld the action of the Assessing Officer.

6. Aggrieved with such order of CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee submitted that due to prolonged suffering from major depressive disorder with psychotic features, the assessee was not able to appear before the CIT(A) and the Ld. CIT(A) without affording reasonable opportunity of being heard and ignoring the various decisions relied on by the assessee cited in the statement of facts, dismissed the appeal which is not correct.

8. The Ld. Counsel for the assessee specifically drew the attention of the Bench to the following decisions cited in the statement of facts filed before the CIT(A):

1. *Kirit Dahyabhai Patel vs. ACIT (2017) 80 taxmann.com 162 (Gujarat HC)*
2. *PCIT-19, Delhi vs. Neeraj Jindal (2017) 79 taxmann.com 96 (Delhi), (2017) 393 ITR 1 (Delhi)*
3. *Sureshbhai Gordhanbhai Prajapati Vs. DCIT, ITA No.526/Ahd/2018, date of order 19/09/2019 for A.Y. 2012-13.*
4. *Vithalbhai Gordhanbhai Prajapati Vs. DCIT Central Circle – 1(2), Ahmedabad, ITA No.4/Ahd/2018, date of order 19/07/2019 for A.Y.2008-09*
5. *M/s. OSE Infrastructure Ltd. Vs. ACIT, ITA No.5891 to 5895/Del/2016 dated 14/08/2018 (ITAT Delhi)*
6. *Dr. Subhash Chandra Jena vs. ACIT, ITA Nos.40 to 45/CTK/2019, Order dated 08/01/2020 for AYs 2010-11 to 2015-16.*
7. *Rishabh Buildwell Vs. DCIT ITA No.6880 and 6881/DEL/2018, order dated 03/07/2019 AYs 2011-12 & 2013-14 (Delhi ITAT)*
8. *Mansukhbhai R. Sorathia & Ors. IT(SS)A No.46/RJT/2014 (Rajkot Tribunal)*
9. *Prem Arora Vs. Dy.CIT 149 TTJ (Delhi) 590 (Delhi – Tribunal) (2012) 24 taxmann.com 260 (Delhi ITAT)*

9. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case before the CIT(A).

10. The Ld. DR on the other hand, strongly opposed the arguments advanced by the Ld. Counsel for the assessee. Referring to the order of CIT(A), he submitted that as many as six opportunities were granted to the assessee and the assessee neither responded to the notices so issued nor filed any adjournment application before the CIT(A) and therefore, the Ld. CIT(A) had no other option but to decide the appeal on the basis of material available on record. He submitted that the CIT(A) has also given reasoned order relying on various decisions and decided the issue on merits. Therefore, the penalty levied by the Assessing Officer and sustained by the CIT(A) should be upheld.

11. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. CIT(A). It is an admitted fact that despite six opportunities granted by the CIT(A), there was no response from the side of the assessee for which the CIT(A) was constrained to pass the ex-parte order. It is also an admitted fact that the assessee in the statement of facts filed before the CIT(A) had relied on various decisions to support his case but the Ld. CIT(A) has not at all considered the same. It is the submission of the Ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate his case before the CIT(A). 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 CIT(A) with a direction to grant one final opportunity to the assessee to substantiate his case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and submit the requisite details on the

appointed date without seeking any adjournment under any pretext, failing which the CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court at the time of hearing itself i.e. 20th of May, 2024.

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated :20th May, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	20.05.2024		Sr. PS/PS
2	Draft placed before author	20.05.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			