

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.628/PUN/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Ramnath Dilip Garade, At Post Parandawadi, Sai Chowk Main, Talegaon Dabhade, Maval, Pune 410507 Maharashtra PAN : APXPG0600A	Vs.	ITO, Ward-9(5), Pune
Appellant		Respondent

Assessee by : Shri Kishor B. Phadke  
Revenue by : Shri B.S. Rajpurohit

Date of hearing : 22.05.2024  
Date of pronouncement : 27.05.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi (NFAC) dated 31.01.2024 for the assessment year 2012-13.

2. Brief facts of the case are as under :

The appellant is an individual deriving income from Agricultural activities. No Return of Income for the A.Y. 2012-13 was filed under the provisions of section 139(1) of the Income-tax Act, 1961 (hereinafter referred to as 'The Act'). As per the AIR

information available on ITS data, the Assessing Officer (AO) found that the appellant had made cash deposits of Rs.17,94,760/- in Punjab & Maharashtra Co-operative Bank Ltd. It was also found that the appellant made cash credit entries of Rs.10,75,928/- in Punjab & Maharashtra Co-operative Bank Ltd. Thus, the AO formed an opinion that income escaped assessment of tax, accordingly issued notice u/s.148 through ITBA portal on 30.03.2019. The appellant neither complied with the notice issued u/s.148 nor with the notice u/s.142(1) of the Income-tax Act, 1961. In the circumstances, the AO was constrained to complete the assessment u/s.144 r.w.s.147 vide order dated 02.12.2019 by assessing to tax the cash deposits made in the Punjab & Maharashtra Co-operative Bank Ltd. amounting to Rs.17,94,760/- and unexplained cash credit of Rs.10,75,928/- by recording a finding that the appellant had failed to make any submission explaining the source of cash deposit/other credit entries.

3. Being aggrieved by the above assessment order, an appeal was filed before the CIT(A) who vide impugned order confirmed the addition of Rs. 17,94,760/- as unexplained, however, deleted the addition of Rs.10,75,928/- treating the same as explained.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

5. The Id. Counsel submits that the appellant is a farmer and could not cause appearance before the lower authorities owing to his father's ill-health. Therefore, the appellant could not submit relevant documents substantiating the sources of cash deposits made. Further, the Id. Counsel submits that the notices served through ITBA portal were not valid. He however submits that given an opportunity the appellant is now in a position to submit the relevant documents explaining the source of cash deposits, thus prayed for remanding the matter to the file of AO.

6. On the other hand, the Id. DR supported the impugned order.

7. I heard the rival submissions and carefully perused the relevant material on record. Admittedly, the appellant could not cause any appearance before the AO and the assessment in this case was completed u/s.144 r.w.s.147 of the Act. In the present case, it would be evident from the impugned orders that notices by AO were issued to the appellant through ITBA portal. In my considered opinion, it is not a valid method and manner of service of notice as specified under the provisions of section 282(1) of the Act. Therefore, it is crystal clear that the notices were not served

upon the appellant. I would like to make a reference to a decision of the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provision of 282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

*“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :*

.....  
 .....

*8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.*

*9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under*

*section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.*

*10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.”*

In view of the above precedent and in the peculiar circumstances of the present case, I am of the considered opinion that it is a fit case to remand the matter to the file of AO for deciding the issue *denovo*, providing an opportunity of hearing to the appellant in accordance with law. The impugned order is therefore set-aside. The appellant is at liberty to file any evidence as deemed expedient, in the interest of justice.

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

Order pronounced on this 27<sup>th</sup> day of May, 2024.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> May, 2024.  
*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, "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.