

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,
ITA No.2907/Mum/2023
(A.Y. 2011-12)

Sudarshan Anand Sheregar, D-1104, Yashwant Empire, Near dmart, Off Railway lines, Vasai Virar Link Road, Vasai East, Maharashtra – 401209	Vs.	DCIT, Central Circle-1 Room No.10, A Wing, 6 th Floor, Ashar I.T. Park, Road No. 16-Z Wagle Industrial Estate Thane (W) - 400604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AZDPS1479H		
Appellant	..	Respondent

Appellant by :	Dnyanesh Patade
Respondent by :	Krishna Kumar

Date of Hearing	09.05.2024
Date of Pronouncement	17.05.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2011-12. The assessee has raised the following grounds before us:

“Ground 1:

- *The Assessing officer Central Circle 1 Thane is erred in passing the assessment order u/s 144 in spite of various details and documents available on record and raised the present high peach demand.*
- *Various additions relating to the cash transaction/ deposit made by assessee in his bank account were made. However, the said transaction were relating to the Business of the assessee and were reflecting in the return filed by the assessee.*
- *Records (Notes by assessee in Diary) of drawing made by the assessee from the business were added back as u/s 69C.*
- *Clause wise additions and facts have been discussed Part B and Part C of this letter.*

Ground 2:

- *Ld. Assessing Officer has erred in law and on facts in making above the additions and disallowance without giving an adequate opportunity of being heard to the assessee to prove the genuineness of his case*
- *Since due to the search and seizure during the year 2018-19 and due to the adverse impact on mental health and depression assessee was unable to comply to all the notices issued and subsequently order was passed.*

Ground 3:

- *Ld. Assessing Officer has erred in law by unjust and unfair application of Section 69A r.w.s 115BBE, and not giving effect of Chapter IV of the Income-tax Act, in computing the income of the assessee.*

Ground 4:

- *Further assessee also prays for addition, deletion, modification or an alteration or to withdraw any grounds at the time of hearing.”*

2. There was a delay of 54 days in filing this appeal vide affidavit dated 11.08.2023, the assessee submitted as under:

“BEFORE THE INCOME TAX APPELLATE TRIBUNAL THE MATTER OF SUDARSHAN ANAND SHEREGAR FOR THE ASSESSMENT YEAR 2011-12 TO 2016-17

Affidavit of Mr. Sudarshan Anand Sheregar aged 40 years.

I had received appeal order for the A.Y. 2011-12 to 2016-17.

That I was unwell due to bronchitis and was under the treatment of doctor for the same, that My Court Proceedings relating to family matter was also going on Ahmedabad Court, family court Gujarat and was in its final stage. So I was not able to focus due to family pressure as well as I did not had the money to pay the Tribunal charges as well as any professional fees due to Financial problem. That due to the mental pressure and financial constrict which I got delay in filing the Appeal at Income Tax Appellate Tribunal.

I, the above named do hereby verify that the contents of this memorandum of appeal from para 1 to 4 are true to the best of my knowledge and belief.

Sudarshan Anand Sheregar.”

3. Heard both the sides and perused the material on record. In view of the facts and circumstances as reported in the affidavit as reproduced above we consider that there appears to be a bonafide reason for delay in filing this appeal before the ITAT. Therefore, we condone the delay of 54 days of filing this appeal in order to decide the case on merit.

4. Fact in brief is that search and seizure action u/s 132 was carried out on the business as well as residential premises of the Gawade Group of cases, including the assessee along with other individual/business associates on 15.12.2016. In response to the notice issued u/s 153A of the Act the assessee has filed his return of income for assessment year 2011-12 on 30.12.2017 declaring total income at Rs.1,59,920/-. During the course of assessment proceedings the assessing officer has issued various notices u/s 142(1) of the Act and show cause notices, however, the assessee has not made any compliance before the assessing officer. Therefore, AO has completed the assessment ex-parte u/s 144 of the Act. The assessing officer has made addition of Rs.37,500/- u/s 69C of the Act on account of unexplained expenditure on the basis of notings on a diary seized as bundle no.1

5. The assessing officer has also made addition of Rs.9,15,800/- as unaccounted income on the receipts recorded in bundle no.4 seized during the search.

6. The assessing officer has also on perusal of the bank statement of various banks of the assessee found that assessee had deposited cash in his bank account, therefore, addition of Rs.30,000/- on account of unexplained cash was made to the total income of the assessee u/s 69A r.w.s 115BBE of the Act.

7. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has restricted the disallowance to the extent of Rs.10,000/- in respect of cash deposited in the bank account of the assessee and has dismissed the appeal of the assessee on the addition of Rs. 37,500/- and Rs.9,15,800/- holding that assessee has neither made any comments to the remand report received from the assessing officer nor made compliance before the AO during the remand proceedings.

8. Heard both the sides and perused the material on record. The assessing officer has completed assessment u/s 144 r.w.s 153A of the Act since the assessee has not made compliance with various notices issued during the course of assessment proceedings by the assessing officer. The assessing officer has added Rs.37,500/- u/s 69C of the Act on account of unexplained expenditure on the basis of notings on a diary seized during the search. The assessing officer has also made addition of Rs.9,15,800/- as unaccounted income of the receipts recorded in the diary found during the course of search. Further the AO has also made addition of Rs.30,000/- u/s 69A of the Income Tax Act being unexplained cash deposit made in the bank account of the assessee. Before the Id. CIT(A) the assessee filed additional evidences stating that due to unavoidable circumstances he could not furnish the same before the assessing officer such as Hotel Sai Plaza Business License details, Hotel Sai Plaza Sale agreement, the copy of bank statement for the year, copy of balance sheet and profit and loss account for the year and copy of I.T. Return form etc. The CIT(A) has admitted the additional evidences under Rule 46A of the I.T Rule and called a remand report from the assessing officer. The Id. CIT(A) has received the remand report from the assessing officer and also called comments of the assessee on the remand report submitted by the assessing officer. However, the assessee has not filed any response before the Id. CIT(A) relating to the remand report submitted by the assessing officer. The Id. CIT(A) also stated that assessee has failed to substantiate that the said diary seized during the course of search was belonged to Hotel Sai Plaza and also not filed any confirmation from M/s Jagdish Amin and M/s Ganesh Vithal (claimed to be owner of Hotel Sai Plaza) and their confirmation that the said diary belonged to them. We find that in the appeal paper the assessee has filed one affidavit dated 26.05.2023 of M/s Jagdish Raj Amin stating that he was the partner of Hotel Sai Plaza

and stated that they had incurred huge loss in the business. Therefore, they planned to sell the property and the hotel business for the year 2011-12 and stated that the business was in loss because of their manager who was handling the business affairs. Therefore, they have appointed Sudarshan Anand Sheregar the assessee to recheck and give exact figures of the business transaction and also stated in the affidavit that they had given the books for the period of two to three years, sale book, purchase file and many other papers ledger book etc. to the assessee to check the books of accounts. The Id. Counsel also contended before us that the other parties have already shown the income in their hand. After considering the above facts and material on record we consider it appropriate to restore this case to the file of the assessing officer for deciding afresh on merits after verification of the relevant details and documents and materials furnished by the assessee. It is needless to say that observation made by us will not injure or impair the case of the AO and will not cause any prejudice to the defense explanation of the assessee. Needless to say that assessee is at liberty to file the relevant documents and written submission before the AO during the assessment proceedings. The assessee is also directed to make compliance without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.05.2024

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.05.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.