

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos.18/Ind/2024 & 21/Ind/2024
(Assessment Year: 2013-14)

Ankur Agarwal, 26 Mangal Sadan Lily Talkies, Barkheda, Bhopal	Vs.	NFAC Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AFUPA0694R		
Assessee by	Shri Gagan Tiwary, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.05.2024	
Date of Pronouncement	29.05.2024	

O R D E R

Per Vijay Pal Rao, JM :

These two appeals by the assessee are directed against two separate orders of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi both dated 18.09.2023 arising from assessment order passed u/s 147 r.w.s 144 and penalty order u/s 271(1(c)) of Income Tax Act respective for the Assessment Year

2013-14. In the quantum appeal the assessee has raised following grounds of appeals.

1. *That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.*
2. *That the order of the learned lowered authorities passed are unlawful and illegal.*
3. *That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard. Also the Learned CIT (Appeals), National Faceless E-Appeal Centre, was also not justified in not allowing any opportunity before confirming the addition.*
4. *That the various findings of the learned lower authorities are opposed to the facts hence the same may kindly be quashed.*
5. *That on the facts and circumstances of the case the Learned CIT Appeals erred in confirming the addition on account of unexplained expenditure under section 69C Rs.19,33,300/-*
6. *That the above grounds are independent to each other.*

2. At the time of hearing Ld. AR submitted that Ld. A.O has made an addition of entire payment of credit card while framing the assessment u/s 144 of the Income Tax Act. The assessee could not make representation before the Ld. A.O due to the change of address as the assessee was transferred to Indore for employment purpose whereas the notices were issued by the Ld. A.O at Bhopal address. He has further submitted that Ld.CIT(A) has also dismissed the appeal of the assessee by passing the impugned, ex-party order when there was no response on behalf of the assessee to the notices issued by the Ld. CIT(A). He has also submitted that

due to communication gap the assessee could not receive the notices of Ld. CIT(A). Further the assessee has not given sufficient opportunity to furnish the relevant details, explaining the source of payment of credit card expenses. He has pointed out that the case related to Financial Year 2012-13 and the bank statements for the relevant period is not readily available despite best efforts of the assessee. The Ld. AR has pleaded that the assessee may be given one more opportunity to explain the source of credit card expenses with relevant supporting evidences. Hence, he has prayed that the impugned order of Ld. CIT(A) may be aside and matter be remanded to the record of Ld. A.O for fresh adjudication.

3. On the other hand Ld. DR has not strongly opposed to the prayer of the assessee for remand of the matter to jurisdictional A.O for fresh deciding the same after verification of record explaining the source of credit card expenses.

4. We have considered the rival submissions as well as relevant material on record. The Ld. A.O issued notice u/s 148 for assessment of escaped income of cash payment against credit card bills to the tune of Rs.19,33,302/- in respect of Standard Chartered

Bank, State Bank of India, HDFC Bank and Citi Bank. There was no response on behalf of the assessee to the notice issued by the Ld. A.O on 04.05.2020 u/s 148 of the Act as well as subsequent notices issued u/s 142(1) of the Income Tax Act. Since the assessee did not file any reply to the notice issued u/s 148 of the Income Tax Act and there was no compliance to the notice issued u/s 142(1), the Ld. A.O proceeded to frame assessment u/s 144 on total income of Rs.19,33,300/-. The assessee challenged the action of the Ld. A.O before Ld. CIT(A) and explained the reasons for non-participation in the assessment proceedings that the notices issued by the Ld. A.O at old address of Bhopal whereas he shifted to Indore on transfer of employment. The Ld. CIT(A) issued various notices as reported in para-4 of the impugned order is as under:-

4. Notice(s) u/s 250 of the Income Tax Act, 1961 were issued to the appellant 10.07.2023, 19.07.2023, 27.07.2023, 07.08.2023, 14.08.2023 & 11.09.2023 fixing the date for filing details/submissions on 17.07.2023, 26.07.2023, 04.08.2023, 14.07.2023, 28.08,2023 & 18.09.2023 respectively. All these notices were duly served electronically on to the registered e-mail ID of the appellant and the status of his notices on ITBA system is showing as "Delivered". However, the appellant has not responded to any of the hearing notices.

5. Since there was no response to the notices issued by the Ld. CIT(A) therefore the addition made by the Ld. A.O on this account was confirmed and the appeal of the assessee was dismissed. Thus

it is a case of addition made by the Ld. A.O for want of explanation as well as relevant details and evidences which was confirmed by the Ld. CIT(A) as the assessee failed to submit any explanation and details despite various notices. It is pertinent to note that initially the appeal of the assessee was filed before concerned CIT(A) and subsequently the appeal was migrated to the National Faceless Appeal Centre, Delhi. The Ld. A.O has made the addition of the entire payment of credit card expenses which has been confirmed by Ld. CIT(A) for want of any detail explaining the source of payment on behalf of the assessee. Ld. AR of the assessee pleaded that the assessee will submit the relevant details and explanation for the source of payment of credit card expenses. Accordingly in the facts and circumstances of the case as well as in the interest of justice, we are of the considered opinion that the assessee be given one more opportunity to explain the source of payment of credit card expenses alongwith supporting evidences. Hence the impugned order of the Ld. CIT(A) is set aside and the matter is remanded to the file of Ld. A.O for fresh adjudication after proper verification and examination of the relevant details and explanation to be furnished by the assessee.

6. In the penalty appeal the assessee has raised following grounds:-

1. *That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.*

2. *That the order of the learned lowered authorities passed are unlawful and illegal.*

3. *That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard. Also the Learned CIT (Appeals), National Faceless E-Appeal Centre, was also not justified in not allowing any opportunity before confirming the addition.*

4. *That the various findings of the learned lower authorities are opposed to the facts hence the same may kindly be quashed.*

5. *That on the facts and circumstances of the case the Learned CIT Appeals erred in confirming the addition on account of unexplained expenditure under section 271(1)(c) at Rs.4,22,290/-*

6. *That the above grounds are independent to each other.*

7. Since the matter in quantum appeal is remanded to the file of Ld. A.O for fresh adjudication therefore, the penalty levied by the Ld. A.O against the original addition would not survive. Accordingly the impugned order of the Ld. CIT(A) is set aside and the matter is remanded to the record of the Ld. A.O for fresh adjudication of levy of penalty as per the outcome of the remand proceeding in the quantum.

8. Hence, both the appeals of the assessee arising from assessment order as well as Section 147 144 r.w.s 144 as well as penalty order passed u/s 271(1)(c) of the Income Tax Act are allowed for statistical purpose.

9. In the result the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 29.05.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 29.05.2024

Dev/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*