

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

BEFORE SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.662/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Sunil Landmark LLP, 562/9, Opp. Savarkar Bhavan, Shivajinagar, Pune- 411005. PAN : ACZFS2579P	Vs.	ACIT, Circle-2, Pune.
Appellant		Respondent

Assessee by : Shri Suhas Bora
Revenue by : Shri Sourabh Nayak

Date of hearing : 31.05.2024
Date of pronouncement : 11.06.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 13.02.2024 passed by Ld CIT(A)/NFAC for the assessment year 2017-18.

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

- "1. The learned CIT(A) has erred in confirming the addition made by the AO without considering detailed submissions made by the appellant in respect of Ground No.1 to 5 and deciding the case in summary manner without any speaking order on the legal issues raised which goes to root of the assessment proceedings by deciding Ground No. 1 and 4 as general grounds.*
- 2. The learned CIT(A) has failed to appreciate that the assessment order passed by the AO is bad in law as same has been passed without considering the submission made by the appellant firm within appointed date to the show-cause notice issued by the AO*

and erred in making the addition on the ground that the appellant firm did not file any reply/response on the appointed date.

3. *The learned CIT(A) has erred in not appreciating the fact that the learned AO has made an addition of Rs.3,14,62,928/- U/Sec.68 of the Act, disregarding the submissions of the appellant firm on the ground that the appellant has failed to provide any explanation and has failed to discharge the onus cast in this regard.*
4. *The learned CIT(A) has further erred in not appreciating the following facts while confirming the addition U/Sec.68 of the Act:*
 - a. *The transaction was carried out through proper banking channels.*
 - b. *The assessee has submitted books of accounts and account extract of the parties.*
 - c. *All the parties are assessed to tax and have given confirmation letters.*
 - d. *In respect of booking advances against the flats, these are not loans or advances which can be considered U/Sec.68 of the Act.*
5. *The learned CIT(A) has further failed to appreciate that the appellant has proved the identity, capacity and genuineness of loans,*
6. *The learned CIT(A) while restricting the adhoc addition at Rs.5,00,000/- as unverifiable expenses has erred in not appreciating the fact that the appellant has made detailed submissions in this respect along with all the supporting documents which have not been appreciated by the learned AO as well as the learned CIT(A).*
7. *The learned CIT(A) has failed to appreciate that the appellant has provided all the supporting as additional evidences as per Rule 46A of the Income Tax Rules.*
8. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. The facts, in brief, are, that the assessee is a firm engaged in the business of real estate, builders and developers & filed original return of income for Assessment Year 2017-18 on 27.10.2017 declaring taxable income of Rs.1,31,11,220/-. Subsequently, the

appellant filed revised return of income on 18.05.2018 declaring taxable income at Rs.1,31,11,220/-. The said return of income was selected for scrutiny under CASS and accordingly, notice u/s 143(2) of the IT Act was issued to the assessee. Thereafter, notices u/s 142(1) of the IT Act were issued and served upon the assessee. In reply, the assessee has submitted documents/submissions from time to time which were examined and verified by the AO. Further, the AO issued show-cause notice on 29.11.2019 asking the appellant to file detailed reply to said show cause notice on or before 05.12.2019. The assessee has complied with the said show-cause notice on 04.12.2019. However, the AO has not considered the reply of the assessee and proceeded to compute the total income at Rs.4,55,74,150/- by making addition of Rs.3,14,62,928/- on account of unexplained cash credits u/s 68 of the IT Act. The Assessing Officer further made addition of Rs.10,00,000/- on account of unverifiable expenses.

4. Being aggrieved with the above action of the Assessing Officer, an appeal was preferred before Ld. CIT(A)/NFAC, who vide impugned order dated 13-02-2024 partly allowed the appeal of the assessee. While doing so, Ld. CIT(A)/NFAC confirmed the addition of Rs.3,14,62,928/- made by the Assessing Officer u/s 68 of the IT Act on the ground that the assessee had failed to provide

any explanation and also failed to discharge the onus cast upon him. As regards to the addition of Rs.10,00,000/- Ld. CIT(A)/NFAC restricted the addition to the tune of Rs.5,00,000/- on the ground that the assessee has failed to produce the bills/vouchers for verification.

5. Being aggrieved with the above order dated 13-02-2024 passed by Ld. CIT(A)/NFAC, the appellant is in appeal before this Tribunal.

6. LD Counsel of the assessee submitted before us that neither LD CIT(A)/NFAC nor the Assessing Officer considered the replies furnished before them. Ld. counsel of the assessee in a paper book produced before us, the copy of e-acknowledgements as well as copy of manual acknowledgements of reply furnished before the AO as well as before LD CIT(A)/NFAC. In the light of all these documents it was requested before the bench to set-a-side the orders passed by both the authorities & further requested to restore the matter back to the file of the Assessing Officer to pass the assessment order afresh after providing reasonable opportunity of hearing to the assessee.

7. LD DR supported the orders passed by LD CIT(A)/NFAC.

8. We have heard LD counsels from both the sides & perused the material available on record. We find that the AO issued a show

cause notice on 29-11-2019 fixing the date of hearing to 05-12-2019. The assessee in response to above show cause notice, filed his e-reply on 04-12-2019, wherein the desired information was furnished in detail. The copy of reply with documents & copy of e-acknowledgement dated 04-12-2019 is produced before us in the paper book page nos.54 to 82. Therefore we are satisfied that the Assessing Officer has not considered the detailed on-line e-reply furnished by the assessee, for the reasons best known to him. The same case we finds with LD CIT(A)/NFAC also. It is evident from the assessee's paper book page nos.35 to 53 that the assessee is continuously filing reply before LD CIT(A)/NFAC. We find that not less than 3 times the assessee furnished online e-reply as well as 1 (one) manual reply but for no use. The manual reply was filed on 08-07-2020, e-reply were filed on 28-01-2021, 05-11-2022 & 02-02-2024 respectively. We also find that LD CIT(A)/NFAC dismissed the grounds of appeal merely on the basis of the wrong fact that the assessee has not furnished reply to the show cause notice dated 29-11-2019. In fact the assessee filed reply on 04.12.2019 to the show cause notice dated 29-11-2019 which was not considered by the AO & this unfortunate addition was made. Therefore we find force in the arguments of the counsel of the assessee & considering the totality of facts & in the interest of justice

we deem it appropriate to set-a-side the orders passed by both the subordinate authorities & remand the matter back to the file of the Assessing Officer to pass assessment order afresh after providing reasonable opportunity of hearing to the assessee. The Assessing Officer shall pass assessment order as per facts & Law, after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to respond & appear on the appointed dates of hearing before the Assessing Officer. We hold & direct accordingly. Thus, the grounds of appeal filed by the assessee in the present appeal are accordingly allowed.

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

Order pronounced in the open Court on 11th day of June, 2024.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th June, 2024.

Sujeet

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, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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