

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.820/PUN/2024

निर्धारण वर्ष / Assessment Year : 2014-15

Jayamitra Suna, Modipara, Khetrajpur, Daldalipara, Sambalpur, Odisha – 768002 PAN : AEIPC1149G	Vs.	ITO, Ward-1, Panvel
Appellant		Respondent

Assessee by : Shri Dinesh Nair  
Revenue by : Shri Abdesb Kumar Jha

Date of hearing : 11.06.2024  
Date of pronouncement : 11.06.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 05.02.2024 for the assessment year 2014-15.

2. Brief facts of the case are as under :

The appellant is an individual and non-resident Indian deriving income under the head 'Income from other sources'. No regular return of income for the A.Y. 2014-15 under the provisions of section 139(1) was filed by the assessee. Subsequently, based on the information available on ITBA portal that the assessee purchased immovable property valued at Rs.4,59,83,388/-, made time deposit of Rs.5,25,434/-, the Assessing Officer (AO) formed opinion that income escaped assessment to tax. Accordingly, a notice u/s.148 was issued to

the assessee on 12.04.2021, placing reliance on the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Ashish Agrawal in Civil Appeal No.3005/2022, the AO proceeded to frame the assessment u/s.147 of the Act. Since the assessee had failed to substantiate the sources for time deposit, the AO made addition of Rs.5,25,434/-. He also made addition of Rs.34,49,952/- for failure of the assessee to explain the source for the investment in the immovable property.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide impugned order confirmed the action of the AO for non-prosecution.

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

5. I heard the rival submissions and perused the relevant material on record. At the outset, on going through the orders of the lower authorities, I find that in the instant case the hearing notices were sent through ITBA portal by the Assessing Officer. As a result, the assessment came to be made u/s.144. 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. To fortify my view, I would like to make a reference to a decision rendered by 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 provisions 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 legal position, I am of the considered opinion that the notice of hearing was not served properly to the appellant.

6. Furthermore, I find the Id. CIT(A) without discussing anything on merits of the controversy of the additions made on account of fixed deposit and purchase of immovable property, simply dismissed the appeal *in limine*, which is contrary to settled position of law. It is a trite law that the CIT(A) should have dealt with the merits of the issues in appeal, even in the case of an *ex-parte* order. In this regard, reference

is being made to a decision of the Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF) Bombay*/[2017] 297 CTR 614 (Bombay) wherein it was held that CIT(A) is not empowered to dismiss the appeal for non-prosecution.

7. In the light of above discussion, I deem it appropriate to remit the matter to the file of Assessing Officer for *de novo* disposal of the issues in accordance with law. I order accordingly.

8. In the result, the appeal filed by the assessee stands partly allowed for statistical purpose.

Order pronounced on this 11<sup>th</sup> day of June, 2024.

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

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> June, 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.