

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT**  
**AND**  
**MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.02/PUN/2024**  
**निर्धारण वर्ष / Assessment Year : 2013-14**

Income Tax Officer, Ward – 1, Ahmednagar	<b>Vs.</b>	Atul Ashok Parakh, M/s. Ashok Bansilal Parakh, Adate Bazar, Ahmednagar-414001  PAN : AAXPP7881R
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

**CO No.13/PUN/2024**  
**निर्धारण वर्ष / Assessment Year : 2013-14**

Atul Ashok Parakh, M/s. Ashok Bansilal Parakh, Adate Bazar, Ahmednagar-414001  PAN : AAXPP7881R	<b>Vs.</b>	Income Tax Officer, Ward – 1, Ahmednagar
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

Assessee by :	Shri Prasad S. Bhandari
Department by :	Shri Ramnath P. Murkunde
Date of hearing :	22-05-2024
Date of Pronouncement :	21-06-2024

**आदेश / ORDER**

**PER ASTHA CHANDRA, JM :**

The appeal filed by the Revenue and Cross Objection filed by the assessee arise out of order dated 02.11.2023 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi ["CIT(A)/NFAC"] pertaining to Assessment Year ("AY") 2013-14.

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

- “1. Whether on facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs.2,07,42,724/- u/s 69 of the Act on account of unexplained credit by ignoring the fact that during assessment proceedings assessee grossly failed to discharge initial burden of explaining and proving credit entries in bank account.
  2. Whether on facts and circumstances of the case, the Ld. CIT(A) is grossly erred in deleting the addition made by the AO of Rs.2,07,42,724/- u/s 69 of the Act merely on the basis of bank statement provided by the assessee and claiming that the sums were received from the debtors against the sales made on which assessee had earned a meager commission of Rs.62,999/- without any documentary evidence to substantiate the same.
  3. Whether on facts and circumstances of the case, the Ld. CIT(A) is grossly erred in deleting the addition made by the AO u/s 69 of the Act when he himself in his order at para 6.3 has mentioned that the assessee is selling and purchasing the goods SAGO and despite the purchases of the assessee during the year being Rs.2,07,42,724/-, no audit report in Form No.3CD was filed by the assessee which could have substantiate the claim of the assessee.
  4. Whether on facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition on the ground that in the assessee’s case for previous AY i.e. 2012-13, the case was reopened for the similar issue and the explanation of the appellant was accepted by the then AO.
  5. Whether on facts and circumstances of the case, the Ld. CIT(A) is legally justified in ignoring the fact that principle of res-judicata are not applicable to income tax proceedings as each assessment year is a separate event.
  6. Whether on facts and circumstances of the case, the Ld. CIT(A) is legally justified in treating the credit entries in bank a/cs as turnover of the assessee and computing commission income on Rs.2,07,42,724/- @0.514%.”
3. The assessee has raised the following grounds of cross objections:-
- “1. On facts and circumstances of the case and in law, the Ld. Assessing Officer erred in objecting the order of Resp. CIT(A)-NFAC without considering the fact that two notices U/s 148 of the Act were issue on the appellant vide notice dated 22.04.2020 and 31.03.2021 thereby making the assessment order bad in law. Hence, addition made is not justified at all.
  2. On facts and circumstances of the case and in law, the Ld. Assessing Officer erred in objecting the order of Resp. CIT(A)-NFAC without considering the fact that no reasons were provided to the appellant along with the documents replied upon at the time of issue of notice under section 148. Hence, addition made is not justified at all.”
4. Briefly stated the assessee is an individual. He is a partner in the partnership firm M/s. Ashok Bansilal Parakh and M/s. Naman Construction. He filed his return of income for AY 2013-14 on 16.07.2013

declaring income of Rs.4,48,780/-. During the search and seizure action u/s 132 of the Income Tax Act, 1961 (**the "Act"**) in the case of M/s. Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. (**"Society"**) on 26.05.2017, it was found that the assessee had maintained accounts in the Society wherein he had deposited cash of Rs.2,07,42,724/- during the year. Based on the information received from ACIT, Central Range-1(1), Mumbai, the case of the assessee was reopened u/s 147 of the Act and accordingly notice u/s 148 of the Act was issued on 22.04.2020 in response to which the assessee filed return on 26.02.2021 declaring income of Rs.8,37,200/-. Another notice u/s 148 of the Act was issued on 31.03.2021 2020 in response to which the assessee filed return declaring income of Rs.8,37,200/-.

5. During the assessment proceedings the assessee filed his reply in response to notice(s) issued u/s 142(1) of the Act wherein the assessee denied any cash deposit in the said Society except an amount of Rs.100/-. In respect of credit entry other than cash deposit, it was explained to be the receipts from debtors against sales made by the assessee during the year. Detailed extract of cash book along with narration and statement showing details of cash deposit made and detailed ledger extract of the Society along with narration were submitted before the Ld. Assessing Officer (**"AO"**).

6. The explanation of the assessee was not acceptable to the Ld. AO who treated the amount of Rs.2,07,42,724/- as unexplained money and added the same to the income of the assessee u/s 69 of the Act and completed the assessment accordingly on income of Rs.2,15,79,920/- on 29.03.2022 u/s 147 r.w.s. 144B of the Act.

7. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A)/NFAC challenging the validity of reassessment proceedings as also the impugned addition of Rs.2,07,42,724/- u/s 69 of the Act. Before the Ld. CIT(A)/NFAC the assessee made detailed submissions on both the above issues which have been reproduced by the Ld. CIT(A) in his appellate order. On consideration thereof, the Ld. CIT(A)/NFAC held that the Ld. AO has duly followed the necessary procedural formalities for the assessment proceedings. Accordingly, in his view the reopening was valid. In this

context the Ld. CIT(A)/NFAC recorded the following observations and findings :

“5.2 The facts, grounds of the case, chronological events noted in the assessment order and the submissions made by the appellant have been gone through carefully alongwith the relevant case laws. On perusal of the assessment order and the submissions alongwith supporting documents filed by the appellant, it is apparent that there are certain dates and events which are not presented correctly by the AO. First of all, as per the AO, the original return of income was filed on 16/07/2013 declaring total income of Rs.4,48,780/-, whereas, the original return of income was filed in ITR 3 (E-filing Acknowledgement No.:825536150261013) on 26/10/2013 declaring taxable income of Rs. 8,37,200/- against the gross total income of Rs.9,39,792/-. The income referred by the AO pertains to the Firm. M/. Ashok Bansilal Parakh (PAN ;.AAVFA2544A). This very fact was ignored by the AO with the best reason known to him despite it was specifically pointed out by the appellant during the course of the proceedings.

Secondly, there are two notices issued u/s 148 of the Act, First was on 22/04/2020 and second was on 31/03/2021. The reassessment proceedings have been completed by the AO vide his order dated 29/03/2021 (DIN ITBA/AST/S/147/2021-22/1042169157(1)) against which the. present appeal has been preferred, whereas, the reassessment proceedings initiated with the notice dated 22/04/2020 still showing pending in the e-proceedings module and was barred by time on 31/03/2022. Against the 148 notice dated 22/04/2020, the appellant filed his return of income on 26/02/2021 declaring the income of Rs.8,37,200/- and subsequently notices u/s 142(1) of the Act were issued on 25/02/2021, 16/07/2021, 13/08/2021 and 08/10/2021 and the details of these notices were mentioned by the AO in the order. However, no notice u/s 143(2) of the Act has yet been issued in this case. In response to the notice issued u/s 148 of the Act on 31/03/2021, the appellant filed his return of income on 21/09/2021 declaring the income of Rs.8,37,200/- and subsequently notice u/s 143(2) was issued on 18/02/2022.

Thirdly, though the reassessment proceedings have been completed in regards to the notice issued us 148 of the Act dated 31/03/2021, however, the AO referred the details of events in case of the notice Issued u/s 148 or the Act dated 22/04/2020 as is clearly evident in para- 4 of the assessment 'order, wherein, it is noted by the AO as under:-

“4. Since the above stated transactions remained unexplained; accordingly, notice u/s 148 was issued on 22.04.2020 and served upon the assessee to file the return of income within 30 days of the receipt of notice. Against this notice assessee has filed its ITR for the AY 201314 vide ITR dated 26.02.2021 (ROI: Rs.8,37,200/-) and 12.09.2021 (ROI:Rs.8,37,200/-). Further, notice u/s. 142(1) was issued to the assessee vide notices dated 25.02.2021, 16.07.2021, 13.08.2021 & 08.10.2021.

5.3 Thus, from the aforesaid facts and events narrated, it appears that the AO was out of track and was perhaps in a confused state of mind and therefore, he combined the events of two proceedings initiated by issuing two different 148 notices (22/04/2020 & 31/03/2021) and passed a common order wherein, a few events were adopted from the proceedings initiated in 148 notice dated 22/04/2020 and a few from the 148 notice dated 31/03/2021. However, it is observed that the

*AO had issued notices u/s 143(2) and 142(1) of the Act in the case of second 148 proceedings which in my opinion compensate the requirements of the proceedings and subsequently completed the reassessment proceedings with regards to .the said second notice, Thus, in view of the totality of the facts and in my considered opinion, appellant's claim in this regard holds no ground as the necessary procedures were duly followed by the AO prior to completing the reassessment proceedings u/s 147 of the Act, hence the ground nos. 2(a) to 2(e) and 4 of the appeal are treated as dismissed.”*

8. On the issue of addition u/s 69 of the Act, the Ld. CIT(A)/NFAC accepted the explanation offered by the assessee before him and deleted the addition after recording his observations and findings as under :

“6.3 *It is apparent from the facts of the case that the appellant is a partner in the firm namely M/s Ashok Bansilal Parakh (PAN: AAVFA2544A) and earned income 'amounting to Rs.8,72,700/- towards remuneration and interest from the firm and Rs.4,03,901/- as share of profit from the firm besides he was also engaged in earning the commission income from the sale and purchase of good SAGO. The AO reopened the case of the appellant based on the information received from ACIT, Central Range-1 (1), Mumbai herein, it was reported that the appellant had made deposits in the bank accounts of M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. amounting to Rs.2,07,42,724/- during the year under consideration and during the course of the assessment proceedings of M/s. Renuka Mata Multi State Urban Co- operative Credit Society Ltd., the assessee could not prove the source of the same. In view of this, the case of the appellant was reopened u/s 147 of the Act and accordingly notice u/s 148 of the Act was issued on 22/04/2020 requesting the appellant to file his return of income. In response 'to the 148 notice, the appellant filed his return of income on 22/04/2022 and 31/03/2021 declaring total income of Rs.8,37,2001-. Subsequently, the AO issued notices u/s 143(2)/142(1) of the Act calling for various information. The AO has admitted that the appellant had submitted following documentary evidences in para 4 of the assessment order:-*

- *Assessee has income from partnership firm, bank interest, dividend income and sago income from Atul Trading Company against return income filed amounting to Rs.8,37,200/- for the year under consideration.*
- *The assessee is a Partner in the Partnership firm M/s Ashok Bansilal Parakh and M/s Naman Construction.*
- *In respect of cash deposits made during the year, detailed extract of cash book along with narration and statement showing details of cash deposits made.*
- *In respect of credit entries in Renuka Mata Multi State Urban Co-operative Society Limited, we submit that, in this support photocopy of detailed ledger extract of Renuka Prasanstha along with narration is enclosed.*
- *We further submit that there are no cash deposits made if Renuka Mata Multi State Co-op society Ltd., except for an amount of Rs.100/-.*

- *In respect of credit entries other than cash deposit, the same are the receipts from Debtors against sales made by the Assessee during the year."*

6.4 *It is an admitted fact that the appellant had made deposits of Rs.2,07,42,724/- in M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. which was acting as bank during the year under consideration and as per the AO, the appellant's claim that the alleged sum was collected' from the sundry debtors against sales made during the year was not supported with proper evidence. In view of this, the AO invoked the provisions of section 69 of the Act and termed the alleged sum as unexplained money. During the course of the appeal proceedings, it is argued by the appellant that the entire transactions made with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. are recorded in the books of accounts and income thereon was declared in the returns filed in compliance to Sections 139(1) and 148 of the Act. To substantiate this claim, the appellant has submitted copies of the bank statements maintained with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society and ledger extracts of the said account in the books of the appellant. It is further argued that the entire deposits were made through banking transactions and only a sum of Rs.100/- was deposited in cash on 23/06/2012 and on perusal of the bank statements, this very fact is found to be bona-fide. The appellant further claims that commission income earned of Rs.62,999/- against the sales made of Rs.2,05,22,000/- had already been offered for income in the returns filed in compliance to Sections 139(1) and 148 of the Act.*

6.5 *It is further seen from the submissions made by the appellant that the appellant's case for previous AY 2012-13, the case was reopened on the same issue] i.e. deposits made of Rs.1,02,99,148/- with M/s Shri Renuka Mata Multi State, Urban Co-operative Credit Society and the erstwhile jurisdictional assessing officer had accepted the modus operandi of the the business transactions carried but by the appellant with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society by holding in assessment order dated 22/11/2019 as under :*

- “7. *On verification: of submissions of the assessee, it is noticed that the deposit of Rs.1,02,99,148/- in Renuka Mata Multi State Urban Co-op Credit Society Ltd. is majorly out of the sale proceeds of the assessee which is duly accounted in his books of account.*

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9. *Since the assessee has submitted source of deposits amounting to Rs.1,02,99,148/- in Renuka Mata Multi State Urban Co-op. Credit Society Ltd which, was the reason for reopening the scrutiny assessment for AY 2012-13, the returned income filed on 18/11/2019 of Rs.5,10,410/- is accepted.*

6.6 *On considering the arguments/claims backed with the documentary evidences, I am inclined to agree with the appellant's contention. In my opinion, the appellant has able to explain that the alleged credits of Rs.2,07,42,724/- made in the bank account maintained with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society are*

*constituted with, the sale': proceeds received from the customers in the bank .account, and there is no cash component deposited other than Rs.100/- which was deposited on 23/06/2012. It also appears that the AO has ignored the very fact that in the appellant's case for previous AY i.e. 2012-13 the case was reopened for the similar issue and the explanation of the appellant was accepted by the then AO. In view of the entirety of the facts and discussions made, I find no reason in sustaining the addition made of Rs.2,07,42,724/- the AO by u/s 69 of the Act on account of unexplained money and the same is therefore deleted. However, considering the commission earned of Rs.52,909/- offered as income out of the total sales made of Rs.1,02,99,148/- in AY 2012-13, the income stands @ 0.514% of the total sales, applying the same ratio, the income to the tune of Rs.1,06,618/- (0.514%) of total sales of Rs.2,07,42,724/- is added to the total income after reducing the income of Rs.62,999/- which is already declared by the appellant for the year under consideration. Accordingly, AO is directed to make addition of differential amount of Rs.43,619/- (Rs.1,06,618/- - Rs.62,999/-) to the total income of the assessee for the year under consideration.*

9. Dissatisfied by the deletion of addition u/s 69 of the Act by the Ld. CIT(A)/NFAC, the Revenue is in appeal before the Tribunal and all its grounds of appeal relate thereto.

10. The Ld. DR took us through relevant paras of the assessment order and supported the order of Ld. AO. The Ld. AR referred to the finding of the Ld. CIT(A)/NFAC in paras 6.3 and 6.4 and submitted that the Ld. CIT(A)/NFAC has given sound and cogent reasons to delete the impugned addition u/s. 69 of the Act.

11. We have considered the submissions of the Ld. Representatives of the parties and perused the records. It is observed that the assessment of the preceding AY 2012-13 of the assessee had been reopened on the identical ground of deposit of Rs.1,02,99,148/- by the assessee with the said Society and the then Ld. AO accepted the assessee's explanation that the same represented the sale proceeds of the assessee which was duly accounted in the books of account maintained. The copy of the assessment order dated 22.11.2019 for AY 2012-13 is placed at pages 14-16 of the assessee's paper book. If that be so, there is no reason to take a different view on the similar facts and circumstances of the case in the succeeding AY 2013-14 presently under consideration without bringing on record any fresh material. The Ld. CIT(A)/NFAC has recorded finding of fact which could not be assailed by the Ld. DR that the assessee was able to explain the alleged credit of Rs.2,07,42,724/- made in the bank account

maintained with the Society which constituted sale proceeds received from customers in the bank account and that there is no cash component deposited other than Rs.100/- which was deposited on 23.06.2012. We, therefore, find no infirmity in the order of Ld. CIT(A) which we hereby uphold and resultantly reject the appeal of the Revenue.

12. The Cross Objection filed by the assessee is against the findings of the Ld CIT(A)/NFAC sustaining the validity of the reopening of the case under section 147 of the Act. However, before us the Ld. AR did not advance any argument to enable us to take a view different from that of the Ld. CIT(A)/NFAC. We, therefore dismiss the grounds of cross objection filed by the assessee as not argued/ pressed.

13. In the result, the appeal of the Revenue and Cross Objection of the assessee both are dismissed.

**Order pronounced in the open court on 21<sup>st</sup> June, 2024.**

Sd/-  
(R.K. Panda)  
**VICE PRESIDENT**

Sd/-  
(Astha Chandra)  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> June, 2024.  
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**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, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune