

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 2857/Mum/2023 (A.Y. 2012-13)

Sudarshan Sheregar
D-1104, Yashwant Empire,
Near DMART Off Railway
Lines
Vasai Virar Link Road
Vasai East, Maharashtra-
401 209.

PAN : AZDPS1479H
(Appellant)

Assessee by
Department by
Date of Hearing
Date of Pronouncement

Vs. THE DEPUTY COMMISSIONER
OF INCOME TAX,
CENTRAL CIRCLE - 1,
Room number 10, A - Wing,
sixth floor, Ashar IT park,
Road number 16 - Z, Wagle
industrial estate,
Thane (W) , Maharashtra - 604

(Respondent)

Shri Dnyanesh Patade
Shri R.R. Makwana
04.06.2024
24.06.2024

ORDER

1. This appeal is filed by Mr. Sudarshan Anand Sheregar (assessee/appellant) against the appellate order passed by the Commissioner Of Income Tax (Appeals), Pune - 11(the CIT - A) for assessment year 2012 - 13 dated 28/4/2023 wherein the appeal filed by the assessee against the assessment order passed under section 144 read with section 153A of The Income Tax Act, 1961 (the act) dated 24/12/2018 by the Deputy Commissioner of income tax, Central Circle - 1, Kalyan (the learned AO) was dismissed in limine since the self-assessment tax was not paid.
2. Assessee is aggrieved in dismissal of the appeal of the assessee in violation of the principles of natural justice and humanitarian grounds.
3. Brief facts show that search and seizure under section 132 of the act were carried out on the business as well as residential premises of

several persons of one Gawade group on 15/12/2016. Assessee is one of the persons. The assessee was issued notice under section 153A of the act on 10/11/2017. For impugned assessment year assessee filed return of income on 30/12/2017 at a total income of Rs. 464,240. Assessee did not pay the due tax thereon hence the return was treated defective. Notice under section 143 (2) was issued on 3/1/2018 and further notice under section 142 (1) was also issued, none appeared on behalf of the assessee. 17 opportunities of the hearing were not availed of by the assessee. The AO passed the assessment order under section 144 read with section 153A of the act on 24/12/2018 determining the total income of the assessee at Rs. 1,610,840/-.

4. Assessee preferred an appeal before the learned CIT – A. The learned CIT – A disposed of six appeals of the assessee for assessment year 2011 – 12 to 2016 – 17 by a consolidated order dated 28/4/2023 wherein all these appeals are dismissed in limini except for assessment year 2011 – 12 for non-payment of self-assessment tax till the date of passing of the order by him.
5. The issue was that during the course of search cash of Rs. 72 lakhs were seized, and the assessee made a request for considering the above sum towards the self-assessment tax. The learned CIT A found that a sum of Rs. 138 Lacs has already adjusted against the tax demand for assessment year 2017 – 18 and therefore nothing is left so required to be adjusted now and the self-assessment tax is required to be paid. Assessee is aggrieved by the order of the learned CIT – A in dismissing the appeal of the assessee in Limine for non-payment of taxes on the returned income.
6. The learned authorized representative appearing before us submitted that the appeal may be restored back to the file of the learned CIT – A and it may be heard on merits if the assessee deposits tax due thereon.
7. The learned departmental representative vehemently objected to the same and stated that how long the appeal can be kept Pending by the

learned CIT – A for non-payment of self-assessment tax. He referred to the provisions of section 249 (4) of the act and stated that as assessee does not pay the due tax on the returned income, the appeal cannot be filed before the learned CIT – A.

8. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the appeal of the assessee is dismissed in limine by the learned CIT – A for non-payment of self-assessment tax. It is fully in consonance with the provisions of the law. However, if the assessee makes the default good by payment of such tax, the appeal of the assessee is required to be heard on merits. In view of this we restore the appeal back to the file of the learned CIT – A with a direction to the assessee to approach the learned CIT – A with proof of payment of self-assessment tax or any other application of adjustment of any such cash seized or liquidation of gold seized. The learned CIT – A, after satisfying himself about the compliance with the provisions of section 249 (4) of the act, may here the assessee on merits.
9. In the result solitary ground of appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24th June 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

//True Copy//

PS

(Assistant Registrar)
ITAT, Mumbai