

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

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

आयकर अपील सं. / ITA No.846/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Kadu Satwaji Gaikwad, NS 1/14, 11th Scheme, Near Foster B. Ed College, Shivaji Nagar, Aurangabad- 431001. PAN : AILPG9644D	Vs.	ITO, Ward-1(4), Aurangabad.
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Rajesh Gawali

Date of hearing : 18.06.2024  
Date of pronouncement : 24.06.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 22.02.2024 passed by Ld Addl./JCIT(A), Agra for the assessment year 2011-12.

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

"1. *On the facts and circumstances of the case, the Learned Commissioner of Appeal ADDL/JICT(A)AGRA erred in confirming the addition of Rs 10,40,000/— without considering the material on record available in the first appeal proceeding. The appeal has been wrongly dismissed, which is not justifiable, and is liable to be set aside by the kind of interference of this Hon'ble Appellate Authority.*

2. *The Learned Commissioner of Appeal ADDL/JICT(A)AGRA wrongly concluded that the appellant was not interested in prosecuting the appeal. However, after filing this appeal, the appellant filed a written reply and supporting documents before the Commissioner of Income Tax Appeal Aurangabad- 1 on 5/12/2019. After perusal of these documents, the Appellate Authority sought a cash flow statement, which the assessee had submitted. After that, the appellate proceedings were almost over, and only the final order awaited. Meanwhile, CBDT introduced a new faceless appeal policy, and CBDT transferred all income tax appeals to the National Faceless Appeal Center in New Delhi for further proceeding, which was adjudicated by the learned Commissioner of Appeal ADDL/JICT(A)AGRA. The learned Commissioner of Appeal ADDL/JICT(A) AGRA has not mentioned anywhere in his order that the action taken by the Commissioner of Appeal Aurangabad previously in the appeal. It proves that the learned Commissioner of Appeal ADDL/JICT(A) AGRA passed the appeal order without verifying the action taken by the Commissioner of Income Tax Appeal Aurangabad-1 in this appeal, which is not justifiable and ought to have been verified.*
3. *The assessing officer of Ward 1(4) failed to verify the facts and circumstances of the case properly. They wrongly concluded that the assessee had no evidence or explanation to prove the genuineness of a cash deposit of Rs 10,40,000/-. However, in reality, the assessee had produced all necessary documents to prove the genuineness of such a cash deposit, which ought to be verified.*
4. *That the Ld. Commissioner of Appeal ADDL/JICT(A)AGRA, has erred in law in upholding the addition of Rs. 10,40,000/-. The addition confirmed is illegal and bad in law.*
5. *The tax amount and interest levied under all sections are not warranted and may be quashed and set aside.*
6. *The appellant craves leave to add, amend, alter, or delete any grounds when the necessity arises till the final disposal of the appeal.*
7. *Other grounds will be argued at the time of the final hearing.”*

3. The facts, in brief, are that the assessee is an individual earned income from salary and agricultural income. On the basis of information that the assessee had deposited Rs.10,40,000/- in his savings bank account, notice u/s 148 of the IT Act was issued on

20-03-2018, after obtaining prior approval of appropriate authority. In response, the assessee furnished return of income on 04-10-2018 declaring income of Rs.97,700/-. The Assessing Officer issued statutory notices u/s 142(1) & 143(2) of the IT Act along-with questioner and called information relating to the case. After considering the reply of the assessee, the Assessing Officer being unsatisfied, completed the assessment u/s 143(3) r.w.s. 147 of the IT Act vide order dated 12-12-2018 determining total income of the assessee at Rs.11,37,700/- by making addition of Rs.10,40,000/- to the income returned by the assessee.

4. Being aggrieved with the above action of the Assessing Officer, an appeal was preferred before Id. CIT(A), who vide impugned order without going into merits of the case dismissed the appeal of the assessee for want of prosecution.

5. Being aggrieved with the decision of Id. Addl./JCIT(A), Agra the appellant is in appeal before us.

6. Ld. AR submitted before us that the *ex-parte* order passed by the Id. Addl./JCIT(A), Agra is unwarranted illegal & bad in law. It was further submitted by LD AR of the assessee that prior to the appeal was transferred to the NFAC & thereafter to Id. Addl./JCIT(A) Agra, notices were issued by Id. CIT(A), Aurangabad and the assessee, in compliance of the said notices,

submitted a written reply dated 05.12.2019 along-with supporting documents before the ld. CIT(A), Aurangabad. After perusal of those documents, ld. CIT(A), Aurangabad sought a cash flow statement from the assessee which was also submitted by the assessee. Thereafter, the assessee was expecting final order from ld. CIT(A), Aurangabad but in the mean time the Faceless Appeal Scheme was introduced by the CBDT and the appeal was transferred from ld. CIT(A), Aurangabad to NFAC & thereafter to ld. Addl./JCIT(A), Agra. It was further submitted by the counsel of the assessee that it is apparent from the order of ld. Addl./JCIT(A) Agra, that the *ex-parte* appellate order was passed by him without considering the reply which was already furnished by the assessee on 05-12-2019. It was, therefore, prayed before the Bench that the assessee was under-impression that he has already furnished the written reply along-with supporting documents & therefore, he was not required to submit all those documents again but unfortunately ld. Addl./JCIT(A), Agra did not consider all those submissions/documents and treated the assessee absent and passed the order *ex-parte*. Therefore, it was prayed before the Bench to set-aside the impugned *ex-parte* order passed by ld. Addl./JCIT(A), Agra and further requested to remand the matter back to the file of LD Addl./JCIT(A), Agra to decide the appeal afresh on the merits

of the case after providing reasonable opportunity of hearing to the assessee.

7. Ld. DR supported the order passed by ld. Addl./JCIT(A), Agra and requested to confirm the same.

8. We have heard ld. Counsels from both the sides and perused the material available on record. We find that the notice u/s 250 of the IT Act was issued to the appellant on 18.11.2019 and the date of compliance was 04.12.2019. It was the contention of the ld. Counsel of the assessee that in reply to this notice, a written reply along-with supporting documents was filed by the assessee before ld. CIT(A), Aurangabad and it is apparent from the record that the same has not been considered by Ld. Addl./JCIT(A), Agra. In the circumstances, we find force in the argument of the ld. Counsel of the assessee and in the interest of justice deem it proper to set-aside the *ex-parte* order passed by ld. Addl./JCIT(A), Agra with a direction to decide the issue afresh on merits of the case after providing reasonable opportunity of hearing to the assessee. Ld. Addl./JCIT(A), Agra shall decide the appeal as per facts & law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by ld. Addl./JCIT(A), Agra and submit the requisite details on the appointed date without seeking any adjournment under any pretext,

failing which Id. Addl./JCIT(A), Agra is at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the grounds of appeal raised by the assessee in the present appeal are allowed.

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

Order pronounced in the open Court on 24<sup>th</sup> day of June, 2024.

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

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> June, 2024.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals), Addl./JCIT (A), Agra.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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