

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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.154/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

ITO, Ward-4, Panvel.	Vs.	Shri Prakash Devidas Patil, At Vadav Tal Pen Dist. Raigad, Pen- 402107. PAN : ASNPP9067B
Appellant		Respondent

Revenue by : Shri Sourabh Nayak
Assessee by : None
Date of hearing : 11.06.2024
Date of pronouncement : 24.06.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the Revenue is directed against the order dated 20.11.2023 passed by LD CIT(A)/NFAC for the assessment year 2017-18.

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

"i. On the facts and in circumstances of the case, the CIT(A) erred in allowing the appeal of the assessee merely on the basis of written submission without any documentary evidence.

- ii. The appellant prays that the order of the CIT(A) may be set-aside and that of the Assessing Officer be restored.*
- iii. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.”*

3. When the appeal was called for hearing NONE appeared on behalf of the assessee but a paperbook was filed by the assessee which is available on record. We find that the matter was also listed previously on two occasions but on those dates also, NONE appeared. Under these circumstances, we deem it proper to decide the appeal on the basis of material available on record & after hearing the appellant revenue.

4. The facts, in brief, are that the assessee is an individual engaged in the business of mobile recharge reseller filed his return of income on 29.03.2018 declaring income of Rs.6,34,770/-. The case was selected for scrutiny through CASS under limited category to examine the substantial cash deposit in bank account during the year. During the course of assessment proceedings, it was found by the AO that the assessee has deposited Rs.57,10,000/- in the Bank of India, Account No. 60137876984 during the demonetization period. Notices u/s 143(1) and 142(1)

of the IT Act were issued along with questionnaire. In absence of any explanation, the AO treated it as unexplained money u/s 69A and added Rs.57,10,000/- to the income of the assessee. Other cash deposit of Rs.3,42,59,902/- was treated as related to business income and net profit @ 10% was determined. Accordingly, the AO passed the assessment order u/s 144 of the IT Act vide order dated 12.12.2019 determining taxable income of Rs.91,29,530/- of which Rs.57,10,000/- was added u/s 69A of the IT Act.

5. Being aggrieved with the above *ex-parte* assessment order, an appeal was preferred before the Id. CIT(A)/NFAC, who vide impugned order allowed the appeal of the assessee on the basis of statement of facts and grounds of appeal raised by the assessee before him.

6. Being aggrieved with the decision of the Id. CIT(A)/NFAC, the Revenue is in appeal before this Tribunal.

7. LD DR submitted before us that LD CIT(A)/NFAC committed grave error in allowing the appeal of the assessee, merely on the basis of written submission & also in the absence of any supporting evidence / documents. It was further submitted that

the assessee neither appeared nor submitted any supporting documents before LD CIT(A)/NFAC & only on the basis of statements of facts & grounds of appeal the appeal was decided in favour of the assessee. It was also submitted before the bench that to verify the cash deposited during demonetization period a Standard Operating Procedure (SOP) was prescribed which was also not followed by LD CIT(A)/NFAC. It was therefore contended before the bench that in the interest of revenue the order passed by LD CIT(A)/NFAC may kindly be set-aside & that of the Assessing Officer be restored.

8. We have heard LD DR representing the Revenue & perused the material available on record, including the paper book filed by the assessee. We find that the paperbook furnished by respondent assessee is consisting of computation of income with ITR V of relevant period under consideration, various bank statements & distributorship agreements with the IDEA Company & the death certificate of erstwhile tax consultant of the assessee. We also find that the assessment order was passed *ex-parte* & therefore obviously these documents were not filed before the Assessing

Officer. We also find that in the order passed by LD CIT(A)/NFAC no reference of such document has been mentioned which proves that none of the documents were produced before LD CIT(A)/NFAC. Therefore the documents produced before us becomes additional evidences & even LD CIT(A)/NFAC has not referred to those documents & without verifying the correctness of same the appellate order was passed. We therefore find force in the arguments of the ld. Departmental Representative that the first appellate order was passed without verifying the relevant documents. We therefore deem it proper in the interest of justice to set-aside the order passed by both the revenue authorities & remand the matter back to the file of the Assessing officer to re-do the assessment afresh as per fact and law, after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notice issued by the Assessing Officer and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which the Assessing Officer is at liberty to pass appropriate order

as per law. We hold and direct accordingly. The grounds of appeal raised by the Revenue are allowed in above terms.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 24th June, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th 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.