

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 869/Mum/2024 (A.Y. 2011-12)

Annasaheb Ganpat
Khatal
E201, Building No. 1
Krishna Dham
Building
Survey No. 193, Hisa
No. 1/1 Usathane,
Kalyan Maharashtra-
421 306

Vs.

ACIT, Circle
18(1)
Mumbai.

PAN : AVDPK7973L
(Appellant)

(Respondent)

Assessee by
Department by
Date of Hearing
Date of Pronouncement

Shri M.A. Gohel
Shri R.R. Makwana
13.06.2024
24.06.2024

ORDER

Per Prashant Maharishi, Accountant Member

1. This appeal is filed by assessee appellant against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT - A) dated 8/1/2024 for assessment year 2011 - 12 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) read with section 147 of the income tax act, 1961 (the act) by the assistant Commissioner of income tax, circle - 18 (1), Mumbai (the learned AO) was dismissed.
2. Assessee aggrieved with the same has preferred this appeal raising the issue that appeal has been decided ex parte and

- further the addition under section 68 of the act of Rs. 2,264,200 was also confirmed.
3. Brief facts of the case show that the assessee is a non-filer of return for assessment year 2011 - 12. Assessee is an individual. Information was available in the income tax system that assessee has deposited cash amounting to Rs. 2,264,200/- in his bank of India account in the impugned previous year. Thus, notice under section 148 of the act was issued on 29/3/2018. In response to that return of income was filed on 24/4/2018 declaring a total income of Rs. 21,380/- wherein the assessee derived income from salary as well as income from other sources was disclosed. The notice under section 143 (2) of the act was also issued on 14/9/2018.
 4. During the course of assessment proceedings, the assessee was issued notices and also asked to furnish an explanation about the deposit of Rs. 2,264,200/- by cash in his bank of India account, which was not explained and therefore the learned assessing officer made the addition under section 68 of the income tax act of the above sum and passed order under section 143 (3) read with section 147 of the act at a total income of Rs. 2,285,580/-.
 5. Assessee on appeal before the learned CIT - A, was given on several occasions, the emails were also received by the assessee however none responded. Therefore, the learned CIT - A dismissed the appeal of the assessee and confirmed the addition. However, in the grounds of appeal before him assessee contested that Rs. 8 lakhs deposited in the bank

account is received from his various relatives and further sum of Rs. 1,464,200/- does not appear in the bank statement and therefore the addition is wrongly made. But the learned CIT – A dismissed the appeal.

6. On appeal before us assessee submitted through authorized representative a paper book containing 20 pages wherein it is contended that that assessee has received Rs. 350,000 from his brother-in-law from whom an affidavit was submitted. Further Rs. 3 lakhs were received from his father was affidavit was also furnished. Assessee also submitted the bank account of the assessee to show that the deposit in the bank account with bank of India for financial year 2010 – 11 is Rs. 1,159,200 and from the same bank account assessee has withdrew Rs. 1,249,000/-. Assessee further submitted a cash flow statement showing the funds received from different sources deposited in bank account. Thus, it was claimed that there is no unaccounted income of the assessee, and an addition could not have been made.
7. The learned authorized representative also submitted that because of the health of the tax consultant, the assessee could not represent before CIT appeal.
8. The learned departmental representative supported the orders of the lower authorities. He stated that if the assessee does not appear before the learned CIT – A, there is no other alternative but to dispose of the appeal of the assessee on merits. Therefore, there cannot be any fault on the part of CIT – A.

9. We have carefully considered the rival contention and perused the orders of the lower authorities. Assessee is an individual who offered income in response to return under section 148 of the act from salary et cetera of Rs. 21 thousand. The information is available that the assessee has deposited cash in his bank account of Rs. 2,264,000. For part of the funds the assessee states that the source of such deposit is withdrawn from the same bank. Some part of the deposit is stated to be received from the relatives. Undeniably the facts are that the assessee did not represent before the CIT appeal his case due to the ill-health of his tax advocate. This fact is supported by the affidavit of the tax advocate. Assessee did not represent his case before the learned that AO also. Naturally, when the assessee is non-responsive, the lower authorities do not have any authority to take any coercive measure to force the presence of the assessee but to make an assessment order or appellate order on the facts available before them. Therefore, as the assessee remained non-responsive before the AO as well as before the CIT – A has made detailed representation before us, it is unfair to look these evidences by us, therefore, we restore the issue back to the file of the learned assessing officer and direct the assessee to produce all the evidences within 90 days of the receipt of this order before him, pursuant to that the learned AO may examine the evidence and decide the issue on merits of the case. In the result ground number one of the appeals is allowed with above direction.

10. In view of our decision on ground number 1, ground number 2 is not required to be adjudicated by us but would be adjudicated by the learned AO.
11. In the result, the 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 :

The Appellant
The Respondent
The CIT(A)
CIT
DR, ITAT, Mumbai.
Guard File.

PS

BY ORDER,
//True Copy//
(Assistant Registrar)
ITAT, Mumbai