

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.897/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Jayshree Bhalchandra Gotal, Bhalu Kumkum, Plot No.1228, A/p KEM, Karmala, Solapur- 413223. PAN : AHZPG6709J	Vs.	ITO, Ward-2(4), Solapur.
Appellant		Respondent

Assessee by : Shri Pratik Sandbhor
Revenue by : Shri Rajesh Gawali

Date of hearing : 20.06.2024
Date of pronouncement : 25.06.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 29.02.2024 passed by Ld CIT(A)/NFAC for the assessment year 2017-18.

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

- "1. On the facts and in the circumstances of the case and in law the ld. CIT(A) erred in passing an exparte order without granting sufficient opportunity to the appellant.*
- 2. On the facts and in the circumstances of the case and in law the Assessing Officer erred in invoking the provision of section 69A of the Income Tax Act, 1961 in respect of cash deposits without taking cognizance of the fact that the cash deposits have been duly recorded in the books of accounts of the appellant.*

3. *On the facts and in the circumstances of the case and in law the Assessing Officer erred in assessing the total income of the appellant at Rs 35,35,600/-*
4. *On the facts and in the circumstances of the case and in law the Assessing Officer grossly erred in not considering the physical cash book filed before him in the course of assessment proceedings*
5. *On the facts and in the circumstances of the case and in law and without prejudice to the above grounds of appeal the Assessing Officer erred in making addition of Rs 23,00,000/- in respect of cash deposits made during the demonetization period without taking cognizance of the fact that the said cash deposits are made out of the business of the appellant and that the books of accounts of the appellant are duly audited under the provision of section 44AB of the Income Tax Act, 1961*
6. *On the facts and in the circumstances of the case and in law and without prejudice to the above grounds of appeal no addition in respect of cash deposits could be made in the hands of the appellant u/s 69A of the Income Tax Act, 1961 in as much as the said cash deposits are made out of the business of the appellant and business is the only source of income of the appellant*
7. *On the facts and in the circumstances of the case and in law and without prejudice to the above grounds of appeal the Assessing Officer erred in levying tax @ 60% u/s 115BBE of the Income Tax Act, 1961*
8. *The above grounds of appeal may kindly be allowed to be altered, amended, modified, deleted etc in the interest of natural justice.”*

3. The facts, in brief, are that the assessee is an individual engaged in the business of manufacturing and selling of Kumkum, filed her return of income on 29.10.2017 for AY 2017-18 declaring total income of Rs.12,35,690/-. The case was selected for scrutiny under CASS. After considering the reply of the assessee vide order dated 24-12-2019 the AO passed assessment order u/s 143(3) of the IT Act determining income of Rs.35,35,600/- of which

Rs.23,00,000/- was added u/s 69A of the IT Act as unexplained money deposited in bank account during demonetization period.

4. Since the assessee remained absent in first appeal, LD CIT(A)/NFAC vide order dated 29-02-2024 decided the appeal *ex-parte* & consequently confirmed the addition made by the Assessing Officer.

5. Being aggrieved with the above *ex-parte* decision of ld. CIT(A)/NFAC, the assessee is in appeal before this Tribunal.

6. LD AR submitted before us that the *ex-parte* order passed by LD CIT(A)/NFAC is unwarranted & bad in law, because no proper opportunity was allowed to the assessee to substantiate her case in support of grounds of appeal. It was submitted before us that total four notices were issued by LD CIT(A)/NFAC to the assessee, out of which two were issued during extreme Covid-19 pandemic period & one was regarding enablement of communication window & the last one being the effective notice was issued on 19-02-2024. But on that date AR of the assessee was out of station & therefore the assessee sought adjournment. But LD CIT(A)/NFAC was not pleased to allow the request of the assessee for adjournment & proceeded to decide the appeal *ex-parte*. Under these facts the counsel of the assessee requested before the bench to set-aside the

ex-parte order passed by LD CIT(A)/NFAC & provide one more opportunity of hearing to the assessee so that she can submit written submission in support of grounds of appeal before LD CIT(A)/NFAC.

7. On the other hand, Ld. DR supported the orders of the learned subordinate authorities.

8. We have heard LD counsels from both the sides & perused the material available on record. We find that LD CIT(A)/NFAC has passed appellate order *ex-parte* i.e. in the absence of the assessee.

We further find that only one effective notice of hearing was issued to the assessee & in response to that the assessee informed that the counsel is not available being out of station & therefore adjournment was sought. But LD CIT(A)/NFAC denied the request by saying that there has been no response only adjournment is sought by the assessee. We are therefore satisfied that no proper opportunity was provided by LD CIT(A)/NFAC to the assessee & therefore in the interest of justice, without going into merits of the case, we deem it appropriate to set-aside the *ex-parte* appellate order passed by LD CIT(A)/NFAC & remand the matter back to his file with the direction to decide the appeal of the assessee on merit. LD CIT(A)/NFAC shall decide the appeal as per fact & law after

providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by Id. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which Id. CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the ground of appeal raised by the assessee is allowed.

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

Order pronounced in the open Court on 25th day of June, 2024.

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

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th 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, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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