

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.305/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Income Tax Officer, Ward - 1, Ahmednagar	Vs.	Atul Ashok Parakh, M/s. Ashok Bansilal Parakh, Adate Bazar, Ahmednagar-414001 PAN : AAXPP7881R
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No.16/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Atul Ashok Parakh, M/s. Ashok Bansilal Parakh, Adate Bazar, Ahmednagar-414001 PAN : AAXPP7881R	Vs.	Income Tax Officer, Ward - 1, Ahmednagar
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Prasad S. Bhandari
Department by :	Shri Pawan Bharati
Date of hearing :	19-06-2024
Date of Pronouncement :	15-07-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the Revenue and Cross Objection filed by the assessee arise out of order dated 21.12.2023 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi [**"CIT(A)/NFAC"**] pertaining to Assessment Year (**"AY"**) 2014-15.

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

- "1. Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in deleting addition of Rs.1,48,26,460/- u/s 69 of the Act on account of unexplained credit by ignoring the fact that during

assessment proceedings assessee grossly failed to discharge initial burden of explaining and proving credit entries in bank account.

2. *Whether on facts and circumstances of the case, the Ld. CIT(A) is grossly erred in deleting the addition made by the AO of Rs.1,48,26,460/- u/s 69 of the Act merely on the basis of bank statement provided by the assessee and claiming that the sums were received from the debtors against the sales made on which assessee had earned a meager commission of Rs.48,874/- without any documentary evidence to substantiate the same.*
 3. *Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in deleting addition on the ground that in the assessee's case for previous AY i.e. 2012-13, the case was reopened for the similar issue and the explanation of the appellant was accepted by the then AO.*
 4. *Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in deleting addition on the ground that in the assessee's case for previous AY i.e. 2013-14, the case was reopened for the similar issue and the addition made by the AO was deleted vide the appellate order dt. 2.11.2023,, where the Revenue has not accepted the said decision of the Ld. CIT(A) and filed further appeal before Hon'ble ITAT?*
 5. *Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in ignoring the fact that principle of res-judicata are not applicable to income tax proceedings as each assessment year is a separate event.*
 6. *Whether on facts and circumstances of the case, the Ld. CIT(A) is justified in treating the credit entries in bank a/cs as total sales and computing commission income on Rs. 1,48,26,460/- @ 0.514%."*
3. The assessee has raised the following grounds of cross objections:-
1. *On facts and circumstances of the case and in law, the Ld. Assessing Officer erred in objecting the order of Resp. CIT(A)-NFAC without considering the fact that no notice under section 143(2) was issued which was mandatory to issue thereby making the assessment order bad in law. Hence, addition made is not justified at all.*
 2. *On facts and circumstances of the case and in law, the Ld. Assessing Officer erred in objecting the order of Resp. CIT(A)-NFAC without considering the fact that no reasons were provided to the appellant along with the documents replied upon at the time of issue of notice under section 148. Hence, addition made is not justified at all.*
 3. *On facts and circumstances of the case and in law, the Ld. Assessing Officer erred in objecting the order of Resp. CIT(A)-NFAC without considering the fact that the case has been reopened on merely on the borrowed satisfaction. Hence, addition made is not justified at all.*
4. Briefly stated the assessee is an individual. He is a partner in the partnership firm M/s. Ashok Bansilal Parakh and M/s. Naman Construction. He filed his return of income for AY 2014-15 on 18.03.2015 declaring income of Rs.15,49,750/-. During the search and seizure action

u/s 132 of the Income Tax Act, 1961 (**the “Act”**) in the case of M/s. Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. (**“Society”**) on 26.05.2017, it was found that the assessee had maintained accounts in the Society wherein he had deposited cash of Rs.1,48,26,460/- during the year. Based on the information received from ACIT, Central Range-1(1), Mumbai, the case of the assessee was reopened u/s 147 of the Act and accordingly notice u/s 148 of the Act was issued on 30.03.2021 in response to which the assessee filed return on 10.12.2021 declaring income of Rs.15,49,750/-.

5. During the assessment proceedings the assessee filed his reply in response to notice(s) issued u/s 142(1) of the Act wherein the assessee submitted the financial details and stating that – (i) during the year, the assessee has received profit from partnership firm, interest on capital and salary from firm, long term capital gain, bank interest, dividends and sago income from Atul Trading Company; (ii) the assessee is a partner in the partnership firm M/s Ashok Bansilal Parakh, M/s Naman Construction and PL Group and (iii) in respect of cash deposits made during the year, detailed extract of cash book is under compilation and will be submitted in the short period of time. The Ld. Assessing Officer (**“AO”**) in para 5 of his order further noted that the assessee has failed to explain the credits in the bank account held with Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd., as there is no proper evidence for the same nor any explanation given thereof. The assessee’s inability to explain the transactions therein as part of the investigation clearly go to establish that the credits are unexplained and need to be taxed as income for the AY 2014-15 within the meaning of section 69 of the Act. He therefore treated the amount of Rs.1,48,26,460/- as a unexplained money and added back the same to the total income of the assessee u/s 69 of the Act.

6. A show cause notice dated 23.03.2022 with a copy of draft assessment order was sent to the assessee requiring him to furnish reply or raise objection, if any, in respect of addition proposed u/s 69 of the Act as stated above. The assessee was required to file his reply by 25.03.2022. As the assessee failed to file the reply till 28.03.2022, the Ld. AO completed the assessment accordingly on income of Rs.1,63,76,210/- on 29.03.2022 u/s 147 r.w.s. 144B of the Act.

7. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A)/NFAC challenging the validity of reassessment proceedings as also the impugned addition of Rs.1,48,26,460/- u/s 69 of the Act. Before the Ld. CIT(A)/NFAC the assessee made detailed submissions on both the above issues which have been reproduced by the Ld. CIT(A) in his appellate order. On consideration thereof, the Ld. CIT(A)/NFAC held that the Ld. AO has duly followed the necessary procedural formalities for the assessment proceedings. Accordingly, in his view the reopening was valid. In this context the Ld. CIT(A)/NFAC recorded the following observations and findings :

“5.2 The facts, grounds of the case, assessment order and the submissions made by the appellant have been considered carefully alongwith the relevant case laws. On perusal of the assessment order and the submissions alongwith supporting documents filed by the appellant, it is apparent that the AO had information wherein, it was noticed that the appellant had made deposits substantial amounts in M/s Sri Renuka Mata Multi State Urban Co-operative Credit Society Limited which prima facie escaped assessment and accordingly after obtaining the necessary approvals from the competent authority, the case was reopened and notice u/s 148 of the Act was issued on 30/03/2021 which is well within the stipulated time. The appellant further complied to the statutory notices issued u/s 148/142(1) of the Act before the AO and made the required submissions/explanations. It appears from the assessment order that the appellant has never objected against the reopening proceedings before the AO and as such the claim of the appellant regarding challenging the reopening proceedings u/s 147 of the Act is not tenable and hence, in view of the same, appellant’s claim in this regard holds no ground as the necessary proceedings was duly followed by the AO prior to completing the reassessment proceedings u/s 147 of the Act, hence the ground no. 2 of the appeal is dismissed.”

8. On the issue of addition u/s 69 of the Act, the Ld. CIT(A)/NFAC accepted the explanation offered by the assessee before him and deleted the addition after recording his observations and findings as under :

“6.3 It is apparent from the facts of the case that the appellant is a partner in the firm namely M/s Ashok Bansilal Parakh (PAN: AAVFA2544A) and earned income amounting to Rs.10,94,876/- towards remuneration and interest from the firm and Rs.5,94,918/- as share of profit from the firm besides he was also engaged in earning the commission income from the sale and purchase of good SAGO. A search and seizure action u/s 132 of the Act was carried out in the case of M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. on 26/05/2017 and during the action, it was noticed that the appellant had made deposits amounting to Rs. 1,48,26,460/- in the bank accounts of M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. and the assessee society could not prove the source of the same. In view of this, the case of the appellant was reopened u/s 147 of the Act and accordingly notice u/s 148 of the Act

was issued on 30103/2021 requesting the appellant to file his return of income. In response to the 148 notice, the appellant filed his return of income on 30103/2021 declaring total income of Rs.15,49,750/-. Subsequently, the AO issued notices u/s 143(2)/142(1) of the Act calling for various information.

6.4 It is an admitted fact that the appellant had made deposits of Rs.1,48,26,460/- in M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. and as per the AO, the appellant could not explain the source of the same with documentary evidence. In view of this, the AO invoked the provisions of section 69 of the Act and termed the alleged sum as unexplained money. During the course of the appeal proceedings, it is argued by the appellant that the entire transactions made with Mis Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. are recorded in the books of accounts and income thereon was declared in the returns filed in compliance to Sections 139(1) and 148 of the Act. To substantiate this claim, the appellant has submitted copies of the bank statements maintained with Mis Shri Renuka Mata Multi State Urban Co-operative Credit Society and ledger extracts of the said account in the books of the appellant. It is further argued that the entire deposits were made through banking transactions and no cash was deposited as alleged by the AO and on perusal of the bank statements, this very fact is found to be bonafide. The appellant further claims that commission income earned of Rs.48,874/- against the sales made of Rs.1,48,26,460/- and already been offered for income in the returns filed in compliance to Sections 139(1) and 148 of the Act.

6.5 It is further seen from the submissions made by the appellant that the appellant's case for previous AY 2012-13, the case was reopened on the same issue i.e. deposits made of Rs.1,02,99,148/- with M/s Shri Renuka Mata Multi State, Urban Co-operative Credit Society and the erstwhile jurisdictional assessing officer had accepted the modus operandi of the the business transactions carried but by the appellant with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society by holding in assessment order dated 22/11/2019 as under :

“7. On verification: of submissions of the assessee, it is noticed that the deposit of Rs.1,02,99,148/- in Renuka Mata Multi State Urban Co-op Credit Society Ltd. is majorly out of the sale proceeds of the assessee which is duly accounted in his books of account.

9. Since the assessee has submitted source of deposits amounting to Rs.1,02,99,148/- in Renuka Mata Multi State Urban Co-op. Credit Society Ltd which, was the reason for reopening the scrutiny assessment for AY 2012-13, the returned income filed on 18/11/2019 of Rs.5,10,410/- is accepted.

6.6 Appellant's case for AY 2013-14 was also reopened for the same reason as for the present case and the addition made by the AO was deleted vide the appellate order bearing DIN & Order No : ITBA/NFAC/S/250/2023-24/1057617496(1) dated 02/11/2023, wherein, the addition made of Rs.2,07,42,724/- u/s 69 of the Act was partly allowed by holding as under :-

“6.6 On considering the arguments/claims backed with the

documentary evidences, I am inclined to agree with the appellant's contention. In my opinion, the appellant has able to explain that the alleged credits of Rs.2,07,42,724/- made in the bank account maintained with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society are constituted with, the sale: proceeds received from the customers in the bank .account, and there is no cash component deposited other than Rs.100/- which was deposited on 23/06/2012. It also appears that the AO has ignored the very fact that in the appellant's case for previous AY i.e. 2012-13 the case was reopened for the similar issue and the explanation of the appellant was accepted by the then AO. In view of the entirety of the facts and discussions made, I find no reason in sustaining the addition made of Rs.2,07,42,724/- the AO by u/s 69 of the Act on account of unexplained money and the same is therefore deleted. However, considering the commission earned of Rs.52,909/- offered as income out of the total sales made of Rs.1,02,99,148/- in AY 2012-13, the income stands @ 0.514% of the total sales, applying the same ratio, the income to the tune of Rs.1,06,618/- (0.514%) of total sales of Rs.2,07,42,724/- is added to the total income after reducing the income of Rs.62,999/- which is already declared by the appellant for the year under consideration. Accordingly, AO is directed to make addition of differential amount of Rs.43,619/- (Rs.1,06,618/- - Rs.62,999/-) to the total income of the assessee for the year under consideration. In view of the above, ground nos. 1 & 3 of the appeal are treated as Partly Allowed."

6.7 Thus, following the same ratio and also considering the arguments/claims backed with the documentary evidences, the alleged credits made of Rs.1,48,26,460/- in the bank account maintained with M/s Shri Renuka Mata Multi State Urban Co-operative Credit Society are held to be explained and the addition made of Rs.1,48,26,460/- by the AO u/s 69 of the Act on account of unexplained money is deleted. However, considering the commission earned of Rs.52,909/- offered as income out of the total sales made of Rs.1,02,99,148/- in AY 2012-13, the income stands @ 0.514% of the total sales, applying the same ratio, the income to the tune of Rs.52,938/- (0.514% of total sales of Rs.1,48,26,460/-) is added to the total income after reducing the income already declared by the assessee to the tune of Rs.48,874/-. Thus, the Assessing Officer is directed to make the addition of Rs.4,064/- (Rs.52,938/- - Rs.48,874/-) to the total income of the assessee for the year under consideration. In view of the above, ground nos. 1, 3 & 4 of the appeal are treated as Partly Allowed."

9. Dissatisfied by the deletion of addition u/s 69 of the Act by the Ld. CIT(A)/NFAC, the Revenue is in appeal before the Tribunal and all its grounds of appeal relate thereto.

10. The Ld. DR took us through relevant paras of the assessment order and supported the order of Ld. AO. The Ld. AR referred to the findings of the Ld. CIT(A)/NFAC in paras 6.3 to 6.7 and submitted that the Ld. CIT(A)/NFAC has given sound and cogent reasons to delete the impugned addition u/s. 69 of the Act. The Ld. AR further submitted that the similar issue came up for consideration before the Tribunal in assessee's own case for the preceding AY 2013-14 and the Tribunal has decided the impugned

issue in favour of the assessee in ITA No. 02/PUN/2024 vide order dated 21.06.2024.

11. We have considered the submissions of the Ld. Representatives of the parties and perused the records. Before the Ld. CIT(A) the assessee filed his written arguments vide letter dated 13.11.2023 which has been reproduced by the Ld. CIT(A) in para 6.2 of his appellate order. It has been mentioned therein that as far as the transactions with the Society is concerned, all the transactions are recorded in the books of account and the income thereon has been declared in the original return as well as the return filed in response to notice u/s 148 of the Act. The assessee submitted copies of bank statement of account maintained with the Society in support of his said claim. The assessee has also submitted that there is no cash deposit into the said account and that all the deposits are made by way of transfer entries during the year under consideration which is verifiable from the bank statement of the Society. It is observed that the assessment of the preceding AY 2012-13 of the assessee had been reopened on the identical ground of deposit of Rs.1,02,99,148/- by the assessee with the said Society and the then Ld. AO accepted the assessee's explanation that the same represented the sale proceeds of the assessee which was duly accounted in the books of account maintained. The copy of the assessment order dated 22.11.2019 for AY 2012-13 perused. Moreover, identical claim of the assessee has been allowed by the Ld. CIT(A) in respect of AY 2013-14. On appeal by the Department before the Tribunal in AY 2013-14 the Tribunal has decided the impugned issue in favour of the assessee vide its order passed in ITA No. 02/PUN/2024 dated 21.06.2024 in the similar facts and circumstances of the case. If that be so, there is no reason to take a different view on the similar facts and circumstances of the case in the succeeding AY 2014-15 presently under consideration without bringing on record any fresh material. The Ld. CIT(A)/NFAC has recorded finding of fact which could not be assailed by the Ld. DR that the assessee was able to explain the alleged credit of Rs.1,48,26,460/- made in the bank account maintained with the Society which constituted sale proceeds received from customers in the bank account and that there is no cash component deposited at all. We, therefore, find no infirmity in the order of Ld. CIT(A) which we hereby uphold and resultantly reject the appeal of the Revenue.

12. The Ld. AR submitted that the assessee is not interested to prosecute the Cross Objection. Hence, the same is dismissed as not pressed.

13. In the result, the appeal of the Revenue and Cross Objection of the assessee both are dismissed.

Order pronounced in the open court on 15th July, 2024.

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

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 15th July, 2024.
रवि

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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune