

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.02/Ind/2024
(Assessment Year: 2019-20)

Puneet Agrawal 38 Maxi Road Anaj Mandi No.2 MP	Vs.	ACIT Ujjain
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AHZPA4205H		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	07.08.2024	
Date of Pronouncement	08.08.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 02.03.2023 of the Commissioner of Income Tax (Appeal), for A.Y.2019-20.

2. This appeal was filed by the assessee on 02.01.2024 against the impugned order dated 02.03.2023 therefore, there is a gap of about 10 months in filing the present appeal. On the directions of the Bench the department has filed the details of issuance of the impugned order to the assessee on 06.03.2023 as manifest from the

dispatch register of CIT(A). The assessee has filed an affidavit explaining the cause of this delay and submitted that the order was dispatched by the office of the CIT(A) to the old address at 100, RNP Police Station, AB Road, Bajrangbali Nagar, Dewas. The said premise has already been taken over by the State Bank of India as per the order of the Court of District Judge and therefore, the possession of the said premises is with the State Bank of India since 10.03.2020. It is also explained in the affidavit that the assessee shifted his residence from the old address to 16, Radha Swami Satsang, Bilawali, Dewas and therefore, the assessee could not receive impugned order as dispatched by the CIT(A) at the old address. Thus, Ld. AR of the assessee has submitted that prior to 12.12.2023 the assessee was not having knowledge of the impugned order and therefore, in absence of the communication of the impugned order the assessee could not file the present appeal before 02.01.2024. He has thus prayed that the appeal of the assessee be admitted for adjudication on merits.

3. On the other hand, Ld. DR has not disputed that as per the dispatch register the impugned order was sent to the assessee on 06.03.2023 at 100, RNP Police Station, AB Road, Bajrangbali Nagar, Dewas and therefore, he has not raised any objection against admission of the appeal for adjudication on merits.

4. We have considered rival submissions and carefully perused the relevant material on record. From the copy of the dispatched register and the other details filed by the department we find that

the impugned order was sent by post on 06.03.2023 and was received back un-served. Thereafter vide letter dated 02.11.2023 the assessee requested the AO to supply the impugned order which was sent to the assessee vide letter dated 12.12.2023. Therefore, from the record of the office of the dispatch section of the CIT(A) it is clear that the impugned order was not served to the assessee and received back un-served which corroborates the explanation of the assessee that in the month of March 2020 the said residential premises of the assessee was taken over by the Stated Bank of India as per the order of the Court of District Judge and consequently the assessee shifted his residence to 16, Radha Swami Satsang, Bilawali, Dewas. We further note that even the address of the assessee as per the array of parties of impugned order of CIT(A) is not address where the impugned order was sent. Accordingly in the facts and circumstances of the case, we are satisfied that prior to 12.12.2023 the assessee was not aware about impugned order and according the appeal of the assessee is admitted for adjudication on merits. The assessee has raised following grounds of appeal:

“1.On the facts and Circumstances of the case and Applicable law the CIT(A) has erred in making confirmation of not giving reasonable opportunity of being heard.

2.The Learned CIT(A) has made appellate order on 02.03.2023 while the intimation sheet with DIN was issued on 14.03.2023 which is clearly violation of the mandatory provision laid down. The DIN should be issued on the date of issuance of appellate order. Hence, the order made by Learned CIT(A) without proper issuance of DIN is

bad in law and needs to be quashed. The appellant prays to delete the order of Learned CIT(A).

3.The Learned CIT(A) has erred in making confirmation of addition of Rs.38698000/- made by Learned Assessing Officer on account of Unexplained Investments for sale and purchase with Vivek Kushwah. The appellant prays to delete the addition made by Learned CIT(A).

4.The Learned CIT(A) has erred in making confirmation of addition of Rs.33341745/- made by Learned Assessing Officer on Account of Unexplained Investment for sale and purchase with Shanu Agrawal. The appellant prays to delete the addition made by Learned CIT(A).

5.The Learned CIT(A) has erred in making confirmation of addition of Rs. 1000000/- made by Learned Assessing Officer on Account of Unexplained money for sale and purchase with Shanu Agrawal. The appellant prays to delete the addition made by Learned CIT(A).

6.The Learned CIT(A) has erred in making confirmation of addition of Rs.283891213/- made by Learned Assessing Officer on Account of Unexplained Investment for sale And purchase with Other parties. The appellant prays to delete the addition made by Learned CIT(A).

7.The Learned CIT(A) has erred in making confirmation of addition of Rs.3468820/ made by Learned Assessing Officer on Account of Unexplained Expenditure for sale And purchase with Other parties. The appellant prays to delete the addition made by Learned CIT(A).

8.The Learned CIT(A) has erred in making confirmation of addition of Rs.6456250 made by Learned Assessing Officer on Account of Unexplained money for sale and purchase with Shanu Agrawal. The appellant prays to delete the addition made by Learned CIT(A).

9.The Learned CIT(A) has erred in making confirmation of addition of Rs.4273558/- made by Learned Assessing Officer on Account of unexplained Investment for sale And purchase with Shanu Agrawal. The appellant prays to delete the addition made by Learned CIT(A).

10.The Learned CIT(A) has erred in making confirmation of addition of Rs.71566189/- made by Learned Assessing Officer on account of Unexplained money for sale and purchase with other parties. The appellant prays to delete the addition made by Learned CIT(A).

11. The Learned CIT(A) has erred in making confirmation of addition of Rs.75838714/- made by Learned Assessing Officer on account of Unexplained Expenditure for sale and purchase with other parties. The appellant prays to delete the addition made by Learned CIT(A).

12. The Learned CIT(A) has erred in making confirmation of addition of Rs.6500000/- made by Learned Assessing Officer on account of Unexplained Investment for sale and purchase. The appellant prays to delete the addition made by Learned CIT(A).

13. The Learned CIT(A) has erred in making confirmation of addition of Rs.8896806/- made by Learned Assessing Officer on account of Unexplained money received. The appellant prays to delete the addition made by Learned CIT(A).

14. The Learned CIT(A) has erred in making confirmation of addition of Rs.8756474/- made by Learned Assessing Officer on account of unexplained investment for sale and purchase. The appellant prays to delete the addition made by Learned CIT(A).

15. The Learned CIT(A) has erred in making confirmation of addition of Rs.1050780/- made by Learned Assessing Officer on account of deemed interest on advance given to different parties. The appellant prays to delete the addition made by Learned CIT(A).

16. The Learned CIT(A) has erred in making confirmation of addition of Rs.14151050/- made by Learned Assessing Officer on account of unexplained investment for advance given to parties. The appellant prays to delete the addition made by Learned CIT(A).

17. The Learned CIT(A) has erred in making confirmation of addition of Rs.15919800/- made by Learned Assessing Officer on account of Unexplained money for advance given to parties. The appellant prays to delete the addition made by Learned CIT(A).

18. The Learned CIT(A) has erred in making confirmation of addition of Rs.1698126/- made by Learned Assessing Officer on account of deemed interest on advance given to different parties. The appellant prays to delete the addition made by Learned CIT(A).

19. The Learned CIT(A) has erred in making confirmation of addition of Rs.5326450/- made by Learned Assessing Officer on account of

Unexplained Investment for purchase of house. The appellant prays to delete the addition made by Learned CIT(A).

20. The Learned CIT(A) has erred in making confirmation of addition of Rs.3429650/- made by Learned Assessing Officer on account of Unexplained money. The appellant prays to delete the addition made by Learned CIT(A).

21. The Learned CIT(A) has erred in making confirmation of addition of Rs.2420505/- made by Learned Assessing Officer on account of Unexplained Expenditure. The appellant prays to delete the addition made by Learned CIT(A).

22. The Learned CIT(A) has erred in making confirmation of addition of Rs.6417872/- made by Learned Assessing Officer on account of deemed interest on advance given to different parties. The appellant prays to delete the addition made by Learned CIT(A).

23. The assessee craves to add/amend/alter/substitute to any grounds of appeal before or at the time of hearing of the case.”

5. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has passed ex-parte order when there was no compliance/response on behalf of the assessee to the notices issued by it. He has explained the reasons that notices were also sent to the old address of the assessee and the possession of the said premises was taken by the State Bank of India in the month of March 2020 itself in pursuant to the order of the Court of District Judge. Since the assessee shifted his residence to new place therefore, the notices issued by the CIT(A) were not served upon the assessee and consequently the assessee could not participated in the proceedings before the CIT(A). He has thus prayed that since the assessee has to explain the source of investment for which the AO

has made additions therefore, the matter may be remanded to the record of the AO for fresh adjudication.

6. On the other hand, ld. DR has submitted that the assessee is a habitual non-compliant as more than sufficient opportunities were given by the AO as well as the CIT(A) but the assessee has failed to comply with the notices issued by the CIT(A) and also failed to furnish supporting evidence before the AO to explain source of transactions recorded in the Diary found during the course of survey. He has relied upon the orders of the AO as well as the CIT(A).

7. We have considered the rival submissions as well as relevant material on record. The AO has passed scrutiny assessment u/s 143(3) on the basis of the impounded material found during the course of survey proceedings which was marked as BI-1 to BI-3 containing various transactions of purchase and sale but not found recorded in the books of account. The AO has also made reference to the statement of the assessee recorded during the course of survey wherein the assessee has accepted unaccounted transactions and also declared undisclosed income. The action of the AO was challenged by the assessee before the CIT(A) however, the appeal of the assessee was dismissed while passing impugned ex-parte order. We have already discussed the reasons for non-participation of the assessee as well as non-compliance of the notices issued by the CIT(A) that the assessee shifted from old address as the said premises was taken over by the State Bank of

India in pursuant to the order of the Court of District Judge and therefore, the assessee could not receive the notices issued by the CIT(A) as well as impugned order sent to the old address. Accordingly in the facts and circumstances of the case and in the interest of justice we are of the considered opinion that the assessee be given one more opportunity to present his case before the CIT(A). Hence the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the CIT(A) for fresh adjudication after giving an appropriate opportunity of hearing to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08.08.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 08 .08.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore