

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1419/PUN/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Anesh Nandkumar Agarwal, C/o. Nitin Gupta, B-14, Ashwini Co.op Housing Society, Mumbai-Pune Road, Wakdewadi, Shivajinagar, Pune 411 005, Maharashtra PAN : AAVPA6809J	Vs.	ITO, Ward-2(1), Pune
Appellant		Respondent

Assessee by : None
Revenue by : Shri Ratnakar Shelake

Date of hearing : 29.08.2024
Date of pronouncement : 29.08.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the appellant directed against the order of CIT(A), Pune-13, dated 30.04.2024 for the assessment year 2012-13.

2. Briefly, the facts of the case are that the appellant is an individual deriving income under the head "Income from Salaries" etc. The Return of Income for the A.Y. 2012-13 was filed on 20.08.2013 declaring total income of Rs.5,36,500/-. Against the said return of income, the assessment was completed by the Assessing Officer (AO) vide order dated 27.03.2015 passed u/s.143(3) of the Act at a total income of Rs.21,90,350/-. During the course of

assessment proceedings, the AO found that the appellant made cash deposits of Rs.41,74,000/- in the Saving bank account maintained with Cosmos Bank. When the appellant was called upon to explain the source for the cash deposit, it was submitted that the cash deposits were made out of cash sales of business of trading in seasonal profitable items and dealing in real estate. However, the appellant could not substantiate that the appellant actually carried on the business. In the circumstances, the AO disallowed the entire expenditure of Rs.13,53,847/- except the interest expenditure of Rs.8,17,413/- and also brought to tax the sale proceeds shown as "Income from other sources". The AO also brought to tax a sum of Rs.3,00,000/- being the consultancy fees received from Goel Ganga Promoters based on the information contained in Form No.26AS.

3. Being aggrieved by the above assessment order, an appeal was filed before the CIT(A). During the course of proceedings before the CIT(A), the appellant had filed evidence in support of carrying on the business and also filed evidence in support of the purchases made. The CIT(A), on calling the remand report from the AO, had accepted the genuineness of the expenditure to the tune of Rs.11,95,325/-. However, in the absence of any proof in support of the indirect expenditure of Rs.1,52,429/-, he confirmed the addition. Further, the CIT(A) after issuing show cause notice to the appellant, considering the submissions of the appellant made enhancement of income by disallowance of the interest expenditure of Rs.8,17,413/-.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

5. When the appeal was called on, none appeared on behalf of the appellant despite due service of notice of hearing. I therefore

proceed to dispose of the appeal after hearing the Id. Departmental Representative.

6. I heard the Id. Sr. DR and perused the material on record. Ground of appeal No.1 challenges the confirmation of addition on account of indirect expenditure of Rs.1,52,429/-. On perusal of the impugned order, I find that the CIT(A) had merely confirmed the addition for inability of the appellant to produce the evidence in support of indirect expenditure. From the details of indirect expenditure, it is clear that the indirect expenditure was incurred on items like Packing material, Petrol and Conveyance, Salary, Shop expenses, Stall expenses and Telephone and Mobile expenses. Incurring of expenditure on these items cannot be ruled out. Mere inability of the appellant to produce evidences in support of the expenditure cannot be a ground to disallow the expenditure. Therefore, the CIT(A) ought not to have disallowed the entire expenditure. Accordingly, I direct the Assessing Officer to allow the indirect expenditure. Thus, the Ground of appeal No.1 stands allowed.

7. Ground of appeal No.2 challenges the enhancement of addition made by the CIT(A) by disallowing the interest expenditure of Rs.8,17,413/-. The CIT(A) was of the opinion that interest expenditure was incurred on the loan borrowed and utilised for the purchase of equity in the company Hotel Surya Pvt. Ltd. He further opined that this was not related to the business activity of trading in seasonal goods carried on by the appellant, the interest expenditure cannot be allowed. The reasoning of the CIT(A) cannot be appreciated in view of the well settled position of law that the interest expenditure incurred on loans utilised for the purpose of investments made with intention to earn profit can be allowed as

deduction u/s.57(iii) of the Act. It is not necessary that any income should infact have been earned as a result of the expenditure as held by the Hon'ble Supreme Court in the case of *CIT Vs. Rajendra Prasad Moody 115 ITR 519 (SC)*. In view of above discussion, Ground of appeal No. 2 raised by the appellant is also allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 29th day of August, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th August, 2024.

Satish

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.