

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1594/PUN/2024

निर्धारण वर्ष / Assessment Year : 2012-13

Sulochana Laxmikant Bhale, Flat No.1, Chandraneel Apartment, Bijali Nagar, Chinchwadgaon, Pune 411 033, Maharashtra PAN : ABNPB3181H	Vs.	ITO, Ward-1(1), Aurangabad
Appellant		Respondent

Assessee by : Shri Kishor B. Phadke
Revenue by : Shri B.S.Rajpurohit

Date of hearing : 16.10.2024
Date of pronouncement : 16.10.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the appellant directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 18.06.2024 for the assessment year 2012-13.

2. Brief facts of the case are that the appellant is an individual, no return of income for the A.Y. 2012-13 was filed. Based on the information available in the Assessment Information System (AST) that the appellant made a cash deposit of Rs.18,12,000/- and time deposit of Rs.18,00,000/- with Deogiri Nagari Sahakari Bank Ltd. Aurangabad, a notice u/s.148 of the Act was issued to the appellant on 30.03.2019. Notices u/s.142(1) along with questionnaire and notice u/s.143(2) was also issued to the appellant. In response to the notices issued, the appellant filed her return, computation of income, bank

statement, copy of sale deed etc. The appellant was asked to explain the sources of cash deposits made in Deogiri Nagari Sahakari Bank Ltd. In response, the appellant had stated that she deposited Rs.11.11 lakhs out of sale proceeds of house property on 27.02.2012 by furnishing the sale deed. The balance amount of Rs.6,80,000/- was stated to have been deposited out of her own savings. Thereafter, a notice u/s.142(1) was issued to the appellant on 07.11.2019 calling upon to explain the various claims made by her. Notices u/s.143(2)/show cause notice were issued to the appellant. The appellant neither complied with notice u/s.142(1) nor notice u/s.143(2). In the circumstances, the Assessing Officer vide order dated 10.12.2019 passed u/s.143(3) r.w.s.147 of the Act completed the assessment, after making addition of Rs.11,89,000/- as appellant's undisclosed income u/s.69 of the Act and Rs.9,26,729/- on account of capital gain arising out of sale of property.

3. Being aggrieved by the above assessment order, an appeal was filed before the NFAC, who vide impugned order confirmed the action of the Assessing Officer.

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

5. I heard the rival submissions and perused the material on record. In the facts of the present case, ordinarily, the matter would have been remitted to the file of NFAC, however from the perusal of the impugned order, it would reveal that no proper service of notice of hearing appears to have been issued nor reasonable opportunity was given by the NFAC. Further, there is no evidence that proper notices u/s.143(2) were issued to the appellant, in view of the submission of Id. AR, notices were issued through ITBA portal. In my considered opinion, it is not a valid method and manner of service of notice as

specified under the provisions of section 282(1) of the Income-tax Act, 1961 Act and Rule 127(1) of the Income-tax Rules, 1962. Therefore, it is crystal clear that the notices were not served upon the appellant. To fortify my view, I would like to make reference to a decision rendered by the Hon'ble Punjab & Haryana High Court in the case of *Munjral BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of 282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

.....

8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner

and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.”

In view of the above legal position, I am of the considered opinion that proper notice(s) of hearing were not served properly to the appellant. Therefore, I am of the considered opinion that in the interest of justice, the matter should be remitted back to the file of Assessing Officer for *denovo* adjudication after affording reasonable opportunity to the appellant, in accordance with law. The appellant is at liberty to file any evidence in support of her claim as she deems expedient.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 16th day of October, 2024.

Sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16th October, 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.