

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

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1972/PUN/2024
निर्धारण वर्ष / Assessment Years : 2012-13

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| Sanjay Nimba Pawar, Lakhamapur Nampur Road, At Lakhamapur Taluka Satanalakhamapur, Lakhamapur S.O., Nashik – 423213 Maharashtra PAN : BLIPP4938C | Vs. | ITO, Ward-2, Malegaon |
| Appellant | | Respondent |

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|--------------------------|---|---------------------|
| Assessee by | : | Shri Pramod Shingte |
| Revenue by | : | Shri B.S.Rajpurohit |
| | | |
| Date of hearing | : | 24.10.2024 |
| Date of pronouncement | : | 25.10.2024 |

आदेश / ORDER

PER DR.MANISH BORAD, AM:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s.250 of the Income Tax Act, 1961 [in short "the Act"] by ld. Commissioner of Income-tax (Appeals)/NFAC [in short ld."CIT(A)"] dated 30.07.2024 arising out of the Assessment order passed u/s.144 r.w.s.147 of the Act dated 28.11.2019.

2. Grounds of appeal raised by the assessee read as under:

"1. On the facts and the circumstances of the case and in law, lower authorities erred in not condoning the delay in filing the appeal without appreciating the facts of the case. Your appellant

prays for condonation of delay and granting an opportunity of hearing before lower authorities.

Without prejudice to the above grounds of appeal, following grounds are also taken on merit.

2. *On the basis of facts and in the circumstances of the case and as per law, lower authorities have erred in making addition Rs.32,14,498/- on account of unexplained money u/s.69A of the Act, being of cash deposited in the bank account. The major source for cash deposit during the FY 2011-12 is Agriculture Income of self and joint family and sometimes cash deposited out of the withdrawal made again and again out of the withdrawal made on earlier dates. Your appellant prays for deletion of entire addition.”*

3. At the outset, ld. Counsel for the assessee requested for restoring the issue of unexplained cash deposit u/s.69A of the Act at Rs.32,14,498/- to the file of Assessing Officer (AO) since assessee could not produce the evidence of owning the agricultural land and earning of agricultural income from agricultural activity of self and his joint family which has been deposited in the Bank account.

4. On the other hand, ld.DR supported the order of lower authorities.

5. I have heard the rival contentions and perused the record placed before me. I note that the assessee is an individual and for the A.Y.2012-13, based on the information about deposit of cash of Rs.32,14,000/-, assessee was issued a notice u/s.148 of the Act for carrying out the assessment proceedings but even after repetitive notices assessee failed to appear and ld.AO concluded the proceedings making the addition of total cash deposit of Rs.32,14,000/- and assessing the income accordingly for the same amount.

6. I note that the assessee thereafter filed an appeal before the ld.CIT(A) but the appeal was delayed for more than 1 year

and 8 months. Even though the assessee made detailed submission explaining the delay and also explaining the sources of cash deposits, however, the Id.CIT(A) was not satisfied with the explanation about the delay in filing the appeal and observed that the assessee has not shown any reasonable cause and went ahead to dismiss the appeal *in limine* under the provisions of section 249(3) r.w.s.250 of the Act.

7. I observe that during the course of appeal proceedings before the Id.CIT(A) the assessee had furnished certain submissions and the same are reproduced below:

“With reference to above mentioned appeal for the AY 2012-13 I wish to submit following submissions to your honour. The AO had erred in making addition on account of cash deposited of Rs.32,14,498/- in banks treated as unexplained money u/s.69A of IT Act. but fact is that it is income from Agriculture activity. The AO passed order u/s.144 of IT Act since assessee himself was hospitalized due to major brain surgery of assessee and till date assessee has not fully recovered and since that time he was not able to travel and also most of the time he have to go in the Hospital. So order passed by AO and addition made is not justified.

1) The AO had erred in making addition on account of cash deposited in banks treated as unexplained money u/s.69A of IT Act. But fact is that cash deposited by the assessee is out of Agriculture income and joint family agriculture income. Assessee is Agriculturist and having salary income upto Rs.66000/- p.a. He having the source of Agriculture income and is also member of Nimba Pawar Joint family HUF. He is a only person in the family is educated and having knowledge of banking transaction. So the cash received in the hands of joint family by way of sale of agriculture produce is deposited in his account. The HUF & assessee having 7-8 acre agriculture land. The evidence in support of the said transactions, i.e. 7/12 extract & bills of agriculture produce sale which state the genuineness of the transactions. The other family members does not have bank accounts. So the cash received from the sale of Agriculture crop is deposited in bank and some-times it is withdrawn for expenses and again redeposited in the Dena Bank account. Most of the times the cash deposited is out of the withdrawals made on various dates. Assessee does not have any other source of income other than salary which is very negligible. So the action of AO treating the cash deposited in the bank as an unexplained income is not justified. Further it is not

correct to tax, There was major brain surgery of assessee and till date assessee has not fully recovered and since that time he was not able to travel and also most of the time he have to go in the Hospital, due to that he was not able to compliance the notices issued by AO u/s.148 on 30/03/2019, 30/07/2019, 16/10/2019 and 05.11.2019 for scrutiny assessment.

The copies of bills of hospital report & bills are enclosed. AO passed assessment order u/s.144 and the order passed by the AO is not correct. The cash deposit of Rs.32,14,498/- in saving bank account on various dates from 12/08/2011 to 16/02/2012 and maximum cash deposited on single day from Rs.3,500 to Rs.2,70,000/- per day.

On the facts and circumstances of the case I herewith submit the following submission to your honor about the receipt of agriculture income of Nimba Raghunath Pawar joint family.

The details of Agriculture land owned by my family and the details of agriculture income earned by my family HUF is as follows:

xxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxx

herewith submit the copy of cash flow statement and date wise summery of cash deposits and cash withdrawals for your information.

So the addition made on account of unexplained cash deposit of Rs.32,14,000/- made by the AO while passing best judgment assessment order u/s.69A is totally incorrect. Therefore I hereby request you kindly consider my submission and allow the relief of Rs.32,14,000/-.

2) I hereby request you kindly called the remand report from the jurisdiction AO ward 1, Malegaon, Camp Road, Agriculture college farm area, Malegaon Dist. Nashik about the correctness of agriculture income.

The above submission is submitted to your honor therefore I request you kindly consider the same."

8. I have gone through the above submission of the assessee where he is stating to possess around 7-8 acres of agricultural land jointly with his other family members and also sale of agricultural produce has been deposited in the bank. If the contentions made by the assessee are correct, then it would not be justified if the assessee is not given one

more opportunity. I therefore in the interest of justice, being fair to both the parties and considering the submissions given before me by the ld. Counsel for the assessee as well as facts stated by the assessee before the ld. CIT(A), restore the issues raised on merits before me to the file of ld. Jurisdictional AO for *denovo* adjudication who shall give reasonable opportunity of hearing to the assessee to file the relevant details as well as the information relating to owning of agricultural land and earning of agricultural income and then decide in accordance with law. The assessee is directed to remain vigilant in the fresh proceedings and should refrain from taking unnecessary adjournments unless otherwise required for reasonable cause. Grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 25th day of October, 2024.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th 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.