

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

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

आयकर अपील सं. / ITA No.1181/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Sajid Dastagir Sayyed, 1, Mande Dal Mill Samrat Chowk, Latur - 413512, Maharashtra	Vs.	ITO, Ward -1, Latur
PAN : BUAPS8016H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Nikhil Pathak
Department by :	Shri Arvind Desai
Date of hearing :	22-10-2024
Date of Pronouncement :	28-10-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 21.02.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**"CIT(A)"**] pertaining to Assessment Year (**"AY"**) 2014-15.

2. The assessee has filed this appeal with a delay of 33 days. The assessee has filed an application for condonation of delay along with a sworn affidavit stating therein the reasons for delay in filing of the appeal. On perusal of the same, we are satisfied that the delay in filing of appeal is not intentional or deliberate but has occurred for the reasons mentioned in the affidavit. After hearing both the sides, we are of the view that the delay is attributable to the sufficient cause. We, therefore condone the delay and proceed to decide the appeal.

3. The assessee has raised the following grounds of appeal:-

- "1. The order of the learned CIT(A) confirming the addition of Rs.1,08,70,530/- U/s 69A of I.T. Act. made by the A.O. is erroneous as CIT(A) has not considered any grounds of appeal made by appellant at the time of filing the appeal. Even if the appellant had not made any submissions at time of appeal, it is the duty of CIT(A) to consider the grounds of appeal and give his reasons for acceptance/rejection of the same. But the CIT(A) has simply dismissed the appeal without considering the same. It is unjust and

we request Your Honour to kindly accept the documents submitted by the appellant and give him relief and oblige.

2. *The A.O. has added Rs.1,08,70,530/- on account of credits in the account maintained with Renuka Mata Multi State Urban Coop. Credit Society without conducting any enquiries and treating these credits as unexplained income. The A.O. did not possess any information and he has presumed the income is unreported.*
3. *The section 69A states that "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account.....". Thus, the section clearly states that the only if the A.O. proves that these transactions are not recorded in assessee's books of accounts, then only the addition can be made under the above section. This point is even reiterated by the A.O. in point no. 12.2 of the order. But the A.O. has nowhere in the order proved that the appellant had not maintained his books of account or if maintained had not disclosed the transactions in the said bank account in his books of account. Thus, the claim that the appellant has not maintained his books of account is false. Hence, the addition made by the A.O. is unjustified and should be deleted.*
4. *The debit side of the account is not at all considered by the A.O. The whole balance of the account has been either transferred or withdrawn. Only considering the cash deposits without considering the cash withdrawals is absurd and unreasonable. Hence, treating the total of credits in the account as income is illogical. The A.O. should have at the maximum considered the peak cash deposits / gross profit on the same. We rely on the following judgments:*

a. Ajit Bapu Satam v. Deputy Commissioner of Income-tax [2023] 147 taxmann.com 222 (Mumbai - Trib.)

b. Income-tax Officer v. J.K. Wood India (P.) Ltd. [2024] 158 taxmann.com 208 (Delhi - Trib.)

c. Yogesh Gupta v. Assistant Commissioner of Income-tax [2024] 159 taxmann.com 1396 (Delhi - Trib.)

d. Gandhibag Sahakari Bank Ltd. v. Deputy Commissioner of Income- tax/Assistant Commissioner of Income-tax [2023] 156 taxmann.com 221 (Bombay)

We have attached the said cooperative society statement and the cash book for your kind reference. Kindly accept the same we request your Honour to kindly delete the addition made and oblige.

5. *The appellant is in the business of transportation and also has sold cement in the year under appeal. The appellant has maintained books of accounts wherein the said cooperative society account is also maintained and profit of Rs.2,37,500/- has been disclosed which was his actual profit earned on the above transactions.*
6. *The case law mentioned in point no. 12.4 of the order has no relevance and facts of the case mentioned are totally different. Nowhere in the order has the A.O. proven that the due to the credits in the said account mentioned, the appellant has derived any gains; apart from only mentioning the sentence in point no. 12.5. Thus, the case law is irrelevant.*
7. *The A.O. has mentioned the amount of Rs. 44,60,000/- in point no. 12.3 of the order whereas the addition made is of Rs. 1,08,70,530/-.*

This shows the A.O. has passed the order in haste and without application of mind.

8. *Also, the appellant is a small trader and service provider and is not aware of the complex procedures of assessment. This led to no response to the assessment proceedings as he relied on his tax consultant to do the same which he failed to do. Again, at the time of appellate proceedings, the email ID provided was of the old tax consultant who did not inform the appellant regarding the issuance of notices for hearing. Sir, the appellant has suffered a lot due to the mistakes of others. The appellant has all the supporting documents which prove that additions made is wrong and we request Your Honour to kindly accept the same and oblige.*
9. *It is humbly prayed that the reliefs as prayed and such other and further reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice, may please be granted.*
10. *The Appellate craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”*

4. Briefly stated, the assessee is an individual and filed his original return of income for AY 2014-15 on 29.03.2016 disclosing income of Rs.2,37,500/-. A search and seizure action u/s 132 of the Income Tax Act, 1961 (**the “Act”**) was carried out on 26.05.2017 in the case of M/s. Renuka Mata Multi State Urban Co-operative Society Credit Ltd. It was found that the assessee had current account with the said society and there were credits appearing in the account of the assessee to the tune of Rs.1,08,70,530/- held with the said society. However, the assessee had not declared the said amount of Rs.1,08,70,530/- in his return. Therefore, the Ld. Assessing Officer (**“AO”**) had the reason to believe that the income chargeable to tax has escaped the assessment. Accordingly, notice u/s 148 of the Act was issued on 30.03.2021 which was duly served upon the assessee. In response to the said notice, the assessee neither filed any response nor filed the return of income. Subsequently, notice u/s 142(1) of the Act was issued on 16.09.2021 which also remained uncomplished with. Another notice u/s 142(1) of the Act dated 21.01.2022 and u/s 144B(1)(xi) dated 19.02.2022 was issued to the assessee subsequent to the transfer of his case to the faceless assessment centre on 11.01.2021. A show cause notice was issued to the assessee on 24.02.2024 requiring the assessee to file his reply and informing him that in the absence of compliance to the notice(s) issued, the assessment is proposed to be concluded as per the best judgment assessment based on the reasons recorded for reopening the assessment and information available with the Department. For lack of compliance in response thereto as also to the show cause letter, the Ld. AO added Rs.1,08,70,530/- to the income of the

assessee u/s 69A r.w.s. 115BBE of the Act as unexplained money for the reason that the assessee failed to explain the source of credit entries appearing in his bank account held with M/s. Renuka Mata Multi State Urban Co-operative Society Credit Ltd. and completed the assessment ex-parte on total income of Rs.1,11,08,030/- on 30.03.2022 u/s 147 r.w.s. 144B of the Act.

5. The assessee challenged the ex-parte order of the Ld. AO before the Ld. CIT(A). The Ld. CIT(A) decided the appeal of the assessee ex-parte for non-compliance of notice(s) of hearing dismissing the appeal of the assessee. Since the assessee did not reply to any of the notice(s) issued during the appellate proceedings, the Ld. CIT(A) concluded that the assessee is not aggrieved with the impugned reassessment order and not interested in pursuing his appeal. He dismissed the grounds of appeal raised by the assessee before him on the ground that the assessee has nothing to explain in respect of his claim before him.

6. Dissatisfied, the assessee is in appeal before the Tribunal.

7. The Ld. AR submitted that non-compliance before the Ld. CIT(A) was due to non-receipt of notice(s) by the assessee. There was no intentional non-appearance before the CIT(A). He submitted that the assessee is a small trader and service provider and unaware of the complex procedures of the assessment proceedings. At the time of appellate proceedings, the assessee had provided the e-mail id of his erstwhile Tax Consultant who did not inform the assessee regarding the issuance of notice(s) for hearing. He submitted that given an opportunity the assessee is in a position to submit all the requisite details/documentary evidences before the Ld. CIT(A) to substantiate his case. He, therefore urged that the matter may be restored to the file of the Ld. CIT(A) for adjudication afresh on merits of the case.

8. The Ld. DR had no objection to the above proposition of the Ld. AR.

9. We have heard the Ld. Representatives of the parties and perused the records. Perusal of the appellate order reveals that only two notices of hearing dated 05.02.2024 and 13.02.2024 were issued to the assessee which remained uncomplied for the reason stated above by the Ld. Counsel for the assessee. We also notice that the Ld. CIT(A)'s order is completely

silent on the merits of the case. Before us, the Ld. AR has pleaded that given an opportunity the assessee is in a position to file the relevant details/documentary evidences and explain the source of credit entries of Rs.1,08,70,530/- appearing in the bank account held with M/s. Renuka Mata Multi State Urban Co-operative Society Credit Ltd.

10. On the facts and in the circumstances of the case enumerated above, we deem it fit in the interest of justice and fair play to set aside the order of the Ld. CIT(A) and restore the matter back to his file to adjudicate the issue(s) raised by the assessee on merits afresh and pass speaking order on merit after allowing reasonable opportunity of being heard to the assessee who shall provide the requisite support in terms of submitting the relevant documents/evidence as may be required/called upon on the appointed date without seeking any adjournment under any pretext, failing which the Ld. CIT(A)/NFAC shall be at liberty to pass appropriate order as per fact and law. We order accordingly.

11. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 28th October, 2024.

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

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th October, 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, "बी" बेंच, पुणे / DR, ITAT, "B" 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