

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.1765/PUN/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Sachin Nagraj Chhajed, 339 B, Rasta Peth, Pune - 411011 Maharashtra PAN : AGVPC0223G	Vs.	Income Tax Officer, NFAC, Delhi
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Sachin P. Kumar
Department by :	Shri Arvind Desai
Date of hearing :	28-10-2024
Date of Pronouncement :	30-10-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 28.06.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ["**CIT(A)**"] pertaining to Assessment Year ("**AY**") 2013-14.

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

1. *That, on facts and in the circumstances of the case, the order of CIT(A), NFAC in dismissing the appeal filed by the appellant is arbitrary, erroneous, contrary to law and is opposed to the principles of natural justice, equity & fair play.*
2. *That, on facts and in the circumstances of the case, the Ld. CIT(A) has passed the order u/s 250 without giving sufficient opportunity of being heard and thus violating the principles of 'audi alteram partem'.*
3. *That, on facts and in the circumstances of the case, the Ld. CIT(A) has erred in confirming the income assessed by the Ld. AO to the tune of Rs.2,19,69,030/- of the assessee without giving any sufficient opportunity of being heard to explain the same.*
4. *That, on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in rejecting all the grounds of appeal raised, in the event of non- submission of reply and without considering the facts of the case.*
5. *That, on facts and in the circumstances of the case, the Ld. CIT (A) has erred in passing the impugned order u/s 250 without appreciating the fact that the assessee inadvertently submitted his*

replies in response to appeal against the penalty order rather than in response to appeal to the assessment order under consideration.

6. *That, on the facts and in the circumstance of the case, the Ld. CIT(A) has passed the order u/s 250 without appreciating that the submission were inadvertently submitted to different window and in no way, whatsoever, it can be called that the assessee did not have cogent material to prove his contentions.*
7. *That, on facts and in the circumstances of the case and in law, the Ld. CIT (A) failed to appreciate that the assessment order was passed u/s 144 and grossly erred in not calling for the remand report from the AO by following the Ruled prescribed under Rule 46A of the Income Tax Rules, despite the fact that specific ground of appeal was raised in this regard.*
8. *That, on the facts and in the circumstance of the case, the Ld. CIT (A) has passed the order u/s 250 in a mechanical way, without application of mind and without appreciating the overall facts of the case.*
9. *The appellant may kindly be allowed to add, alter or modify any other modify any other points to the grounds of appeal at any time before or at the time of hearing.*
10. *Any other order in the interest of justice may kindly be passed.”*

3. It is a case of assessment framed u/s 147 r.w.s. 144 read with section 144B of the Income Tax Act, 1961 (**the “Act”**). From certain information gathered by the Department it was revealed that during the relevant AY 2013-14 the assessee had received payment on account of contract receipts amounting to Rs.10,41,00,168/- from various parties, the details of which are provided in para 2.2 of the assessment order. It was also observed that the assessee had deposited cash of Rs.53,13,000/- in his account with HDFC Bank during the year under consideration. The assessee is an individual and engaged into the construction business as a contractor. The assessee had not filed his return of income for AY 2013-14. The Ld. Assessing Officer (**“AO”**), therefore, had reason to believe that the said income of Rs.20,82,00,336/- and Rs.53,13,000/- had escaped assessment and accordingly notice u/s 148 of the Act was issued to the assessee via registered e-mail on e-filing portal. In response to the notice issued u/s 148 of the Act, no income tax return was filed by the assessee. Statutory notice(s) u/s 142(1) of the Act were issued which were duly served upon the assessee. The assessee failed to respond. Due to the lack of details /information, the Ld. AO issued a show cause notice proposing to complete the assessment by invoking the provisions of section 144 of the Act. Based on the information available in Form 26AS reflecting the deduction of tax at source on contractual receipts by the assessee u/s 194C of the Act, the Ld. AO for the reason recorded in paras 8.1 to 10 of

the assessment order added Rs.1,66,56,027/- (8% of Rs.20,82,00,336/-) to the Nil income returned by the assessee by holding as under :

“13. In view of continued non response from the assessee, and also considering the nature of business of the assessee being civil contract, the net profit of the assessee is estimated 8% of the entire gross receipt. The gross receipts from contracts is Rs.20,82,00,336/- and 8% on the same which works out to Rs.1,66,56,027/-. Hence a sum of Rs.1,66,56,027/- is added to the total income as undisclosed business receipts in terms of Section 194D r.w.s 44AD of the Income-tax Act, 1961.”

3.1 The Ld. AO has also made an addition on account of cash deposit of Rs.53,13,000/- by the assessee in its HDFC Bank account on the ground that the source and nature of the said deposit remained unexplained by the assessee and not offered to tax in the return filed by the assessee. The relevant observation of the Ld. AO in this regard is as under :

“18 Therefore, in case where assessee deposits huge cash in bank account but the sources are neither explained nor such money is offered for taxation, the onus is on the assessee to prove that the cash deposit made did not bear the character of income. In this case, the assessee has failed to prove this fact that the cash deposited represented income from disclosed sources. The assessee has concealed his true income, which otherwise is taxable. By relying on the decision of the Hon'ble Supreme Court in the cases cited above, it is held that the deposits made by the assessee in the bank account maintained with HDFC Bank is undisclosed income of the assessee. Moreover, the assessee has failed to give any explanation about the nature and source of cash deposits, hence the cash deposits, appearing in his Bank Account is deemed as unexplained money u/s 69A of the Income Tax Act, 1961 and added to the Total Income of the assessee.”

3.2 The Ld. AO, therefore, completed the assessment ex-parte on total income of Rs.2,19,69,030/- (Rs.1,66,56,027/- + Rs.53,13,000/-) on 23.03.2023 u/s 147 r.w.s. 144 read with section 144B of the Act.

4. The assessee challenged the ex-parte order before the Ld. CIT(A). Although the appeal was filed late by 14 days, the Ld. CIT(A) condoned the delay and decided the appeal ex-parte for non-compliance of notices of hearing dismissing the appeal of the assessee. The relevant findings and observations of the Ld. CIT(A) are reproduced below :

“6.1. As mentioned in the earlier para, during the appellate proceedings five notices have been issued to the appellant from 12.04.2024 to 19.04.2024, however, the appellant did not comply to any of the five notices issued to him. It is relevant to state here that once the appeal is filed by the appellant, it is obligatory on its part to co-operatively and effectively pursue the same before the appellate authority in effective and productive manner. The facts of the instant case clearly reveal that the appellant through its repetitive non-compliance has shown complete lack of interest in pursuing the appeal. The appellant did not bother to give even the basic details in support of its claim in the appeal memo. Hence, in view of the total non-compliance/non prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed off as under, ex-party, primarily on the basis of documents/information available on records.

6.2 At the outset, in view of the facts of the instant case, this appeal is liable to be dismissed in terms of the ratio of the judgments of the Hon'ble Apex Court which has held in the case CIT v. B. N. Bhattacharjee and Another (10 CTR 354) that an appeal means an effective appeal and that to "prefer an appeal" would mean effectively prosecuting an appeal." Purposefully and constructively interpreted, preferring an appeal means more than formally filing it but effectively pursuing it and if a party retreats before the contest begins, it is as good as not having entered the fray.

6.3 It is pertinent to add here that laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus non dormientibus jura subveniunt". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff is favoured and prejudicial of him who is careless. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. It is trite that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities (Assessing Officers/Appellate Authorities) lies with the assessee/appellant. In the present case, the appellant has not been able to even discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made as the grounds of pain spite of adequate time and repeated opportunities given as brought out in the foregoing paras.

6.4 From the above discussion it is evident that the appellant has no evidence to substantiate the grounds taken the instant appeal and it has not argued with any supporting relevant and cogent arguments / averments in support of the grounds of appeal. Therefore, there is no option left with me but to go through the extremely brief non-speaking description appearing in the grounds of appeal, statement of facts filed by the appellant and the order appealed against.

6.5. The first ground of appeal is general in nature. Therefore, it needs to separate adjudication.

6.5.1 Vide the second grounds of appeal, the appellant has contended that the A.O. has erred in assessing the income of the appellant at Rs.2,19,69,027/- by making additions of Rs.2,19,69,027/- without giving adequate opportunity for hearing.

6.5.2. On perusal of the order appealed against, it is observed that as per information gathered by the A.O the appellant had received contractual receipts of Rs.20,82,00,336/- and made cash deposit of Rs.53,13,000/- in bank accounts of the appellant during the F.Y.2012-13, relevant to the A.Y.2013-14. But, the appellant is not fled the Return of income for the A.Y.2013-14. Therefore, after obtaining due approval, the AO, had initiated reassessment proceedings u/s. 147 of the Act and issued notice u/s 148 of the Act on 15.07.2022. Subsequently, seven statutory notices including show cause notice were also issue by the A.O. from time to time, but the appellant did not reply to any notice/show-cause issued by the A.O. In this situation, the A.O. had no other option but to complete the assessment ex-parte u/s.144 of the IT Act.

6.5.3. During the appellate proceeding, five notices were issued to the appellant for submission of arguments/evidences in support of its contentions made in the aforesaid grounds of appeal. But the appellant has not complied to any of the five notices issued during the appellate proceedings. The consistent non-compliance of the appellant may be because the appellant has no evidence/argument in support of the issues raised in the grounds of appeal or the appellant does not want to pursue the appeal.

6.5.4. From the above facts of the case, it is apparent that the A.O. has given adequate opportunity in the form of seven statutory notices to the appellant for submission of the required details/documentary evidence/ reply, but the appellant did not reply to any notice/show-cause issued by the A.O. Therefore, it is held that the A.O. had provided adequate opportunity through numerous statutory notices and has followed all due procedure before completing the re-assessment procedures.

6.5.5. In view of the above and in absence of any argument/evidence from the appellant, no infirmity can be found in the order appealed against.”

4.1 On merits the Ld. CIT(A) endorsed the findings of the Ld. AO. The relevant findings and observations of the Ld. CIT(A) are as under :

“6.7. Vide the sixth ground of appeal, the appellant has contended that the Ld. Assessing Officer has erred on facts and in law in making an addition of Rs.1,06,56,027/- by virtue of 8 percent profit of the receipts as shown in 28AS without giving due opportunity to the assessee to explain the actual profits arrived at, by the assessee.

6.7.1. On perusal of the order appealed against, it is observed that as per information gathered by the A.O., the appellant had received contractual receipts of Rs.20,82,00,336/- during the F.Y.2012-13, relevant to the A.Y.2013-14. But, the appellant had not filed the Return of income for the A.Y.2013-14. Therefore, after obtaining due approval, the A.O. had initiated reassessment proceedings u/s.147 of the IT Act and issued notice u/s. 148 of the Act on 15.07.2022. Subsequently, seven statutory notices including show- cause notice were issued by the AO from time to time, but the appellant did not reply to any notice/show-cause issued by the A.O. In this situation, the A.O. had no other option but to complete the assessment ex-parte u/s. 144 of the IT Act. The A.O. had estimated the net profit under the provisions of 44AD of the I.T. Act and estimated the net profit @ 8% of the gross contractual receipts which comes to Rs.1.66.56.027/- and made addition of this amount as undisclosed business income.

6.7.2. During the appellate proceeding, five notices were issued to the appellant for submission of arguments/evidences in support of its contention made in the aforesaid grounds of appeal. But the appellant has not complied to any of the five notices issued during the appellate proceedings. The consistent non-compliance of the appellant may be because the appellant has no evidence/argument in support of the issues raised in the grounds of appeal or the appellant does not want to pursue the appeal. The statement of fact as grounds of appeal are very brief and do not provide any evidence in support contentions made in this ground of appeal.

6.7.3. From the above facts of the case, it is apparent that the A.O. has give adequate opportunity in the form of seven statutory notices to the appellant submission of the required details/documentary evidence/reply, but appellant did not reply to any notice/show-cause issued by the A Therefore, it is held that the A.O. had provided adequate opportunity throw numerous statutory notices and has followed all due procedure before completing the re-assessment procedures.

6.7.4. In view of the above and in absence of any argument/evidence from appellant, I have no other option but to go along with the findings of the AO the order appealed against Therefore, the addition of Rs 1.66.56.027) towards estimated profit 8% of the gross contract receipts is hereby sustained.

6.8. Vide the seventh ground of appeal, the appellant has contended that the Ld Assessing Officer has erred on facts and in law in making an addition of Rs 53,13,000/- on account of cash deposits without appreciating the facts

and without giving an opportunity to explain the source of the already accounted said cash.

6.8.1. On perusal of the order appealed against, it is observed that as per information gathered by the A.O., the appellant had made cash deposit of Rs 53,13,000/- in bank account during the relevant previous year. But, the appellant had not filed the Return of Income for the A.Y.2013-14. Therefore, after obtaining due approval, the A.O. had initiated reassessment proceedings u/s.147 of the IT Act and issued notice u/s 148 of the Act on 15.07.2022. Subsequently, seven statutory notices including show-cause notice were issued by the AB from time to time requesting the appellant to explain the source of cash deposit, but the appellant did not reply to any notice/show-cause issued by the A.O. In this situation, the A.O. had no other option but to complete the assessment ex-parte u/s.144 of the IT Act. Therefore, the A.O. had treated the cash deposit made by the appellant for Rs.53,13,000/- as unexplained cash deposit u/s.69A of the IT Act and added the same to the total income of the appellant while completing the assessment order u/s.147 r.w.s.144 of the IT Act for the A.Y.2013-14.

6.8.2. During the appellate proceeding, five notices were issued to the appellant for submission of arguments/evidences in support of its contentions made in the aforesaid grounds of appeal. But the appellant has not complied to any of the five notices issued during the appellate proceedings. The consistent non-compliance of the appellant may be because the appellant has no evidence/argument in support of the issues raised in the grounds of appeal or the appellant does not want to pursue the appeal. The statement of fact and grounds of appeal are very brief and do not provide any evidence in support of contentions made in this ground of appeal.

6.8.3. From the above facts of the case, it is apparent that the A.O. has given adequate opportunity in the form of seven statutory notices to the appellant for submission of the required details/documentary evidence/ reply, but the appellant did not reply to any notice/show-cause issued by the A.O. Therefore, it is held that the A.O. had provided adequate opportunity through numerous statutory notices and has followed all due procedure before completing the re-assessment procedures.

6.14. Before parting, it is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in *Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014]* and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant in the instant appeal to counter the AO's decision as contained in the assessment order, as mentioned earlier, the additions/disallowances made by the AO is sustained in terms of the observations herein above.”

5. Dissatisfied, the assessee is in appeal before the Tribunal.
6. The Ld. AR submitted that there was no intentional non-compliance of the notice(s) issued by the Ld. CIT(A)/NFAC. By referring to the affidavit of the assessee, the Ld. AR submitted that the ex-parte order u/s 147 of the Act was passed for AY 2013-14, as the assessee could not comply with the assessment proceedings due to the incident of the robbery which had taken place in his house and the murder of his mother. He further submitted that the assessee was in receipt of notice u/s 250 for AY 2013-14 bearing DIN: ITBA/NFAC/F/APL_1/2024-25/1065116206(1) dated

24.05.2024 in regard to the appeal filed against the said assessment order u/s 147 of the Act, the response dated 21.06.2024 to the aforesaid notice issued u/s 250 in regard to the assessment order was inadvertently submitted to the different window of notice u/s 250 bearing DIN: ITBA/NFAC/F/APL_1/2024-25/1065495861(1) dated 10.06.2024 in regard to the appeal filed against the penalty order u/s 271(1)(b) of the Act. It was only due to this inadvertent error that the notices remained uncomplished with. All the requisite details/documents were filed but in the incorrect window. The Ld. AR relied on the decision of Punjab and Haryana High Court in the case of CIT Vs. Dev Raj, (1975) 98 ITR 76 wherein it has been held that "*an inadvertent mistake was not equivalent to gross negligence or willful neglect*". He submitted that given an opportunity the assessee is in a position to furnish all the requisite supporting documents/evidence to substantiate his case before the Ld. CIT(A)/NFAC. It was therefore urged by him that the matter may be sent back to the file of Ld. CIT(A)/NFAC for adjudication afresh on merits.

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

8. We have heard the Ld. Representatives of the parties and perused the records. We notice from the facts narrated in Form No. 35 filed by the assessee before the Ld. CIT(A) that there was sufficient cause for the assessee for non-compliance of the notice(s) issued by the Ld. AO. So far as the non-compliance of the notice(s) issued by the Ld. CIT(A) is concerned, the Ld. AR has submitted that inadvertently the response to the notice issued by the Ld. CIT(A) in respect of appeal filed against the impugned assessment order was submitted to the notice issued by the Ld. CIT(A) in respect of appeal filed by the assessee against the penalty order passed by the Ld. AO u/s 271(1)(b) of the Act. He submitted that the assessee has cogent material/documentary evidence to prove his contentions before the Ld. CIT(A) which were duly submitted though unintentionally in the different window relating to the penalty proceedings (pages 27 to 46 of the paper book refers). The Ld. CIT(A) has passed the impugned order since the assessee failed to prosecute his appeal inspite of several opportunities. We further observe that the Ld. CIT(A) has passed the impugned order in concurrence of the order of the Ld. AO without himself going into the merits of the case. Thus, in our view, his order is in violation of the provisions of section 250(6) of the Act.

9. 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 Ld. CIT(A)/NFAC 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. We order accordingly.

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

Order pronounced in the open court on 30th October, 2024.

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

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th 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