

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

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

**ITA No.1556/PUN/2024
Assessment Year : 2020-21**

| | | |
|--|------------|------------------------------------|
| Dattatray Ramdas Gaikwad 250, Kawadenagar, New Sanghavi, Pune – 411027 | Vs. | ACIT, Central Circle 1(2), Pune |
| PAN: AFFPG6620Q | | |
| (Appellant) | | (Respondent) |

Assessee by : Shri Harsh S. Bhuta (through virtual)
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 04-11-2024
Date of pronouncement : 11-11-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the *ex-parte* order dated 24.05.2024 of the CIT(A), Pune-11 relating to assessment year 2020-21.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of the CIT(A) in confirming the addition of Rs.82,24,348/- made by the Assessing Officer u/s 69A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts of the case, in brief, are that the assessee is an individual and had filed his return of income on 09.01.2021 declaring total income of Rs.61,26,000/-. The

return was declared invalid by the CPC as it was not properly e-verified. Therefore, it was inferred by the Assessing Officer that no return of income was filed by the assessee for the impugned assessment year. A search and seizure operation u/s 132 of the Act was conducted in the case of the assessee on 06.11.2019. With a view to assess the total income of the assessee, a notice u/s 142(1) of the Act was issued on 08.09.2021 requiring the assessee to file his return of income for the impugned assessment year as per rule 12 of the IT Rules. However, the assessee failed to furnish the return electronically. On 18.09.2021, a questionnaire was issued to the assessee requiring him to furnish certain information and explanation as specified therein. The compliance was required to be made on 20.09.2021. However, no compliance was made by the assessee. Since the case was getting barred by limitation and only two days were left for completing the assessment, the Assessing Officer proceeded to complete the assessment u/s 144 of the Act on the basis of material available on record and on the basis of the evidences found during the course of search.

4. The Assessing Officer noted that during the course of search operation at the residential premises of the assessee, cash of Rs.51,17,300/- was found. The assessee in his statement recorded u/s 132(4) of the Act failed to explain the source of cash found to the extent of Rs.50,00,000/- for which, the authorized officer had seized Rs.50,00,000/-. Since the assessee did not participate in the assessment proceedings and has not explained the source of such cash found during the course

of search, the Assessing Officer made addition of the same to the total income of the assessee u/s 69A r.w.s. 115BBE of the Act.

5. The Assessing Officer further noted that during the course of search operation at the residence of the assessee, jewellery valued at Rs.90,50,896/- was found. The statement of the assessee was recorded u/s 132(4) of the Act wherein he was asked to explain the source of the jewellery so found. Since the assessee could not explain the source of such jewellery found the search party, after considering the CBDT Circular seized the jewellery amounting to Rs.30,22,348/- treating as unexplained in absence of any explanation provided by the assessee. The Assessing Officer again confronted the same to the assessee during the course of assessment proceedings. However, in absence of any reply from the side of the assessee, the Assessing Officer made addition of Rs.30,22,348/- to the total income of the assessee u/s 69A r.w.s. 115BBE of the Act. The Assessing Officer accordingly determined the total income of the assessee at Rs.1,41,48,348/-.

6. Since the assessee, despite number of opportunities granted by the CIT(A), did not submit any details, the Ld. CIT(A), following the decision of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojiro Holkar vs. CWT 223 ITR 480 (MP), decision of the Hon'ble Supreme Court in the case of CIT vs. B. Bhattachargee & Anr (118 ITR 461 (SC) and the decision of the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 ITR 495 (P&H) dismissed the appeal. While doing so, he further

held that nothing was brought before him to explain the source of cash of Rs.50,00,000/- and investment made in jewellery of Rs.30,22,348/-.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

8. The Ld. Counsel for the assessee submitted that although opportunities were granted by the CIT(A), however, the assessee was seeking adjournments to collate the documents and appoint a Counsel to represent his case. The Ld. CIT(A) without granting any further opportunity, has dismissed the appeal, which is not justified. He submitted that in the interest of justice, the assessee should be given one last opportunity to substantiate his case by filing the requisite documents before the Assessing Officer to explain the source of cash and jewellery found during the course of search.

9. The Ld. DR on the other hand referring to the order of the Ld. CIT(A) submitted that the assessee was given adequate opportunities by the Ld. CIT(A) which is evident from para 5 of his order. However, the assessee did not file any submission before the CIT(A). Further, during the course of assessment proceedings also, the assessee did not respond. This type of attitude on the part of the assessee shows that he has nothing more to say to explain the source of such cash and jewellery found during the course of search. Therefore, the order of the

Ld. CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

10. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We find the Assessing Officer in the instant case made addition of Rs.50,00,000/- as unexplained cash and Rs.30,22,348/- as unexplained investment in jewellery by invoking the provisions of section 69A r.w.s. 115BBE of the Act on the ground that the assessee failed to explain the nature and source of cash and jewellery so found during the course of search. We find the Ld. CIT(A) dismissed the appeal filed by the assessee in absence of any evidence filed before him to explain the nature and source of cash so found and source of investment made in the jewellery. It is the submission of the Ld. Counsel for the assessee that in the interest of justice, the assessee should be given one last opportunity to substantiate his case by filing the necessary evidence regarding the source of cash and jewellery so found during the course of search. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate his case by filing the requisite details explaining the source of cash and jewellery so found during the course of search and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer on the appointed date and file the requisite details without seeking any adjournment under any pretext failing which the Assessing Officer is

at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 11th November, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 11th November, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

| S.No. | Details | Date | Initials | Designation |
|-------|--|------------|----------|-------------|
| 1 | Draft dictated on | 04.11.2024 | | Sr. PS/PS |
| 2 | Draft placed before author | 05.11.2024 | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | | | Sr. PS/PS |
| 6 | Kept for pronouncement on | | | Sr. PS/PS |
| 7 | Date of uploading of Order | | | Sr. PS/PS |
| 8 | File sent to Bench Clerk | | | Sr. PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | | |
| 10 | Date on which file goes to the A.R. | | | |
| 11 | Date of Dispatch of order | | | |