

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.281/Nag./2023
(Assessment Year : 2019-20)

Purnanand Ramchandra Mishra
593, Pugaliya Kothi, Naik Gali
Dharaskar Road, Itwari, Nagpur 440 002
PAN – AKTPM9237C

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-2(2), Nagpur

..... Respondent

Assessee by : Shri K.M. Gupta
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/11/2024

Date of Order – 28/11/2024

ORDER

PER V. DURGA RAO, J.M.

This appeal by the assessee is directed against the impugned order dated 07/06/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2019-20.

2. The following grounds have been raised by the assessee:-

"1. That, on the facts and circumstances prevailing in the case, the Assessing Officer has not assumed proper jurisdiction to assess the assessee u/s 143(3), as the notice u/s 143(2) was issue beyond the time limit prescribed for issue of notice.

2. That, on the facts and circumstances prevailing in the case, Assessing Officer has no jurisdiction to issue notice u/s 143(2) of the Income Tax Act.

3. That, on the facts and circumstances prevailing in the case, Assessing Officer has failed to prove that assessee is owner of money found Rs. 67,50,000/- and thus has erred in applying provision of Sec 69A to held that Rs.67,50,000/- is the deemed income of assessee.

4. That, on the facts and circumstances prevailing in the case, the Assessing has erred in holding that Shri Anand Pugaliya is not the owner of Rs. 67,50,000/- in the circumstances when Assessing Officer himself accepts books of account of Shri Anand Pugaliya in his own case in the order passed u/s 143(3) which evidences the payment of Rs. 67,50,000/- to the assessee.

5. That, on the facts and circumstances prevailing in the case, Assessing Officer has erred in holding that the assessee is owner of money found Rs. 67,50,000/- when the Department itself in a proceeding under Prohibition of Benami Act held that assessee is not the owner of money found at Rs. 67,50,000/-.

6. That, on the facts and circumstances prevailing in the case, whether a person can simultaneously held to be owner of cash u/s 69A of the Income Tax Act, 1961 and a benamidar of the same cash u/s 2(9)(D) of The Prohibition of Benami Property Transaction Act, 1988 by the Income Tax Department.

7. That, on the facts and circumstances prevailing in the case and law applicable thereto, CIT(A) has erred in dismissing the appeal for want of prosecution and failed to passed order on merits, which is against the provision of Sec. 250 and decided case laws.

8. That, the assessee craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the course of hearing."

3. When this appeal is taken up for hearing, the learned A.R. appearing for the assessee submitted that the learned CIT(A) passed an ex-parte order and prayed that one opportunity may be granted by restoring the matter to the file of the learned CIT(A) to enable the assessee to substantiate its case before the learned CIT(A).

2. On the other hand, the learned D.R. submitted that despite the learned CIT(A) provided sufficient opportunities to the assessee, however, the assessee did not appeared before the learned CIT(A) and not furnished

relevant details. He strongly supported the orders passed by the learned CIT(A).

3. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that though the learned CIT(A) granted opportunities to the assessee to substantiate its case, ultimately, the order passed by him is an ex-parte order. Therefore, we am of the opinion that by following the principles of natural justice, one opportunity should be given to the assessee to substantiate his case before the learned CIT(A). In view of the above, the order passed by the learned CIT(A) is set aside and remit the matter to the file of the learned CIT(A) and direct him to adjudicate the matter afresh on merit and in accordance with law after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 28/11/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 28/11/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur