

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.1855/Kol/2024

Assessment Year: 2017-18

Pancghvarnam Thangaraj.....Appellant

Aberdeen Bazar, Port Blair,
Union Territory of Andaman &
Nicobar Island – 744102.

[PAN: AEJPT7625M]

vs.

ITO, Ward-3(4), Port Blair.... Respondent

Appearances by:

Shri Akkal Dudhwewala, AR & Vidhi Ladia, AR, appeared on behalf of the appellant.
Shri Susanta Saha & Shri Rajat Datta, Sr. DRs, appeared on behalf of the Respondent.

Date of concluding the hearing : December 05, 2024

Date of pronouncing the order : December 06, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.05.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the ld. AR drew our attention to a delay of 35 days in filing the instant appeal. The assessee has submitted an application for condonation of delay citing valid and proper reasons. After considering the averments made in the application, we condone the delay.

3. The brief facts of the case are that a search and seizure operation u/s 132 of the Act was conducted on 16.12.2016 at Veer Savarkar International Airport, Port Blair in the name of Shri Gopala Krishnanan. During the course of search, Rs.16,18,440/- in cash and certain

documents were seized. During the search operation, statement was recorded from the assessee. Out of the seized amount, Rs.6,00,000/- was claimed to be belonged by the assessee. The assessee admitted that Rs.6,00,000/- was given by him to Shri Gopala Krishnanan from his undisclosed source of income. The assessee also disclosed Rs.21,00,000/- as his undisclosed income for the F.Y 2016-17 stating the income arose from hotel business. The assessee subsequently filed his return of income on 02.12.2017 declaring a total income of Rs.5,00,250/- under presumptive taxation u/s 44AD of the Act. Subsequently, the case of the assessee was selected for scrutiny followed by statutory notices issued u/s 143(2) and 142(1) of the Act. During the assessment proceedings, the assessee retracted his earlier disclosure of Rs.21,00,000/- claiming that the statement was made under duress during the search operation. The contention of the assessee was that he operates a tea stall cum tiffin centre at Mohanpura, Port Blair and also holds a valid money lending licence issued by Deputy Commissioner of Andaman & Nicobar Island. Before the Assessing Officer, the assessee stated that he is exempted from maintaining books of account as required u/s 44AA due to presumptive taxation provision. Despite these explanations, the Assessing Officer treated the entire Rs.21,00,000/- as undisclosed income and adjusted Rs.6,00,000/- towards tax liability.

4. Dissatisfied with the above order, the assessee filed an appeal before the Id. CIT(A), however, due to assessee's non-appearances on multiple occasions, the appeal was dismissed ex parte without considering the proper facts of the case.

5. Aggrieved, the assessee is in appeal before this Tribunal primarily challenging the addition of Rs.21,00,000/- solely based on the initial disclosure made during the search action without corroborating evidences, which was bad in law. The Id. AR also stated that CBDT

Circular No.286/2/2003 dated 10.03.2003 clearly mentioned that forced confession made during the search operations and retracted later on while filing returns should be based on credible evidence. The ld. AR submitted that the assessee herein retracted his earlier statement, the Assessing Officer did not consider such retracted statement and later on also during the proceeding before the ld. CIT(A), the assessee was unable to present its case properly due to non-appearance and the ld. CIT(A) did not consider the issue on merits, which is bad in law. The ld. AR therefore prayed that the instant issue may be set aside to the file of the ld. CIT(A) with a direction to re-examine the issue afresh after providing reasonable opportunity to present his case.

6. On the other hand, the ld. DR opposed the above plea of the assessee arguing that sufficient opportunities were provided to the assessee during the appellate proceedings, however, the assessee has failed to avail those opportunities. Therefore, the ld. CIT(A) acted correctly to dismiss the appeal of the assessee on the basis of materials available on record. Therefore, he prayed that such prayer made by the assessee may be rejected in limine.

7. We, after hearing the rival submissions and perusing the materials available on record, find that during the search operation, the assessee had disclosed a turnover of Rs.21,00,000/- for the assessment year in question, however, the disclosure was retracted during the assessment proceedings. The assessee asserted that the statement made during the search operation was under duress and was not voluntary. The income of the assessee was declared under presumptive taxation u/s 44AD and no books of account are required to be maintained as per provisions of section 44AA of the Act. We also examine the Circular No.286/2/2003, which explicitly states that confessions made during the search or survey operations should not be used as a sole basis for addition unless supported by tangible evidences. We note that in the present case, no

such evidence was provided by the Assessing Officer. We, therefore, deem it appropriate to remand the matter back to the file of the Id. CIT(A) with a direction that the Id. CIT(A) will re-examine the issue afresh taking into account the assessee's retraction with supporting documents, bank statement, money lending licence and Instruction issued by CBDT in relation to retracted statement. Needless to say that the Id. CIT(A) will provide opportunity to the assessee to present his case properly and the assessee is also directed to comply with the notices issued by the Id. CIT(A) without any fail.

8. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 6th December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 06.12.2024.

RS

Copy of the order forwarded to:

1. Pancghvarnam Thangaraj
2. ITO, Ward-3(4), Port Blair
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches