

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.319/Nag./2023
(Assessment Year : 2015-16)

ITA no.320/Nag./2023
(Assessment Year : 2016-17)

ITA no.321/Nag./2023
(Assessment Year : 2017-18)

Vikram Radheshyam Agrawal
159, Bhandara Road
Pardi, Kalamna Market Yard S.O.
Nagpur 440 035 PAN – AIJPA7310C

..... Appellant

v/s

National Faceless Assessment Centre

..... Respondent

Assessee by : None

Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 05/12/2024

Date of Order – 12/12/2024

ORDER

PER V. DURGA RAO, J.M.

These appeals by the assessee are against impugned order dated 07/07/2023, for the A.Y. 2015-13 and orders of even date 10/07/2023, for the A.Y. 2016-17 & 2017-18 respectively, passed by the first appellate authority i.e., National Faceless Appeal Centre, Delhi.

2. When these appeals were taken up for hearing neither the assessee-appellant nor any of its authorised representatives appeared before us to assist the Bench in disposing off these appeals by the assessee.

3. Since these appeals pertain to the same assessee involving common issue, except variation in figures, the decision so arrived in this appeal will mutatis mutandis apply to the other two appeals as well.

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4. Before us, the learned Departmental Representative strongly supported the orders passed by the National Faceless Appeal Centre.

5. We have gone through the entire material filed before us in all the three assessment years under consideration. We find that in this case these appeals were adjourned for 18 times. Even today also, the assessee, despite receiving notice, failed to appear before us. Therefore, prima facie, we are of the opinion that the assessee is not interested in pursuing its appeals and thus we proceed to dispose off these appeals on merit after hearing the learned Departmental Representative and on relying upon the material available before us.

6. The learned CIT(A) confirmed the order of the Assessing Officer by considering the material facts and the relevant portion of the order passed by the first appellate authority for the assessment year 2015-16 are extracted below:-

A.Y. 2015-16

"6.2 Ground nos.1 2 & 3, are relates to reassessment proceedings u/s 147/148. The appellant through this ground of appeal has challenged the legal validity of reopening u/s 148 of the IT Act.

6.2.1 I have examined the issue so raised. The Assessing Officer initiated reassessment proceedings only after properly appreciating and analyzing

evidences and information gathered by Investigation Wing. The return of income was also analyzed with reference to information received from Investigation Wing. Thus, information, on the foundation of which Assessing Officer had initiated proceedings under section 147, was certain and constitutes sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. Thus, there was reason to believe that income of the appellant company had escaped assessment on account of failure on the part of the appellant to disclose fully and truly all material facts/particulars of its income necessary for its assessment.

6.2.2 In *Peass Industrial Engineers (P) Ltd. vs. Deputy Commissioner of Income-tax* [2016] 73 taxmann.com 185 (Gujarat), it was held that what is required at stage of issuing notice under section 148 is a reason to believe and not established fact of escapement of income and, therefore, looking to the scope of section 147 as also sections 148 to 152 even if scrutiny assessment has been undertaken, if substantial new material is found in form of information on basis of which assessing authority can form a belief that income of petitioner has escaped assessment, it is always open for assessing authority to reopen assessment.

6.2.3 In *Assistant Commissioner of Income-tax vs. Kisco Casting (P) Ltd.* [2013] 34 taxmann.com 37 (Chandigarh-Trib.), it was held that action can be taken under section 147 read with section 148, on basis of report from Investigation wing of department. Therefore, where assessing Officer had been supplied with information by Investigation wing and he applied his mind to such information, there was no infirmity or illegality in issuance of notice under section 148.

6.2.4 In the case of *Principal Commissioner of Income-tax-7 vs. Paramount Communication (P) Ltd.* [2017] 79 taxmann.com 409 (Delhi), it has been held that:-

"Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings."

6.2.5 I have perused the matter and it is seen from the assessment order that the proper procedure was followed and no infirmity in law. The Assessing Officer should have reason to believe that the income of the assessee had escaped assessment and this belief should be of an honest and reasonable person based on reasonable grounds. Taking the totality of the facts and circumstances of this case into consideration, I reject the contentions of the AR and uphold the validity of the notice u/s 148 issued and subsequent assessment made.

The ground of appeal no. 1, 2 & 3 are accordingly dismissed.

6.3 Ground No. 4 pertains the addition of Rs 4,36,70,910/- as unexplained income u/s 69 of the IT Act.

6.3.1 During the course of assessment proceedings, the Assessing Officer in his assessment order dated 28/09/2021 has stated that:-

"The assessee was requested to furnish his explanation on the source and nature of cash deposits in M/s Renuka Multistate Urban Credit Co-operative Society. In his reply furnished on 04.04.2021, the assessee has submitted his explanation as under:-

Assessee has been working as an Agent for various clients. The amounts were collected from the person of such client and were remitted through RTGS or NEFT through the account of assessee in Renuka Multistate Urban Credit Co-operative Society A/C No. 107004003000084 to the said clients in their bank account. For rendering these services, assessee was receiving certain amount as a commission which is duly offered for taxation as Commission Income in the Income Tax Return filed.

Assessee Account statement in Renuka Multistate Urban Credit Co-operative Society A/C No. 107004003000084 is enclosed herewith. It may kindly be verified that the amount is remitted immediately to the account of the assessee from the clients after it is received by the assessee from the clients.

That the amount deposited in the Renuka Multistate Urban Credit Co-operative Society does not belong to the assessee and was never retained by the assessee. That assessee hereby undertakes to submit such other information or documents as may be required/obtained in support of all above.

Another reply dated 15.07.2021 was submitted by the assessee simply stating that all the details have been furnished earlier and hence no documentary information is submitted herewith. However the assessee had failed to furnish the nature and source of cash deposit in his account and no documentary evidence except for single page statement has been furnished for such huge cash deposit in the account of assessee which was not even declared by him in his ITR. Before considering the submission of the assessee, it is necessary to analyze the bank statement of the assessee, which was concealed by him at the time of filing of his ITR. Now, analysis of cash deposits of Rs. 4,36,70,910/- during F.Y.2014-15 in the saving account no. 107004003000084 held with M/s Renuka Multistate Urban Co-operative Society in the name of Shri Vikram Kumar Agarwal reveals as under:-

XXXXX

XXXXX

XXXXX

2. The summary of bank statement clearly reveals that out of total amount of Rs. 436.71 lakhs deposited in cash in his account, Rs. 77.87 lakhs have been withdrawn in cash as detailed in chart above. Moreover for the debit entries made to various accounts through RTGS/NEFT, no evidence has been furnished by the assessee as to how the cash belonged to any other person and what is the nexus of that party with the account to which these RTGS/NEFT have been made. The assessee had failed to furnish copy of balance sheet, P & L account and the bank statement of the assessee to evidence the nature of entry in its account for cash given to assessee and the amount received through RTGS/NEFT. Various Courts have opined that the onus is always on the assessee to furnish the genuineness of entries in his books of accounts/bank

Hon'ble Supreme court in the case of Kale Khan Mohammad Hanif Vs. CIT[1963]50 ITR 1 SC has held as under:-

It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it

was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income tax Officer is entitled to treat it as taxable Income.

Sumati Dayal V. CIT [1995] 80 Taxman 89 (SCJ)

"But, in view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory."

In this case the assessee has not furnished any evidence with regards to the source and nature of cash deposited by him except for single page reply dated 4/4/2021 without any documentary evidence. Moreover the contention of the assessee that he was receiving certain amount as commission which is duly offered for taxation as commission income is also not supported by the fact that for total turnover of more than Rs. 4 crore the assessee has neither got his accounts maintained and audited as provided u/s 44AA & 44AB of the I.T. Act, 1961. Even the amount of commission either in percentage or in quantum has not been given by the assessee. Moreover the cash deposited in declared bank account remains unexplained, in case this contention is accepted. Non maintenance of books of accounts, non-conduct of audit and concealment of such bank account which is now claimed to be major income earning account, cannot be held as simple omission but proves deliberate and intentional default of the assessee and avoidance of tax payable by giving statements which are not supported by single documentary evidence. In none of the replies the assessee has furnished the nature of his business activities, source of cash deposit i.e. the name and address of the person from whom such commission has been received and the nature of services provided by him for earning such commission.

Further from the above chart reflecting payment to various parties through RTGS/NEFT, amount of more than crore has been transferred to Om Impex, and if the contention of the assessee that he has received commission from it (total commission received from all parties being Rs. 4,06,388/-) then why no TDS on commission was deducted by such entity UME TAX DEPART Without prejudice to the above, if the statement of the assessee is accepted that he had received cash from various parties and has transferred the same by RTGS/NEFT to them, then it makes it ample clear that he had acted as conduit to convert black money of any other person by transferring it through banking channel and is involved in helping others to evade tax.

Thus from above analysis following questions remained unanswered:-

- 1. At the time of filing of ITR why this bank account was not declared.*
- 2. Since the gross receipts of the assessee were more than Rs. 1 crore, why books of accounts were not properly maintained and why audit was not conducted.*
- 3. When at the time of filing of ITR, the commission was stated to be received in bank account maintained with Nagpur Nagrik Sahakari Bank Ltd., then how the Bank has now changed and moreover the total cash and other deposit in Nagpur Nagrik Sahakari Bank Ltd. was Rs. 5.5 lakhs only which was stated to*

be commission income then how an amount of more than Rs. 4 crore could fetch same commission.

4. The account in Renuka Matta Multi State Urban Credit Company Society was opened by the assessee on 22/10/2013 and operated till 25/08/2016, but this account remained undisclosed in each and every ITR filed for this period.

5. As per the ITR filed by the assessee for A.Y. 2017-18, the assessee is proprietor of Shri G Grain & Oil Trading Co and has declared sales to the tune of Rs. 269.14 lakhs. During this period, the account of Renuka Multi State Urban Credit Co society, has been utilized by the assessee for cash deposits from different areas, but even then this account remained undisclosed.

6. Since the assessee has utilized this account in subsequent years for his own proprietary firm, hence it can well be accepted that during this A. Y. also, the account was used by the assessee for his undisclosed business.

7. Why no identification (name, address and PAN), balance sheet, P&L, bank statement and confirmed copy of account with entities to whom RTGS has been given and from whom cash has been received was furnished to substantiate the claim.

8. Why the balance sheet prepared and furnished later on do not reveal the balance amount of housing loan date of purchase i.e. of purchase of plot at Netaji Nagar in which the assessee has shown his share as 1/3rd, account maintained with Renuka Matta Multi State Urban Credit Company Society, bank charges on this account, nature of amounts forwarded from Nagpur Nagrik Sahakari Bank Ltd to Tarabai Radheshyam Agarwal Rs. 2,50,000/- and Shri P.P. Agarwal Rs. 4,00,000/-, LIC premium as per balance sheet Rs. 80,009/- though as per LIC receipts the same is 82,208/- etc. No explanation as to how the balance sheet has been tallied has been furnished.

All these facts clearly reveal that the assessee has deliberately and intentionally concealed his income by not reflecting the account maintained with Renuka Multi State Urban Credit Co Society from where huge cash has been withdrawn by him as per the bank statement and chart furnished above and for other entries, the assessee had failed to furnish even a single documentary evidence to prove the genuineness of the claim. Even after selection of the case for scrutiny, the assessee has failed to furnish the correct explanation of cash deposit in this account and has tried to mislead department by giving baseless statements. In view of the ITR filed for A.Y. 2017-18, which is audited one, it cannot be ruled out that the assessee was engaged in making procurements related to his business and utilized his unaccounted cash for transferring it to other parties for the reason better known to him. This fact is further supported by the bank account opened by the assessee with HDFC bank on 19.10.2015, wherein an amount of Rs. 1 lac was transferred from Shri G Grain And Oil Trading co on the very same date of opening of bank account, establishing that the firm of the assessee was working at least before 19.10.2015, from where the amount was transferred.

In view of the above facts and the decisions of Hon'ble Apex Court cited above, since the assessee had failed to furnish any documentary evidence for source of cash deposit in his account, the entire cash deposit of Rs. 4,36,70,910/- is treated as unexplained income of the assessee liable to be added u/s 69 read with section 115BBE of the Income tax Act, 1961."

6.3.2 I have perused the matter and the relevant factors to be considered in this case including the surrounding circumstances, objective facts, evidences adduced and material available on record.

6.3.3 In the present case, the assessing officer had reason to believe that income has escaped the assessment within the meaning of section 147 of the IT Act, on account of failure to disclose true and correct income. The information received is that the assessee had made cash deposits of Rs 4,36,70,910/- in saving bank account and the assessee has not reported the same in the return of income filed for the AY 2015-16.

6.3.4 It is noticed from the assessment order that the bank statement clearly reveals that out of total amount of Rs 436.71 lacs deposits in cash in his account and Rs 77.87 lacs have been withdrawn in cash (detailed in chart pg. 20 of this order). The debit entries made to various accounts through RTGS/NEFT, no evidence has been furnished by the assessee as to how the cash belonged to any other person and what is nexus of that party with the account to which these RTGS/NEFT have been made. In this regard, the appellant has failed to furnish copy of balance sheet, P&L A/c and the bank statement to evidences the nature of entry in its account for cash given to assessee and the amount received through RTGS/NEFT.

6.3.5 Further, it is noticed that the contention of the assessee that he was receiving certain amount as commission which is duly offered for taxation as commission income is also not supported by the fact that for total turnover of more than Rs. 4 crore the assessee has neither got his accounts maintained and audited as provided u/s 44AA & 44AB of the I.T. Act, 1961. Since turnover of the appellant is more than one crore for the year under consideration, the appellant was required to get its account audited before the specified date and audit report in the prescribed form duly signed.

6.3.6 Non maintenance of books of accounts, non-conduct of audit and concealment of such bank account which is now claimed to be major income earning account, cannot be held as simple omission but proves deliberate and intentional default of the assessee and avoidance of tax payable by giving statements which are not supported by single documentary evidence. In none of the replies the assessee has furnished the nature of his business activities, source of cash deposit i.e. the name and address of the person from whom such commission has been received and the nature of services provided by him for earning such commission.

6.3.7 In this regard, the appellant's reply is considered but not found tenable. No identification i.e. name, address and PAN, balance sheet, P&L, bank statement and confirmed copy of account with entities to whom RTGS/NEFT has been given and from whom cash has been received was furnished to substantiate the claim. It is seen that no further documentary evidence, whatsoever, has been produced to prove the genuineness of the transaction. Apart from written submission, the appellant has produced copies of documents produced before AO as mentioned above in appellant's submission. I have examined these documents. Instead of supporting the case of appellant, these documents only reinforces the findings of the AO which are based on his detailed analysis of the facts and circumstances of the case along with deep and wide Investigation carried out by the department.

6.3.8 In the instant case, appellant has failed to submit the details regarding sources of the cash deposits in his bank account. The primary onus was cast upon the appellant to establish the source of such cash deposits in the said

bank account. I find that the appellant has failed to discharge its burden of proof and the AO, on the other hand, even in the limited time available, analysed the available material and has proved that the claim of the appellant was incorrect. All these facts clearly reveal that the assessee has deliberately and intentionally not disclosed the true and correct income with the intention to evade tax.

6.3.9 Hence, in view of the above and on the basis of the detailed findings and reasons given by the AO in his assessment order, which have not been explained by the appellant and no evidence to the contrary has been submitted either at the stage of assessment or appeal. Hence, in absence of supporting evidence, the claim of the appellant was not found acceptable. Accordingly, addition made by the Assessing Officer amounting to Rs 4,36,70,910/- as unexplained money/unexplained cash credit u/s 69A of the IT Act is hereby confirmed and grounds of appeal raised in this regard is dismissed.

7. Ground No. 5 states that the appellant reserves its right to add alter modify or to amend any of the aforesaid grounds before or at the time of hearing of an appeal. Since no such option has been exercised by the appellant during the appeal proceedings, this ground of appeal is considered to be dismissed for statistical purposes.

8. In the result, appeal is dismissed.”

7. Considering the facts and circumstances of the case and the order of learned CIT(A), the Bench is of the view that the order passed by the learned CIT(A) to be reasonable which was passed in accordance in law. The assessee failed to make out any case and also failed to controvert the water tight findings of the learned CIT(A). Accordingly, we do not find any cogent reason to disturb the findings of the learned CIT(A) and the order passed by him is hereby upheld by dismissing the grounds raised by the assessee.

8. In the result, appeal filed by the assessee for the A.Y. 2015-16 is dismissed.

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12. Since the grounds of appeal taken by the assessee is identical to the grounds raised by the assessee in its appeal for the assessment year 2015-16, which we have decided as aforesaid, consistent with the view taken therein, similar directions are issued in these appeals also. Accordingly, the grounds raised by the assessee in the A.Y. 2016-17 and 2017-18 are also dismissed.

9. In the result, appeals filed by the assessee for A.Y. 2016-17 and 2017-18 are dismissed.

10. To sum up, all the appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 12/12/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 12/12/2024

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