



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.1449/PUN/2024
निर्धारण वर्ष / Assessment Year: 2013-14

Mr.Altaf Patel, House No.128, Bhusar Mohalla Panvel Raigad, Panvel – 410206. PAN: BCAPP4701L	V s	The Income Tax Officer, Ward-1, Panvel.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shir Manish Mehta – Addl.CIT(DR)
Date of hearing	05/12/2024
Date of pronouncement	11/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] for Assessment
Year 2013-14dated 21.05.2024 passed u/sec.250 of the Income tax
Act, 1961. The Assessee has raised the following grounds of
appeal :

“1. We request sir to please admit bank of baroda statement which we could not obtain at the initial assessment stage since very less time was allowed and in the show cause notice the said bank details were not mentioned. The said bank statement filed at CIT(appeals) level



was also not considered By Honorable CIT(appeals) while making his order It was old record and other banks we obtained after huge hard work with bank. We pray to your honor that while considering the gross receipt of Bank of baroda The honorable Income Tax officer and Honorable CIT(appeals) have grossly erred. The Gross receipts of Bank of Baroda for year in question are Rs.21,65509/- and the following receipts must be reduced from the gross receipts being contra enteries like cheque dishonored and transfer to our own account elsewhere and cash deposit out of previous withdrawals The details there of are as follows contra entry for cheque dishonored Rs.458500(dt 2/5/12)., (Transfer to own account in DCB bank Rs.100000(15/09/12)., Transfer to own account in DCB bank account Rs.300000(15/09/12)., Transfer to Icici bank own account Rs.100000(05/1/12))(these transfer were considered in gross receipts of DCB bank and Icici bank). Cash withdrawal of Rs 450000 dt 03/05/12 considered as gross receipt for other banks hence these amounts needs to be reduced from Gross receipts for working of the 8 percent being so the gross receipt of bank of baroda should be considered at Rs.2165509 (deposit in bank of baroda excluding bank interest on saving account) less above Rs.1408500 equal to Rs.757009/- hence total gross receipts will be Rs.3947509 and presumptive income of 8% will be Rs.315800 prayer to consider the ground of appeal.

2. Prayer before your honor that while working the presumptive income due consideration for Money returned back to customer and money given by account payee cheques to private limited companies were not considered by Honorable Income tax officer and hence we pray to give concession for rate of presumption on gross receipt to be considered at 5 Percent instead of 8 percent. Prayer to consider the ground of appeal.

3. Sir Show cause dictates cash deposit of Rs 2866000 and hence as per the show cause notice and gross receipt being considered by Hon AO the presumptive income of 8 percent should be worked out on Rs 2866000 since no other gross receipts were declared by Hon AO in his notice and hence assessee income must be considered Rs.229280 i.e.8 percent of Rs 2866000 Prayer to consider the ground of appeal.”

Submission of Id.AR :

2. At the outset of hearing, no one appeared on behalf of the assessee. No request for adjournment was filed. Even for earlier



hearing dated 10.09.2024, no one had appeared and no adjournment letter was filed. In these facts of the case, we proceed the case as ex-parte.

Submission of Id.DR :

3. The Id.Departmental Representative (Id.DR) for the Revenue relied on the order of the Assessing Officer and Id.CIT(A).

Findings & Analysis :

4. It is observed from Form No.35 filed by the assessee before the Id.CIT(A) that assessee had made following submissions before the Id.CIT(A) :

“Sir I had a business of Haj Tours and travels but I suffered loss but in the assessment Honorable Assessing officer has applied presumptive income and treated my income as 8 percent of deposit in bank. However the deposit in bank of Baroda are 1400000 only and not 3263694 As such working of the presumptive income should be on 1400000 cash deposit in bank of baroda so total cash deposits after considering the 1400000 comes to 4550500 and working at 8 percent comes to 364040 as income Since there is difference in cash deposit of bank of baroda as per Honorable income tax officer records the appeal is made

2. Assessing officer has treated 8 percent as presumptive income on total cash deposit in all banks whereas the net cash deposit after considering the withdrawals are only 2000000 (twenty lacs) only Hence I request to apply 5 percent presumptive rate on total cash deposit in bank hence the appeal

3. Various expences details and affadavit was given at the time of assessment

BEFORE HONORABLE OFFICE OF CIT(APPEALS)



1. We Your Kind sir to please admit bank of baroda statement which we could not obtain at the initial assessment stage since very less time was allowed and in the show cause notice the said bank details were not mentioned.

It was old record and other banks we obtained after huge hard work with bank. As could be seen from the bank of baroda statement the Cash deposit in bank of Baroda are only 1400000. as such it is request to your kind sir with huge cry of distress and hardship to please recompute the working of Honorable Assessing officer by taking 1400000 in place of 3263694 as cash deposit in bank of baroda since 1400000 figure as per the bank statement is correct figure so the total cash deposit in all banks will be 4550500 and 8 percent there of will be Rs 364040 ie income of the Assessee. We request your kind sir to please consider this ground

2. The Honorable officer while considering the income of the Assessee has charged presumptive rate on total cash deposit in all banks where as the net cash deposits in all banks after considering the cash deposit and cash withdrawals is only 2000000. As such it is requested to your kind sir to please consider 5 percent rate for presumption of the income of the assessee on the total cash deposit in all banks as such the presumptive income will be 5 percent of Rs 4550500 that is 227525 Honorable authority is requested to please consider this ground of appeal

3. Assessee request to add alter amend ground of appeal athe time of appeal and actual hearing

4 request to consider the appeal.”

4.1 However, it is observed that Id.CIT(A) has dismissed the appeal of the assessee without discussing the merits of the case.

The relevant paragraph of the Id.CIT(A) is as under :

“6. Decision:

6.1 Appeal has been filed against the order u/s 147, dated-29.09.2021, by PNE-W-(81)(1). In pursuance of appeal, this office has issued notices dated 08.12.2023, 03.01.2024, 03.04.2024 and 13.05.2024



wherein the compliance dates were 18. 12. 2023, 12.01 2024, 10.04.2024 and 17.05.2024.

6.2 It can be seen that assessee has not furnished any reply and has not given any factual or legal details to come to conclusion different from that of AO.

6.3 Even otherwise, it was for assessee to furnish cogent evidence in support of its grounds of appeal. This has not been done Onus cannot be cast on this office to be an adjudicator and also a lawyer for the assessee when assessee is itself lax and uninterested in pursuing of his own appeal.

6.4 As a result, the appeal is held to be without merit and the same is hence Dismissed.”

4.2 Thus, ld.CIT(A) has not discussed the merits of the case. Ld.CIT(A) has not verified the claim of the appellant that there is discrepancy in the actual amount deposited in the Bank of Baroda account and the amount which has been considered by the Assessing Officer. The assessee claimed in his submission before the Ld.CIT(A) that actual deposits in the Bank of Baroda Account are only Rs.14,00,000/- where as the Assessing Officer has added Rs.32,63,694/- as deposits in the bank of Baroda Account. The Assessee had filed copy of the Bank Statement. The Ld.CIT(A) has not verified these facts at all. As per Section 250 of the Act it is the duty of the Ld.CIT(A) either to verify the facts himself or get it verified from the Assessing Officer. It seems the AO had not



bothered to get copy of Bank Statement from the concerned Bank. The AO has merely relied on the “AIR information”. It is observed that there was valid reason for non-compliance by the assessee. Assessee had also claimed that benefit of cash withdrawals may be provided. This fact also needs to be verified which neither Assessing Officer, nor Id.CIT(A) has verified. On plain reading of the Assessment Order we could not ascertain whether COPY of the reasons recorded for Reopening were provided to the Assessee or Not ! If Reasons Recorded have not been provided to the assessee the same must be provided to the assessee as held by Hon’ble Supreme Court in the case of GKN Driveshaft Ltd Vs. ITO 259 ITR 19 (2003). Subsequently Hon’ble Jurisdictional High Court in the case of *Tata Capital Financial Services Ltd. v. ACIT* [2022] 137 taxmann.com 315/287 Taxman 1 (Bom.) has laid down elaborate guidelines to be followed in reopening cases. Therefore, in the interest of justice, we set-aside the order of the Id.CIT(A) to Id.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the Id.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.



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

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

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th Dec, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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