

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.56/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Javed Abdul Gafur Naik,
Shivaji Nagar, Kudal,
Dist.-Sindhudurg,
Maharashtra – 416520

PAN : AEUPN3460P

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer,
Ward – Kudal

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kumar Kale
Adv. Rajdeep A Dikonda
Revenue by : Shri Kalpesh Rupavatiya

सुनवाई की तारीख / Date of Hearing : 09-02-2024
घोषणा की तारीख / Date of Pronouncement : 20-03-2024

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 01-12-2023 passed by the National Faceless Appeal Centre (“NFAC”), Delhi for assessment year 2017-18.

2. The assessee raised five grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A), NFAC, Delhi justified in confirming the order of AO ex-parte of the assessee.

3. We note that the assessee is an individual and no return of income filed within the prescribed time provided u/s. 139 of the Act. The AO found that the assessee had deposited substantial cash of Rs.10,49,000/- in Vidharbha Konkan Gramin Bank, Kudal between 09-11-2016 to 30-12-2016. Having no return of income on record, the AO issued notice u/s. 142(1) of the Act, but no return of income filed in response to such notice. The AO reproduced the details of cash deposits in page No. 3 of the assessment order. Having no compliance by the assessee in response to notice u/s. 142(1) of the Act, the AO recorded statement of the assessee u/s. 131 of the Act. The said statement is reproduced from pages 10 to 14 of the assessment order. Considering the said statement and facts and circumstances of the case, the AO held no satisfactory explanation to the cash deposits amounting to Rs.11,51,000/-, added the same to the total income of the assessee u/s. 69A of the Act and charged to tax u/s. 115BBE of the Act. Aggrieved by the said order, the assessee preferred an appeal before the First Appellate Authority.

4. It is evident from para 4 of the impugned order that no compliance made by the assessee in response to the five notices issued by the NFAC, Delhi, thereby the NFAC, Delhi confirmed the order of AO.

5. Before us, the ld. AR submits, that no notice received by the assessee from the NFAC, Delhi. He drew our attention to Form No. 35 and submits that the assessee has given e-mail of his authorized representative

and the said authorized representative did not inform the assessee about the notices issued by the NFAC, Delhi. The ld. AR submits that the assessee is ready to prosecute his case before the NFAC, Delhi, if an opportunity is given by the Tribunal by remanding the matter to the file of CIT(A). The ld. DR objected to the said submissions of the assessee, drew our attention to para 4 of the impugned order and argued that the NFAC, Delhi has given ample opportunities to the assessee, but no compliances were made by the assessee. On perusal of Form No. 35, we note that the assessee provided e-mail of his authorized representative in personal information column and also in Column No. 17. Admittedly, that is not the e-mail ID of the assessee as we find his e-mail ID at personal information column in Form No. 36. Further, there was no discussion on merits of the case by the NFAC, Delhi regarding the additions made by the AO which is evident from paras 5.1 to 5.5 of the impugned order.

6. As discussed above, there was no discussion made by the NFAC, Delhi on merits, but however, simply confirmed the order of AO ex-parte of the assessee which is against the statutory provisions contemplated under sub-section (6) of section 250 of the Act. The sub-section (6) of section 250 of the Act explains that the order of Commissioner (Appeal) shall be in writing stating points for determination, the decision thereon and the reasons for the decision in disposing of the appeal, but however, no discussion whatsoever made by the NFAC, Delhi as it is evident from the impugned order. Since, the addition made u/s. 69A of the Act, in our opinion, assistance of assessee is required, therefore, we deem it proper to remand the issue to the file of NFAC, Delhi for its fresh adjudication. The assessee is liberty to file evidence, if any, in support of its claim. The assessee shall comply with the notices issued by the NFAC, Delhi, in case

of any failure, NFAC, Delhi is liberty to dispose off the appeal of assessee as contemplated under sub-section (6) of section 250 of the Act. Thus, the grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 20th March, 2024.

Sd/-
(Om Prakash Kant)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th March, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune