



आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

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

आयकर अपील सं. / ITA No.1742/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Shakeel Abdul Azeez Mohammad, Kachchi Chawl, Indira Nagar, Shahu Nagar, Jalgaon – 425001. PAN: BYFPM1596K	V s	The Income Tax Officer, Ward-1(1), Jalgaon.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Vinay V. Kawdia – AR
Revenue by	Shri Arvind Desai – Addl.CIT(DR)
Date of hearing	26/12/2024
Date of pronouncement	10/02/2025

आदेश/ ORDER

PER DR.DIPAK P.RIPOTE, AM :

This is an appeal filed by the assessee against the order of
Id.Commissioner of Income Tax(Appeal)[NFAC], passed under



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section 250 of the Income Tax Act, 1961; dated 16.07.2024 for A.Y.2017-18. The Assessee has raised the following grounds of appeal :

“1) Under the facts and circumstances of the case and in law, since the proceedings were initiated on the basis of information/documents related to assessee found during the course of search at third party, the notice issued by the AO under section 148 instead of Section 153C is bad in law and the resultant order under section 144 rws 147 is liable to be quashed.

2) Under the facts and circumstances of the case and in law the learned CIT(A). NFAC has erred in confirming the addition of Rs.72,18,349/- made by AO u/s 69A of the act by treating the entire cash deposits in Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd as unexplained money of the appellant without appreciating the facts of the case and submissions on record.

3) The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”

Submission of Id.AR :

2. Ld.Authorised Representative(Id.AR) for the Assessee submitted that in the case of Assessee, notice under section 148



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has been issued based on the information received from ACIT, Central Circle-4(4), Mumbai that search and seizure took place in the case of Shri Renuka Maata Multi State Urban Co-operative Credit Society Limited, wherein during the search and seizure, during documents evidencing cash deposits, by assessee were found. Ld.AR submitted that in this case, notice under section 148 of the Act is bad in law. Ld.AR further submitted that since information received during the course of search, in the case of Shri Renuka Maata Multi State Urban Co-operative Credit Society Limited has been considered by the Assessing Officer(AO), the appropriate section should have been Section 153C of the Act. Hence, notice under section 148 of the Act is bad in law.

2.1 Ld.AR for the Assessee relied on following decisions :

- *Shyam Sunder Khandelwal Vs. ACIT of Hon'ble Rajasthan High Court in Writ Petition No.18363/2019 dated 19.03.2024.*

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➤ *ITAT Pune in the decision of Vijaykumkar Mangilalji Chordiya Vs. NFAC, Delhi in ITA No.1075/PUN/2024 dated 19.09.2024.*

2.2 Ld.AR submitted that Legal Ground was raised before the ld.CIT(A), but ld.CIT(A) has not decided the Legal Ground.

Submission of ld.DR:

3. Ld.Departmental Representative(ld.DR) for the Revenue relied on Assessment Order & order of ld.CIT(A).

Findings and Analysis :

4. We have heard both the parties and perused the records. It is observed that ld.CIT(A) has not adjudicated the Ground No.1 which is the Legal Ground raised by Assessee. The relevant paragraph 4 of the ld.CIT(A)'s order showing the grounds of appeal is reproduced as under :

“1. Since the proceedings were initiated on the basis of information documents related to assessee found during the course of search at third party the notice issued by the AO under section



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148 instead of Section 153C is bad in law and the resultant order under section 144 r.w.s 147 is liable to be quashed.

2. The AO erred in treating the entire cash deposits in shri Renuka Mata Multi State Urban co operative Credit Society Ltd. as unexplained money of the appellant without appreciating the facts of the case.

3. Appellant craves the permission to add amend modify alter revise substitute delete or all grounds of appeal if deemed necessary at the time of hearing of the appeal.

4. As per section 250 of the Act, Id.CIT(A) must adjudicate the grounds raised by assessee.

4.1 The Hon'ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF Bombay)/[2017] 297 CTR 614 (Bombay) as under :

Quote, "8.From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of



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the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.

Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not



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empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.” Unquote.

4.2 Thus, Hon’ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit. Therefore, the order of ld.CIT(A) is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall provide opportunity to the Assessee. Assessee shall file all necessary details before the ld.CIT(A). Accordingly, grounds of appeal raised by the Assessee are allowed for statistical purpose.

5) Assessee has also filed additional evidence. Assessee filed copies of confirmations from farmers along with their Aadhar Cards to prove purchases. We are admitting additional evidence as there was sufficient cause for not filling it before Assessing Officer(AO)/CIT. The evidence filed is crucial for the Assessee to prove his pleading. Accordingly, we set-aside the issue of addition of Rs.72,18,349/- to the ld.CIT(A) for denovo



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adjudication. Ld.CIT(A) shall provide opportunity of hearing to the Assessee and Assessing Officer both. Accordingly, Ground No.2 is allowed for statistical purpose.

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

Order pronounced in the open Court on 10th February, 2025.

Sd/-

(VINAY BHAMORE)

JUDICIAL MEMBER

Sd/-

(DR. DIPAK P. RIPOTE)

ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th Feb, 2025/ 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, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

// TRUE COPY //

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