

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 64/Ind/2023
(Assessment Year:2012-13)

Vijesh Samule 108, Vaaishali Nagar Kotra Sultanabad Bhopal	Vs.	ITO 3(1) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AMIPS 7377 N		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	17.07.2023	
Date of Pronouncement	18.07.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 30.12.2022 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2012-13.

2. None has appeared on behalf of the assessee and this appeal was called for hearing it transpires from the record that the notice issued to the assessee through speed post A.D. has been received back with the postal remark "the addressee is not available at the given address". The notices issued to the assessee to the e-mail ID given in the form 36 were only delivered however, there is no response on behalf of the assessee.

Accordingly the Bench proposes to hear and disposed of this appeal *ex-parte*. The assessee has raised following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the decision of the learned lower authorities is contrary to law, materially incorrect, and unsustainable in law as well as facts. And that all the adverse findings recorded therein are opposed to facts, equity, and law.

2. That on the facts and in the circumstances of the case and in law, the initiation of proceedings u/s.147 of the IT Act is without jurisdiction and the issue of notice do not satisfy the judicial requirements of the law and, therefore, the assessment is bad in law and without jurisdiction hence the same be kindly cancelled.

3. That on the facts and in the circumstances of the case and in law, the learned lower authorities erred in their findings and treating the cash deposits into the savings bank account of the appellant Rs. 11,47,000.00 and transfer credit into the bank account of the assessee Rs. 5,37,309.00, as income of the assessee, such findings are wholly injudicious and opposed to facts and, therefore. be quashed and the addition of Rs. 16,84,809.00 as per para 6 & 7 of the order is wholly unjustified and unlawful and, therefore, the said unlawful and unjustified addition be kindly deleted.

4. That on the facts and in the circumstances of the case and in law, the learned lower authorities erred in their findings and estimating the income of the appellant at Rs. 20,55,088.00, total of all receipts as per Form No. 26AS, such findings are wholly injudicious and opposed to facts and therefore, be quashed and the addition of Rs. 20,55,088.00 as per para 8 & 9 of the order is wholly unjustified and unlawful and, therefore, the said unlawful and unjustified be kindly deleted.”

3. We have heard the Ld. DR and carefully perused the impugned order of the Ld. CIT(A). The CIT(A) has dismissed the appeal of the assessee on technical reason that grounds of appeal and form 35 are not matching to each other. The CIT(A) has dismissed the appeal that it is a deficient/defective appeal filed against show cause notice issued by the AO u/s 274 r.w.s. 271(1)(b) of the Act. The relevant part of the impugned order is as under:

“I have carefully perused the Penalty notice, grounds of appeal and submissions of the appellant filed along with Form 35. On careful consideration of entire facts, it is observed that the present appeal suffers with serious deficiency, being appeal filed against notice u/s 274 read with Section 271(1)(b) of the Act, which is not an Order in accordance with Section 246A of the Act. Also, the Grounds of appeal raised and Statement of facts submitted in Form 35 are irrelevant to the notice appealed against. As a result, the present appeal has no legs to stand upon and cannot be adjudicated on merits of Grounds of appeal. Therefore, this appeal is dismissed, being a deficient appeal, without going into the merits of the Grounds of appeal.”

4. It is pertinent to note that the assessee has raised the grounds before the Ld. CIT(A) against the assessment order passed u/s 144 r.w.s 147 of the Act however, in the form 35 the assessee has mentioned section under which the order was passed by the ITO as 271(1)(b) of the Act. Thus, it is apparent that there is a mistake in form 35 if it is considered in light of the grounds of appeal raised by the assessee. Further in the statement of facts the assessee has clearly stated his grievance against the assessment order passed by the AO. Therefore, in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the Ld. CIT(A) and remand the matter to the record of the Ld. CIT(A) to grant one more opportunity to the assessee to rectify the mistake in form 35 and then decide the appeal of the assessee on merits.

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

The Order is pronounced in the open court on 18.07.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Indore, 18 .07.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore