

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1475/PUN/2016

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Premchand R. Mittal,
Prop. : Vasant Industries,
Plot No. 44/1, D-2 Block, MIDC,
Chinchwad, Pune - 411019

PAN : ABAPM3708Q

.....अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,
Circle - 9, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 23-01-2020

घोषणा की तारीख / Date of Pronouncement : 17-03-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 24-05-2016 passed by the Commissioner of Income Tax (Appeals)-9, Pune [‘CIT(A)'] for assessment year 207-08.

2. Before us, at the outset that it is brought to our notice that there are two issues for adjudication in this appeal.

3. Bringing to our attention to ground Nos. 1 and 2 of the appeal, the ld. Counsel submitted that there are legal issues relating to reassessment and by referring to para 5.3 of the order of CIT(A), the ld. Counsel submitted that the CIT(A) merely confirmed the validity of reassessment by recording that some new facts came to his knowledge and failed to record the said new facts in the said para 5.3. He submitted that the order of CIT(A) fails short of the speaking order.

4. Similarly, referring to ground No. 3 issue relating to the merits, the ld. Counsel submitted that the only difference between the original return filed u/s. 139(1) of the Act and return filed in response to section 147 of the Act is offering of change of claim of interest income or claim relating to the interest expenditure while interest expenditure was claimed in the original return u/s. 57 of the Act. The same was now claimed u/s. 22 of the Act relating to the income from house property.

5. Bringing to our attention to para 6.3, the ld. Counsel mentioned the CIT(A) has not given mind at all. Reading the following lines of para 6.3 the ld. Counsel submitted that the same again does not indicate the reasons and the appeal is dismissed. The said lines are extracted as under:

“Thus, above facts and discussion suggest that loan sanctioned was subsequent to the date of lease deed entered into with SBI by the appellant. Therefore, the AO’s stand that “the loan granted by the bank as a rent plus loan, that is a scheme in which loan is granted to a person by keeping in lien the rental proceeds of a pre-existing property and therefore it can be concluded that the loan has been sanctioned to the assessee on the basis of the property and not for the purpose of acquiring the property” appears to be justified and hence is confirmed. Thus, appeal on this ground is dismissed.”

6. In the light of above, we find the CIT(A) merely extracted the AO's mind instead of applying his own mind for adjudication of issues.

7. The Id. DR supported the order of CIT(A).

8. After hearing both the sides on both the issues legal as well merits, we are of the opinion as pronounced in the open court, the order of CIT(A) cannot be considered as a speaking order within the meaning of section 250(6) of the Act. The said section reads as under :

“(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

9. Considering the above requirements of law, we are of the opinion that the CIT(A) order requires to be set aside and we deem it proper to remand the issue to the file of CIT(A) for want of speaking order. Needless to say, the assessee shall be given opportunity of hearing. The assessee is liberty to file evidences, if any, in support of his claim. Thus, ground Nos. 1 to 3 are allowed for statistical purpose.

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

Order pronounced in the open court on 17th March, 2020.

Sd/-
(D. Karunakara Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 17th March, 2020

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

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

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