

AO should have a cogent reasons for rejecting books of account prepared on basis of bank entries

Summary – The Pune ITAT in a recent case of Moreshwar Mahadev Bhondve., (the Assessee) held that once books of account of assessee have been prepared based mainly on bank entries and other details, same should be rejected only by cogent reasoning

Facts

- A search was conducted on assessee's premises and some documents were seized and the statement of assessee under section 132(4) was recorded. Search revealed that the assessee had not filed return of income and even the books of account were not available. The stand of the assessee was that he was from agriculturist background and had sizeable agricultural income, wherefrom the other activities of land dealing and commission activity were started.
- Considering the papers seized during search, summary of books and other transactions was prepared by investigating team. Consequently, the assessee made declaration of Rs. 2 crores.
- Thereafter, the assessee retracted from his statement under section 132(4) with delay of 28 months on basis of final account prepared by assessee based on bank transactions, property deals, expenses, car acquisition transactions, etc.
- The Assessing Officer held that the retraction after a gap of 28 months could not be accepted without bringing on record any materials which could show that the assessee was subjected to any threat or coercion or inducement for giving the same. Finally, the Assessing Officer after considering entire facts and circumstances of the case, computed total income of assessee on the basis of declaration made under section 132(4) and certain other documents seized, details of investment and expenses found after giving telescopic effect wherever possible.
- The Commissioner (Appeals) partly allowed the appeal of the assessee.
- On appeal, the assessee submitted that the Commissioner (Appeals) erred in confirming addition only on the basis of declaration made during the course of search without appreciating the fact that the said declaration has been retracted by the assessee.

Held

- Even if the retraction is made after a long gap, it should be rejected by cogent reasoning. The same was possible by demonstrating the stand of the assessee taken by way of books of account prepared and produced at assessment stage as well as appellate stage. According to the Assessing Officer, sufficient documents were not filed in this regard. While in appeal, the Commissioner (Appeal) observed that the expenses found genuine were allowed by the Assessing Officer while the expenses not supported by evidence were disallowed by the Assessing Officer. This shows that the details of expenses as reflected in books of account prepared could not be brushed aside. The reasoning of retraction should not be rejected at the strength of admission by assessee but

retraction based on prepared books of account should be rejected by cogent reasoning only. Material put forward on behalf of assessee has been rejected in ad hoc manner, which is not justified.

- Nothing emerges from the search material as such indicating that the entire amount was paid to the assessee. The Assessing Officer and the Commissioner (Appeals) on the basis of statement of Sonigra have presumed that the said amount has been received by the assessee. Further, the Commissioner (Appeals) stated that the assessee was aware of the contents of the statement given by Sonigra. However, the assessee claimed to be not aware of the fact that statement of Sonigra, which has been taken on record. Copies of the statement were not provided and cross-examination opportunity was also not provided. In this background, the argument of the assessee has been that in all the years involved, the Assessing Officer has decided to make taxable income on the basis of declaration made during search. At the time of search, the declaration of income was based on bank statement plus seized papers found during search. Further, the bank transactions summary was prepared by search party only. In the absence of any clarity, the assessee has made declaration of income at relevant point of time. However, once books of account were prepared, the mistake was realized by the assessee. Hence, declaration was retracted. The Assessing Officer could have verified the reconciled income prepared by the assessee which was contrary to the income summary prepared at the time of search with books of account prepared by search party. Specially so when the Assessing Officer has also accepted the reconciliation of differences. As such, the Assessing Officer made addition mainly based on search statement and discrepancy worked out by search party at the time of search. The action of the Assessing Officer in adding the income for above reason, is not justified. The Commissioner (Appeals) has not appreciated this fact and merely dismissed the appeal without giving proper reasoning for the same. The books of account prepared after search should not be brushed aside. Once the books of account of assessee has been prepared based mainly on the bank entries and other details, same can be rejected by cogent reasoning.
- Accordingly, this whole issue should be looked into in the light of above discussion. So, the order of Commissioner (Appeals) and the whole issue was restored to the file of the Assessing Officer with a direction to decide the same as per fact and law and after providing due opportunity of being heard to the assessee.