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IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA. No.1892/PUN/2024
Assessment Year : 2019-20

Ashwin Rajendra Bade, 164E, 8th Lane, Rajarampuri, Kolhapur – 416 008 Maharashtra PAN : AISPB6344A	Vs.	ACIT, Central Circle, Kolhapur
Appellant		Respondent

Appellant by	:	Shri Bhuvanesh Kankani
Respondent by	:	Shri Ramnath Murkunde
Date of hearing	:	13.02.2025
Date of pronouncement	:	21.04.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This appeal filed at the instance of assessee pertaining to the Assessment Year 2019-20 is directed against the order dated 30.08.2024 passed by CIT(A), Pune-11 u/s.250 of the Income-tax Act, 1961 (in short 'the Act') which in turn is arising out of the Assessment order dated 29.09.2021 passed u/s.143(3) of the Act.

2. Brief facts of the case are that the assessee is an individual carrying on the business of manufacture of Furniture under the sole proprietorship concern M/s.J.M. Sales. Survey action u/s.133A of the Act was conducted on 06.02.2019 during which shortage of stock to the tune of Rs.79,96,450/- was found and the same was accepted by the assessee as unrecorded sales. Subsequently, notice u/s.143(2) of the Act

was issued and served upon the assessee for carrying out the scrutiny proceedings followed by validly service of notice u/s.142(1) of the Act. During the course of assessment proceedings, ld. AO observed that the assessee has himself admitted and offered the additional income declared under the head 'Income from other sources' in his computation statement and paid due taxes. The observation of ld. AO summarizing the assessment reads as under :

"1. The assessee accepted the unaccounted cash sales to the extent of Rs.7996450/-and he has increased his capital by the above amount. This is self admission. Sec.69A clearly applies. The assessee himself shown the additional income under the head "income from other sources' in his computation of income. He has not included the additional income in P&L account.

2 The assessee did not offer any explanation on the unaccounted cash sales found at the time of survey proceedings. Sec.69A clearly applies.

3. It had also not offered any explanation at the time of assessment proceedings by producing any documents such as purchase bills, stock book, GST paid record, mode of payment for such purchase, mode of transportation etc., to link the purchases with the business of M/s J.M.Sales. He has failed in linking the unaccounted cash sales made with his proprietry business M/s J.M.Sales. Sec.69A clearly applies.

4. As per sec. 115BBE(1)(a), where the total income includes any income referred in sec.69A and reflected in the return of income furnished by the assessee, sec.115BBE(1)(a) squarely applies.

I have gone through section again. Considering the facts discussed above, the unaccounted stock of Rs.7996450/- is treated as deemed income u/s 69A with the applicability of section 115BBE.

I am also satisfied that section 271AAC is attractable in the present case. Hence, penalty u/s.271AAC is initiated on this ground.

6. Subject to the above, the total income of the assessee is recomputed as below :

Income from business after depreciation, remuneration and interest	*Rs.1,00,56,640/-*

Less : Survey declaration	*Rs.79,96,450/-*
Total	*Rs.20,60,190/-*
Add : Deemed Income u/s.69A w.r.t.115BBE	*Rs.79,96,450/-*
Total income	*Rs.1,00,56,640/-*
Total Assessed Income R/o. to the nearest ten	*Rs.1,00,56,640/-*

3. Subsequently, the assessee preferred appeal before the ld.CIT(A) challenging the impugned addition of Rs.79,96,450/- and also challenging the action of the AO invoking section 69A r.w.s.115BBE of the Act. Ld.CIT(A) after considering the submissions recorded on survey was satisfied that the source of shortage of stock is unrecorded sales which is part of the business activity and therefore section 69A r.w.s.115BBE cannot be invoked and to this extent ld.CIT(A) granted relief.

4. So far as the quantum addition is concerned, ld. CIT(A) stated that the assessee has himself admitted the income and offered it to tax and now the contention of the assessee that only the profit element should have been taxed on the unrecorded sales cannot be entertained because firstly the assessee has himself admitted to have applied unrecorded cash sales for the purpose of making investment in fixed assets and advance to vendors and also that the assessee has not furnished any revised return. Ld.CIT(A) further held that if the contention of the assessee is accepted and profit is estimated on the unrecorded sales, then the assets purchased by the assessee from the unrecorded sales would remain unexplained. Ld.CIT(A) thus confirmed the addition of Rs.79,96,450/- made by the AO as unaccounted business income.

5. Aggrieved assessee is now in appeal before this Tribunal by raising the following grounds :

"1. On the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the declaration of Rs.79,96,450/- as undisclosed sales and offering the same amount as income is incorrect since said amount was already forming part of closing stock. Thus, income so declared by Appellant and as upheld by Ld. CIT(A) be kindly reduced to the Gross Profit margin on said amount. Accordingly, Appellant be granted just and proper relief in this respect.

2. On the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that Ld. Assessing Officer and Ld. CIT(A) both erred in not guiding the Appellant to correctly compute its income, in as much as taxing the entire amount of Rs.79,96,450/- instead of the profit component in said sales amount. Accordingly, Appellant be granted just and proper relief in this regard.

3. On the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the excess tax paid by the Appellant be refunded along with the interest.

4. The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.

6. Ld. Counsel for the assessee referring to the documents filed in the paper book running into 98 pages submitted that the assessee had inadvertently made the entries in the capital account showing the shortage of stock as additional income. However, the fact remains that only the profit element embedded in such unrecorded sales should have been taxed. He however fairly admitted that the assessee had offered the amount to tax and has not raised this issue before the AO. Referring the following decisions, he stated that the purpose of tax appeals is to ascertain the correct tax liability of the assessee in accordance with law :

1. *Sesa Goa Ltd Vs. Addl. CIT [2020] 117 taxmann.com 548 (Bombay HC)*
2. *PCIT Vs. Karnataka State Co-operative Federation Ltd [2021] 128 taxmann.com 1 (Karnataka HC)*
3. *S&P Capital IQ (India) Pvt Ltd Vs. ACIT [2024] 158 taxmann.com 12 (Hyderabad ITAT) (ITA-TP- No. 463/Hyd/2022)*
4. *Nirmala L Mehta Vs. A Balasubramaniam, CIT [2004] 139 taxman 394 (Bombay HC)*

5. *Dhanuka Agritech Ltd. Vs. ACIT [2024] 161 taxmann.com 774 (Delhi ITAT) (ITA No. 1401/Del/2021)*

6. *CIT Vs. Shelly Products [2003] 129 taxman 271 (SC)*

7. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

8. We have heard the rival submissions and perused the record placed before us. Assessee is aggrieved with the addition of undisclosed business income of Rs.79,96,450/- which was calculated on the basis of shortage of stock found during the course of survey carried out on the assessee's premises on 06.02.2019. We notice that the shortage of stock has been calculated on the basis of closing stock calculated in the estimated trading account and the same has been reduced from the physical stock found during the course of survey. We notice that the physical stock found in the course of survey amount to Rs.1,80,02,300/- and the closing stock calculated by applying the gross profit rate as on the date of survey amounting to Rs.2,59,98,750/-. Based on this date, survey team noticed that there is shortage of stock. The assessee accepted this fact and stated that shortage of stock is on account of unrecorded cash sales made to the customers but not recorded in the regular books of account. Further, when the assessee was asked about the detail of application of such unrecorded cash sales of Rs.79,96,450/- it was stated that part of the amount has been utilised for giving advance to farmers for purchase of raw material and part of the amount is utilised for expansion of the existing showroom. In the further question asked by the survey team, assessee stated that he will pay the

tax on the additional income declared of Rs.79,96,450/- and shall offer it as additional income over and above the regular income. Now the assessee while filing the return of income has admitted the unrecorded cash sales as its total income and offered the tax thereon. In the assessment and appellate proceedings, assessee is claiming that only the profit element on the unrecorded cash sales should have been taxed. However, in the balance sheet furnished for the year under appeal, the assessee has offered the additional business income in the capital account and in the computation of income it has been offered as "Income from other sources'. The assessee has shown the application of unrecorded cash sales in the items appearing on the asset side.

9. Admittedly, the claim of the assessee that only the profit element on the unrecorded cash sales should been taxed is an afterthought because during the course of survey proceedings as well as in the return of income filed the assessee has admitted the unrecorded sales as its additional income. However, taking note of the fact that during the course of survey the assessee has stated that the cash received from unrecorded sales has been partly utilised for giving advance to the farmers for purchase of raw material and partly for expansion of the existing showroom, we find that details of advance given to the farmers for purchase of raw material and the actual amount spent for expansion of the existing showroom is neither discernible from the audited financial statements for F.Y. 2018-19 nor any such information is provided by the assessee before us or the authorities below. On the strength of various judicial decisions the assessee stated

that the assessee should not be subjected to levy of tax which he is not required to pay as per law.

10. Hon'ble Apex Court in the case of *CIT Vs. Shelly Products reported in (20023) 129 taxman 271 (SC)* has referred to Article 265 of the Constitution of India which provides that no tax shall be levied or collected except by authority of law. Taking guidance from the above judgment and considering the fact that the assessee in the statement recorded during the course of survey has stated that the cash received from unrecorded cash sales have been applied for giving advance to the farmers for purchase of raw material and the remaining amount has been utilised for expansion of the existing showroom, which have further not been examined by the ld.AO as well as ld.CIT(A), we deem it proper to restore the impugned issue to the file of ld.CIT(A) before whom the assessee shall demonstrate with credible evidence about the application of cash received from unrecorded cash sales. Ld.CIT(A) shall decide the issue in accordance with law after affording reasonable opportunity of hearing to the assesssee. Grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 21st day of April, 2025.

Sd/-	Sd/-
(VINAY BHAMORE)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 21st April, 2025.
Satish

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, "**A**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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