

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.1088/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

Pandit Gangadhar Kawale,
House No.40, Anand Nagar,
Near Jeejamata Kanya School,
Nanded – 431605

.... अपीलार्थी/Appellant

PAN: AVLPK1461F

Vs.

The Income Tax Officer,
Ward 3(2), Nanded

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 14.02.2018	घोषणा की तारीख / Date of Pronouncement: 28.02.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-I, Aurangabad, dated 08.03.2016 relating to assessment year 2009-10 against order passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

On the facts and in the circumstances of the case and in law:

Ground No 1:

The learned CIT(A) has erred in confirming the addition of Rs.10,42,312 made by the AO observing that the Appellant has failed to justify source from which the Appellant has introduced this amount in his business.

Ground No 2:

The learned CIT(A) has erred in upholding disallowance of Rs.62,132 of the Appellant's agricultural income made by the AO for inability of the Appellant to furnish sale patties corresponding to such income.

In view of the above ground and in the facts and circumstances of the case and in law, the Appellant prays your Honours to delete the additions to the returned income made by the AO which has been subsequently confirmed by the learned CIT(A).

3. The appeal was fixed for hearing on different dates starting from 26.10.2016 and none appeared on behalf of assessee. On the last two dates of hearing, the Counsel for assessee appeared and sought adjournment and noted the next date of hearing. For the appointed date of hearing, notice was issued to the assessee. However, none appeared on behalf of assessee nor any application was moved for adjournment. So, the appeal is decided *ex parte* the assessee but after hearing the learned Departmental Representative for the Revenue.

4. The first issue raised is against the addition of ₹ 10,42,312/- and the second issue raised vide ground of appeal No.2 is against disallowance of ₹ 62,132/- out of agricultural income.

5. Briefly, in the facts of the case, the assessee for the year under consideration had furnished return of income declaring total income of ₹ 1,72,027/- and agricultural income of ₹ 2,70,320/-. On the basis of AIR information, notice under section 148 of the Act was issued to the assessee.

The assessee was represented by different Counsels, who filed information in parts. The Assessing Officer noted that there was huge difference between the figures shown in Balance Sheet as on 31.03.2009 filed by learned Authorized Representative for the assessee Shri B.G. Raje in the submissions made on 11.12.2012 and in the new Balance Sheet furnished by second learned Authorized Representative for the assessee Shri R.G. Baheti. The assessee had not shown the land purchased along with two other persons at Taroda, Nanded City for total consideration of ₹ 30 lakhs in the revised return of income. The assessee's share was worked out at ₹ 11,42,360/-. There were other differences i.e. loans and advances and cash in hand shown. The assessee was asked to explain the same. However, no addition was made on this account but the Assessing Officer noted the differences in figures shown in two Balance Sheets and estimated the profit on total sales shown at ₹ 22,34,269/- by applying profit rate of 15% and added sum of ₹ 3,35,140/- after deduction of profit shown by the assessee at ₹ 1,90,317/-, ₹ 1,44,823/- was added to the total income of the assessee. Further, addition was made on account of loans taken from persons against which addresses were not furnished totaling ₹ 23,72,800/-. Another addition was made on account of agricultural income shown by the assessee.

6. The CIT(A) deleted GP addition made in the hands of assessee. In respect of unexplained credits of ₹ 23,72,800/-, the assessee explained that ₹ 12,50,500/- was introduced out of his agricultural income and loans from relatives. Further, balance sum of ₹ 11,48,860/- was invested out of funds of HUF of his father / grandfather on 29.05.2008. The CIT(A) after considering various evidences filed by the assessee, first held that investment of ₹ 11,42,360/- was made in the purchase of land by the assessee in the

capacity of Karta of HUF. The sources of investment was proved where both the parties had appeared before the Assessing Officer and confirmed that they had given cash to the assessee. However, in respect of balance income, difference was out of agricultural income shown by the assessee. The CIT(A) in view of the size of landholding held that only sum of ₹ 2,08,188/- was available out of agricultural income of family and himself, whereas he had introduced sum of ₹ 12,50,500/- in his business as per Balance Sheet as on 31.03.2009. The addition to the extent of ₹ 10,42,312/- was thus, confirmed in the hands of assessee.

7. In respect of addition made on account of agricultural income of ₹ 81,096/-, the CIT(A) noted that the assessee has failed to produce sale patties in support of agricultural income of ₹ 2,70,320/- during the course of assessment proceedings and the assessee could furnish only sale patties for ₹ 2,08,188/- during appellate proceedings. The matter was remanded to the Assessing Officer in order to examine the claim of assessee vis-à-vis agricultural income. The CIT(A) further observed that the disallowance of ₹ 81,096/- was made by the Assessing Officer almost corresponding to inability of the assessee to furnish sale patties. The CIT(A) however, restricted the addition to ₹ 62,132/-. Against both the additions, the assessee is in appeal.

8. On perusal of record and after hearing the learned Departmental Representative for the Revenue, I find that the assessee though claims that the source of funds is out of his agricultural income but has failed to establish his case on the basis of concrete evidence. In the absence of the same, where the assessee has failed to establish its case of agricultural income being available to it and in view of the evidences filed before the authorities below, wherein his

landholding was found to be not enough to generate such income and in the absence of any fresh evidence filed before the Tribunal in this regard, addition to the extent of ₹ 10,42,312/- is upheld.

9. The second addition on account of agricultural income is also linked one, where the assessee has failed to furnish sale patties to establish its case of earning the requisite amount of agricultural income. In the absence of same, the order of CIT(A) is upheld and the grounds of appeal No.1 and 2 raised by the assessee are thus, dismissed.

10. In the result, appeal of assessee is dismissed.

Order pronounced on this 28th day of February, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28th February, 2018.
GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Aurangabad;
4. The Pr.CIT-1, Aurangabad;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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