

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 एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.253/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Lt Jawaharlal Chandulal Shah,  
L/H Vikalp Jawahar Shah,  
At Post Vaduj, Tal. Khatav,  
Dist. Satara – 415506

.... अपीलार्थी/Appellant

PAN: ACYPS0025R

Vs.

The Dy. Commissioner of Income Tax,  
Satara Circle, Satara

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by

: Shri M.K. Kulkarni

प्रत्यर्थी की ओर से / Respondent by

: Shri Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 10.04.2018	घोषणा की तारीख / Date of Pronouncement: 27.04.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-4, Pune, dated 25.09.2016 relating to assessment year 2008-09 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

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

- 1) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of*

*Rs.3,15,008/- declared in the survey action. The assessee had explained the position of excess cash included in the figure of Rs.3,15,008/- and in fact it amounted addition twice when main addition of income was made of Rs.4,86,212/- by which source of cash gets explained. The addition is not sustainable being unwarranted be deleted.*

- 2) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified confirming the addition of Rs.20,806/- included in addition in Rs.3,15,008/- made by the A.O. on account of unexplained stock valuation. The addition being revenue neutral is not sustainable. It be deleted.*
- 3) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition of Rs.73,101/- included in the addition of Rs.3,15,008/- made by the A.O. on account of unexplained expenditure. The addition is unwarranted. It be deleted.*
- 4) *On the facts and circumstances of the case and in law the income of Rs.4,86,212/- offered for taxation during the course of survey action and not retracted explained the source of Rs.3,15,008/- included therein excess cash of Rs.2,21,101/- unexplained stock of Rs.20,826/- and unexplained expenditure of Rs.73,101/- and therefore, no further addition was required to be made. In fact and law the additions made comprised in a figure of Rs.3,15,008/- when amount of Rs.4,86,212/- gets taxed, amounts to double addition. In view of this the addition of Rs.3,15,008/- be quashed.*

3. The issue raised in the present appeal is against addition of ₹ 3,15,008/- declared in survey action. The assessee has raised the issue that once addition of ₹ 4,86,212/- is made in the hands of assessee, then source of addition of ₹ 3,15,008/- stands explained. This was the plea in respect of addition of ₹ 2,21,101/-, ₹ 20,806/- and ₹ 73,101/-, assessee claims that telescopic effect has to be allowed.

4. Briefly, in the facts of the case, the assessee was proprietor of M/s. Jawahar Chandulal & Company and engaged in selling diesel, oil and petroleum under the name and style of M/s. Jawaharlal Chandulal & Co. at Vaduj, Tal. Khatav, Dist. Satara. Survey action under section 133A of the Act was conducted at the business premises of assessee on 21.02.2008. During the course of survey proceedings, survey team came across various

discrepancies which were confronted to the assessee. The discrepancies were as under:-

1]	<i>Excess cash found</i>	<i>Rs.2,21,101</i>
2]	<i>Income from Pokland Earthmover</i>	<i>Rs.4,86,212</i>
3]	<i>Unexplained expenditure</i>	<i>Rs. 73,101</i>
4]	<i>Excess stock</i>	<i><u>Rs. 20,806</u></i>
	<i>Total</i>	<i><u>Rs.8,01,220</u></i>

5. During the course of survey, assessee offered sum of ₹ 8,01,220/- as additional income for the year under consideration. The assessee furnished return of income declaring total income of ₹ 11,11,130/- after the survey. On going through return of income, the Assessing Officer noted that the assessee had not included the amount of excess cash found, excess stock and unexplained expenditure as his additional income and had only offered the amount of unrecorded income of ₹ 4,86,212/- to his Profit and Loss Account. The assessee explained that excess cash of ₹ 2,21,101/-, excess stock of ₹ 20,806/- and unexplained expenditure of ₹ 73,101/-, totaling ₹ 3,15,008/- was taken care of by the income offered of ₹ 4,86,212/-. The Assessing Officer was of the view that where the assessee had offered additional income during the course of survey voluntarily, then he could not go back on the same. The explanation of assessee was held to be an afterthought with a view to evade the payment of due taxes. The Assessing Officer thus, held that source of unexplained items were not explained at the time of survey and even at the time of assessment proceedings and the same had to be added as deemed income of the assessee. The Assessing Officer thus, made an addition of ₹ 3,15,008/-.

6. The CIT(A) upheld the said addition in view of the assessee having admitted to the voluntary disclosure made during the course of survey.

7. The assessee is in appeal against the order of CIT(A).
8. The learned Authorized Representative for the assessee pointed out that the assessee is deceased and the legal heir has filed the present appeal. He further referred to the disclosure made during the course of survey and pointed out that yes, sum of ₹ 4,86,212/- was offered to tax and other three items totaling ₹ 3,15,008/-, offer was retracted on the ground of telescoping.
9. The learned Departmental Representative for the Revenue strongly objected to the submissions of learned Authorized Representative for the assessee and pointed out that what has to be seen is how the items were capitalized in the books of account after survey.
10. We have heard the rival contentions and perused the record. In the facts of the present case, survey under section 133A of the Act was carried out at the business premises of assessee. During the course of survey, various discrepancies were found and the assessee in all offered sum of ₹ 8,01,220/- as his additional income. However, in the return of income, the assessee offered sum of ₹ 4,86,212/- as income which was originally offered as income from Pokland Earthmover. In respect of excess cash found of ₹ 2,21,101/-, unexplained expenditure of ₹ 73,101/- and excess stock of ₹ 20,806/-, the assessee did not offer as additional income and claimed that telescoping effect of income offered in the hands of assessee should be given against said items totaling ₹ 3,15,008/-. We find merit in the plea of assessee that once the assessee has already offered sum of ₹ 4,86,212/- as its income, then the said funds are available with the assessee for making investments in various other

assets and / or expenditure incurred by the assessee. Hence, the assessee is entitled to the benefit of telescopic effect. Accordingly, we direct the Assessing Officer to allow the same i.e. against income offered of ₹ 4,86,212/-, the assessee is entitled to claim the benefit of availability of funds for investments in cash of ₹ 2,21,101/-, excess stock of ₹ 20,806/- and unexplained expenditure of ₹ 73,101/-. Accordingly, the addition made by CIT(A) in this regard, is deleted. The grounds of appeal raised by the assessee are thus, allowed.

11. In the result, appeal of assessee is allowed.

Order pronounced on this 27<sup>th</sup> day of April, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> April, 2018.

GCVSR

**Sd/-**  
**(SUSHMA CHOWLA)**

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-4, Pune;
4. The Pr.CIT-3, Pune;
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