

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.276/PUN/2016**
निर्धारण वर्ष / **Assessment Year : 2010-11**

Shri Haresh Nandlal Narayani,
Prop. Sai Agency,
Lane No.4, Ussgalli,
Dhule – 424 001
PAN : ABUPN7111L

.... अपीलार्थी / Appellant

Vs.

ACIT, Circle-1,
Dhule

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Smt. Deepa Khare
प्रत्यर्थी की ओर से / Respondent by : Shri Anil Kumar Chaware

सुनवाई की तारीख / Date of Hearing : 20.03.2018	घोषणा की तारीख / Date of Pronouncement: 25.04.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-1, Nashik, dated 02-09-2015 for the Assessment Year 2010-11.

2. Grounds raised by the assessee read as under :

“1. The Appellant request for condonation of delay in filing the appeal, as appellant was under suffering from “jaundice and was under treatment since 1-10-2015 to 04-02-2016. Therefore, he could not contact to the counsel and handed over the relevant papers for preparation of appeal. Hence, there is delay. Appellant had received the said notice about in the 6th October, 2015 and accordingly, appeal was due to be filed on or before 6th of December, 2015. Thus, there is delay about 2 month and 20 days. Therefore, appellant sincerely request to please condone the delay in filing the appeal and it may please be admitted to deliver the justice.

2. On the facts and in the prevailing circumstances of the case and the CIT(A) has erred in confirming the additions of unrecorded sale of Rs.4,84,905/-, though profit thereon and peak amount of Rs.1,90,180/- was offered by the appellant in the return of income. The aforesaid addition being arbitrary, devoid of merits and hence, addition may please be deleted.

3. *On the facts and in the prevailing circumstances of the case and the CIT(A) has erred in confirming the disallowance of expenses at Rs.10,000/-, out of the amount of Rs.25,000/- made by the AO. As it is disallowances out of the expenses incurred for Telephone, Shop, Transport and Petrol expenses supported by bills and hence disallowances on adhoc basis on assumption and presumptions, is not justified. Hence, addition confirmed by the CIT(A) may please be deleted.”*

3. **Request for condonation of Delay of 81 days :** At the outset, before us, Ld. Counsel for the assessee submitted that there is delay of 81 days in filing of this appeal. Ld. Counsel brought our attention to the affidavit dated 20-02-2016 and stated that, during the relevant point of time i.e. 01-10-2015 to 04-02-2016, the assessee suffered with jaundice and therefore, he could not contact his counsel and hand over the relevant papers.

4. After hearing both the sides and considering the contents of the affidavit, we are of the opinion that the delay of 81 days in filing of the appeal can be condoned in view of the reasonable cause. Therefore, the appeal is admitted for adjudication. Accordingly, Ground No.1 raised by the assessee is allowed.

5. Briefly stated relevant facts needed for adjudication of the Ground Nos. 2 & 3 include that the assessee is a wholesale trader in General Mal Bidi, Gutkha, Cigarette, Tobacco, Pan Masala Etc. Assessee filed the return of income declaring total income of Rs.22,07,300/-. This is a case where assessee was surveyed u/s.133A of the Act on 08-09-2010 and a statement of Shri Haresh Nandlal Narayani, Proprietor of Sai Agency was recorded on the said date. Assessee offered the following income as additional income during the survey action amounting to Rs.19,35,182/-. Break-up details are given as under :

<i>Sr.No.</i>	<i>Nature in respect of which discrepancies noticed</i>	<i>Amount disclosed (Rs.)</i>
1	<i>Excess stock</i>	8,85,612/-
2	<i>Excess cash</i>	3,50,000/-
3	<i>GP on unrecorded sales</i>	24,485/-
4	<i>Unrecorded purchase of Bidi</i>	6,75,085/-
	<i>Total</i>	19,35,182/-

However, in the return of income filed by the assessee, AO noticed in the return of income that the above said disclosure of income was not offered in toto. Special reference is made to the said sum of Rs.6,75,085/-. At the end of the assessment proceedings, AO made various additions and quantified the assessed income at Rs.27,67,706/-. AO added the said income of Rs.6,75,085/-, which is part of the gross disclosure of Rs.19,35,182/- and it relates to the addition on account of unrecorded purchases of Bidi. Ground No.2 raised by the assessee before us revolve around this addition. Assessee offered only Rs.2,14,615/- in place of Rs.6,75,085/-.

6. Regarding the said Ground No.2, relevant facts include that the assessee quantified the unaccounted purchases of Rs.6,75,085/- and on sale of the same, assessee earned the gross profit of Rs.24,485/-. These sales pertain to the period from 21-06-2009 to 26-08-2009. As per assessee, the peak purchases works out to Rs.57,745/- and peak credit for the said period works out to Rs.1,32,435/-. Thus, the peak purchases and peak credit works out to Rs.1,90,180/-. The same is offered to tax on this account. Thus, gross profit of Rs.24,485/- and peak purchases credit of Rs.1,90,180/- (totalling to Rs.2,14,615/-) were eventually offered to tax by the assessee in the return of income in place of original offer of Rs.6,75,085/- during the survey action. This offer of Rs.2,14,615/- out of Rs.6,75,085/- was not acceptable to the AO. Therefore, as per assessee, no

separate addition is called for on this account. However, the AO dismissed the said submission of the assessee as per the discussion given in Para No. 5.1(c) of the assessment order. Therefore, the entire amount of Rs.6,75,085/- should be added in view of the admission given by the assessee during the survey action. AO relied heavily on the said statement.

6.1 During the First Appellate proceedings, assessee made various written submissions. Contents of Para No.4.2 of the order of CIT(A) is relevant. Eventually, the CIT(A) dismissed the appeal of the assessee on this issue as per the reasoning/discussion given in Para No.4.3. In the said paragraph, CIT(A) held that the assessee cannot back-track and state that only peak credit plus gross profit should only be added. CIT(A) also observed that the assessee failed to substantiate its claim with cogent documentary evidences in support of the assessee's claim. Assessee failed to link the unaccounted purchases of Bidis to the account sales of the bidis. CIT(A) also dismissed the assessee's submission stating that the assessee was not in proper frame of mind when the declaration of entire unaccounted purchases are given during survey action. Thus, the CIT(A) confirmed the entire addition of unaccounted purchases after netting the income offered by the assessee in the return of income.

7. Aggrieved with the same, assessee is in appeal before us with the grounds extracted above.

8. Before us, the case of the assessee is that unrecorded purchases of Bidi worth Rs.6,75,085/- was offered originally during the survey action without much application of mind on the issue. However, considering the fact that the said unrecorded transactions is part-and-parcel of the business transactions, the assessee quantified the relevant profits of the

said unrecorded purchases and worked out the same at Rs.24,485/- which was included while filing the return of income. Further, assessee also offered peak credit based investment in the said purchases. Therefore, as per assessee, taxing of income of Rs.2,14,615/- (Rs.24,485 + Rs.1,90,180/- (supra) on this discrepancy is fair instead of Rs.6,75,085/- on account of unrecorded purchases.

9. On the other hand, it is the case of Ld. DR for the Revenue that survey resulted in discovery of unrecorded purchases amounting to Rs.6,75,085/- and the same were not recorded in the books of account. Survey u/s.133A of the Act took place on 08-09-2010 and incorporation of the same in the books of account subsequently constitutes an afterthought. Finalisation of the return of income for the year based on the said updated books of account constitutes an afterthought. Further, the assessee's failure to link the unaccounted purchases to unaccounted sales, does not give rise to a valid peak credit addition. Therefore, it is a case of back-tracking the statement given by the assessee and the same is unsustainable.

10. We heard both the parties on this issue. The undisputed facts include the discovery of unrecorded purchases amounting to Rs. 6,75,085/-. The same are subsequently recorded in the books of account before filing the return of income. In the return, assessee disclosed the additional income of Rs.24,485/- on account of gross profit on the unrecorded sales over Rs.1,90,180/- on account of peak credit on the unrecorded purchases totalling to Rs.2,14,615/- (Para No.4.2 of order of CIT(A). It is the case of the assessee that there is no case of making entire unaccounted purchases of Rs.6,75,085/- when the above referred working is within the scope of the peak credit linked principles. Further,

we find the principle of peak credit is a valid and sustainable method of arriving at the income linked to unaccounted purchases/sales. This is the case where the AO failed to bring any contrary evidence to deny the benefit of peak credit additions. Considering the same, we are of the opinion that the related investment in the said purchases and related profits on the unaccounted sales stand taxed. Therefore, making addition merely relying on the statement given by the assessee is not sustainable. Accordingly, we reverse the order of CIT(A) on this issue. Thus, the ground No.2 raised by the assessee is allowed in favour of the assessee.

11. Ground No.3 relates to confirmation of expenses of Rs.10,000/- by the CIT(A). AO disallowed Rs.25,000/- out of the expenses claimed by the assessee on various accounts of Telephone, Shop, Transport & Petrol. AO reasoned that the assessee has not maintained details of the vouchers. In the absence of supporting vouchers, AO disallowed a sum of Rs.25,000/- out of the said expenditure on adhoc basis. However, in the First Appellate proceedings, the CIT(A) restricted the said disallowance to Rs.10,000/- again on adhoc basis in view of the possible element of personal use of the phones, vehicles etc.

12. After hearing both the sides on this issue of disallowance of expenses, we find it relevant to extract the finding given by the CIT(A) in Para No.6.2. The same is reproduced as under :

“6.2 I have considered facts of the case, the submission of the appellant and the order of the Assessing Officer. It is observed the AO has made the disallowance on estimation. However, the interest of personal use cannot be ruled out. Conceding the facts and circumstances of the case the AO is directed to restrict the expenditure to Rs.10,000/-.”

In our view, no case is made out by the assessee that the assessee maintained any log book showing the use of these facilities. Therefore, we

concur with the above finding of the CIT(A). Assessee failed to substantiate the expenditure is for wholly and exclusively for the business activity of the assessee. We therefore confirm the order of CIT(A) on this issue. Thus, the ground No.3 raised by the assessee is dismissed.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 25th day of April, 2018.

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

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 25th April, 2018.
Satish

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

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

आदेशानुसार/ BY ORDER,

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