

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", 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.2710/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Mr. Khan Afzalhusain Mohd. Saie,
Prop. Afkaar Steel; Plot No. 67,
Satpur, Ambad Link Road,
Nashik – 422010

.... अपीलार्थी/Appellant

PAN: AJEPK1750A

Vs.

The Dy. Commissioner of Income Tax,
Circle – 1, Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Shri Hitendra Ninave

सुनवाई की तारीख / Date of Hearing : 11.12.2018	घोषणा की तारीख / Date of Pronouncement: 18.12.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-1, Nashik, dated 09.09.2016 relating to assessment year 2011-12 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:-

- “1. *On the facts and in the circumstances of the case and in law, the lower authorities have erred in initiating the reassessment proceedings u/s. 147 in absence of any material showing any live link with the reason to believe that income has escaped the assessment.*
2. *On the facts and in the circumstances of the case and in law, the lower authorities have erred in passing the reassessment proceedings u/s. 147, wherein no notice u/s. 142(1) and 143(2) being served to assessee and no reasons to believe were provided to the assessee appellant.*
3. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in estimating the Gross profit @ 20% for the assessment year especially in view of the fact that in principle it has been accepted that the purchases are genuine under such circumstances there is no need of any estimation of Gross Profit on alleged bogus purchase. Entire addition needs to be deleted.”*

3. Despite service of notice, none appeared on behalf of assessee, nor any application for adjournment was filed. However, the Ld. DR for the Revenue fairly pointed out that the Commissioner of Income Tax (Appeals) had passed consolidated order for assessment years 2009-10 to 2011-12 and the Tribunal has already decided the issue in assessment years 2009-10 and 2010-11. He also pointed that the issue raised in assessment year 2011-12 was similar to the issue raised in earlier years. We, therefore, proceed to decide the present appeal ex-parte the assessee after hearing the Ld. DR for the Revenue.

4. The assessee has raised the issue on merits against estimation of gross profit @ 20% for the assessment year under consideration. The assessee has also raised issues against initiation of reassessment proceedings under section 147 of the Act. The Tribunal had decided the similar issue in assessee's own case relating to assessment years 2009-10 and 2010-11. It may be pointed out herein itself that the order of Commissioner of Income Tax (Appeals) is consolidated order relating to assessment years 2009-10 to 2011-12, so we

apply the ratio laid down by the Tribunal vide order dated 23.03.2018 in the case of assessee itself for assessment years 2009-10 and 2010-11.

5. First we shall take up the issue raised on merits of reassessment proceedings under section 147 of the Act vide ground of appeal Nos.1 and 2. The Tribunal had decided the said issue vide para 9 and 10 and both the issues were decided by the Tribunal observing as under:

“9. The first issue raised by the assessee is against re-assessment proceedings initiated under section 147 / 148 of the Act. We find that the said issue is squarely covered against the assessee by the ratio laid down by Hon'ble Supreme Court in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) and referring to paras 4 and 5 of the appellate order, we uphold the same and dismiss the ground of appeal No.1 raised by the assessee.

10. Coming to the next ground of appeal raised by the assessee of non service of notice. The CIT(A) in paras 5 and 5.1 at pages 9 and 10 has gone through the assessment records and also dispatch register and verified not only the issue of notice under section 148 of the Act but also its dispatch on 09.10.2014. Notices were sent on 20.10.2014 as evident from speed post entries. Accordingly, there is no merit in the plea of assessee vis-à-vis non service of notice under section 143(2) of the Act.”

6. The assessee has not pointed any contrary factual aspects and consequently we dismiss the grounds of appeal No. 1 and 2 raised by the assessee in line with the ratio laid down by the Tribunal in assessee's own case in assessment years 2009-10 and 2010-11.

7. The issue raised on merits by way of grounds of appeal No. 3 is against the addition made on account of bogus purchases wherein the Assessing Officer had made the addition in the hands of the assessee on account of full amount of bogus purchases but the Commissioner of Income Tax (Appeals) applied GP rate @ 20%.

8. Similar issue is decided vide various decisions and also in assessee's own case vide para 11 it was held as under :

"11. Now, coming to the merits of addition. The issue raised in the present appeal is against bogus purchases. We have already adjudicated similar issue in series of decisions with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, order dated 28.04.2017. The assessee in the first year i.e. assessment year 2009-10 has maintained quantitative details. In other words, it has the evidence of purchasing goods and its sales. In such circumstances, at best, higher gross profit rate can be applied. Following our decision in earlier orders, we hold that GP rate of 10% over and above GP declared by the assessee in its books of account, be applied to work out the additional income in the hands of assessee. The ground of appeal No.3 raised by the assessee is thus, partly allowed."

9. The issue arising in the present appeal is similar to the issue raised in the earlier years and following the same parity of reasoning, we direct the Assessing Officer to apply GP rate @ 10% over and above the GP rate declared by the assessee in its books of account and compute the additional income in the hands of the assessee. Accordingly, ground of appeal No. 3 is thus, partly allowed.

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

Order pronounced on this 18th day of December, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

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

पुणे / Pune; दिनांक Dated : 18th December, 2018.

RK/GCVSR

आदेश की प्रतिलिपि अद्येष्ठित/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. The Pr.CIT-1, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR
'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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