

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.3206/Bang/2018
Assessment year : 2013-14

Shantilal Bafna Santosh, Santosh Marketing, Bafna Complex, Near Alur Gurappa GIN, Near Old Bus Stand, Gadag. PAN – BHDPS 4601Q.	Vs.	The Income Tax Officer, Ward -II, Gadag.
APPELLANT		RESPONDENT

Appellant by	:	Shri R Chandrashekar, Advocate
Respondent by	:	Shri T Shering Ongda, JCIT (DR)(ITAT), Bengaluru.

Date of hearing	:	07.02.2019
Date of Pronouncement	:	20.02.2019

ORDER

Per N.V Vasudevan, Vice President

This is an appeal by the assessee against the order dated 26/9/2018 of CIT(A), Hubli relating to asst. year 2013-14.

2. The assessee is an individual carrying on the business as whole sale dealer in pipes and accessories under the name and style "Santosh Marketing". There was a survey in the case of the assessee conducted on 5.8.2013 in the business premises u/s 133A of the Income-tax Act 1961

(the Act). In the course of survey certain loose sheets were found and impounded. The loose sheets so impounded contained ledger account of construction account of the building owned by Shri Shantilal Bafna, the assessee's father. The inference of the AO on the basis of the loose sheet found was that the assessee made payments for construction of the building owned by his father. At the time of survey, a statement of the assessee was recorded on 14/8/2013 u/s 131 of the Act. In the said statement in answer to question No.7 on the loose sheets, the assessee explained that he was unable to explain the contents and was prepared to offer an additional income of Rs.3,35,000/-.

3. The assessee filed return of income for asst. year 2013-14 on 17/10/2013. In the said return of income, the assessee did not offer sum of Rs.5,81,278/- which was the difference between the closing balance as on 31/3/2012 and the closing balance as on 10/9/2012 as found in the loose sheet found at the time of survey. Though at the time of survey, the assessee offered to declare additional income of Rs.3,50,000/- on the basis of loose sheet found at the time of survey, the AO was of the view that the difference between the opening balance and the closing balance of Rs.5,81,278/- should be added to the total income of the assessee. The order of the AO mentions facts that the assessee agreed in the course of asst. proceedings for making addition of Rs.5,81,278/- and accordingly the said sum was added to the total income of the assessee.

4. The CIT(A) confirmed the order of the AO.

5. Aggrieved by the order of the CIT(A), assessee is in appeal before the Tribunal.

6. I have heard the rival submissions. My attention was drawn to the profit and loss account for the period from 1/4/2013 to 31/3/2014 which shows other income of Rs.65,03,180/- credited therein. The breakup of the other income is at page 60 of assessee's paper book. On perusal of the same it reveals that it includes sum of Rs.3,35,000/- declared as income by the assessee in the course of survey. It is thus evident that in the return of income filed for the subsequent asst. year 2014-15, the assessee has offered a sum of Rs.3,35,000/- declared as income. The same amount of Rs.3,35,000 offered as income in the course of survey has also been taxed in asst. year 2014-15 and is a part of sum of Rs.5,18,278/- brought to tax by the AO in asst. year 2013-14. The plea of the Id DR was that the seized papers pertain to financial years 2012-13 relevant to AY 2013-14. Therefore, the right asst. year in which income in question has to be brought to tax. The Id. counsel for the assessee on the other hand submitted that since the survey took place on 5/8/2013, the income declared at the time of survey was offered to tax in asst. year 2014-15 and therefore to the extent of Rs.3,35,000/- the addition made in asst. year 2014-15 should be deleted.

7. I am of the view that without going into the technicalities of the year in which the income should be brought to tax, it would be just an appropriate to exclude the sum of Rs.3,35,000/- already offered to tax by the assessee out of the addition of Rs.5,18,278/- made in asst. year 2013-14. The law is well settled that the same income cannot be taxed twice. Therefore, the addition to the extent of Rs.3,35,000/- is directed to be deleted. The appeal of the assessee is treated as partly allowed.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on **20th February, 2019.**

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 20th February, 2019.

/ Vms /

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore