

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.760/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Nilesh Nandkumar Agarwal, Vs. ITO, Ward -2(1),  
B-14, Ashwini Co-op. Hsg Pune  
Society, Shivajinagar,  
Mumbai-Pune Road,  
Pune – 411 005  
PAN : AELPA9995B  
(Appellant) (Respondent)

आयकर अपील सं. / ITA No.761/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Anesh Nandkumar Agarwal, Vs. ITO, Ward -2(1),  
B-14, Ashwini Co-op. Hsg Pune  
Society, Shivajinagar,  
Mumbai-Pune Road,  
Pune – 411 005  
PAN : AAVPA6809J  
(Appellant) (Respondent)

आयकर अपील सं. / ITA No.762/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Nandkumar Maidhan Agarwal, Vs. ITO, Ward -2(1),  
B-14, Ashwini Co-op. Hsg Pune  
Society, Shivajinagar,  
Mumbai-Pune Road,  
Pune – 411 005  
PAN : AAVPA6807G  
(Appellant) (Respondent)

Appellant by Shri K. Srinivasan  
Respondent by Shri Rajesh Gawli

Date of hearing 20-02-2019

Date of pronouncement 21-02-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These appeals by three related but different assesseees relate to the assessment years 2013-14. Since common issue is raised in all these appeals, I am, therefore, proceedings to dispose them off by this consolidated order for the sake of convenience.

**ITA No.760/PUN/2018 – Nilesh N. Agarwal :**

2. The only issue raised in this appeal is against the confirmation of addition of Rs.11,54,662/- on account of non-genuine business activity/expenses.

3. Briefly stated, the facts of the case are that the assessee made certain cash deposits in his savings bank accounts maintained with Cosmos bank, Bank of India and HDFC Bank. On being called upon to present the source of such deposits, the assessee submitted that the deposits were made out of cash balance in the cash book. The assessee further explained that the receipts in cash book were mainly from cash sales. The Assessing Officer (AO) required the assessee to produce the books of account which the assessee could not. It

was however maintained that he made purchases in cash and also effected sales in cash and the deposits in the banks were out of such cash sales. The AO took up the figure of cash sales at Rs.29,20,795/- as "Income from other sources". After allowing deduction on account of interest and considering the profit already shown by the assessee at Rs.12,30,197/- along with certain expenditure booked at Rs.11,54,662/-, the AO made an addition of Rs.23,84,860/-, comprising of disallowance of expenditure at Rs.11.54 lakh and non-genuine sales. The Id. CIT(A) sustained the addition by observing that the assessee could not produce even a single document to show that his bank transactions represented business receipts. The assessee has come up in appeal against the sustenance of such an addition.

4. I have heard both the sides and perused the relevant material on record. The assessee has filed a paper book comprising of 207 pages as additional evidence. The Id. AR contended that the files containing purchase vouchers etc. were misplaced and could not be located during the course of proceedings before the authorities below, as those were kept

separate when renovation and construction work was going on. A request was made that a further opportunity should be given to the assessee to adduce evidence in support of genuineness of transactions recorded in his bank accounts, which is now available. In view of the fact that the authorities below have disbelieved the genuineness of transactions of purchases, sales and expenses on the ground that supporting vouchers were not available and the assessee is now claiming to have collected all such evidence, I am of the considered opinion that the ends of justice would meet adequately if the impugned order on this score is set-aside and the matter is restored to the file of AO. I order accordingly and direct him to frame the assessment afresh after allowing reasonable opportunity of hearing to the assessee. It is made clear that the assessee will be at liberty to lead any fresh evidence in support of his claim which he considers expedient.

**ITA No. 761/PUN/2018 – Anesh N. Agarwal**

**ITA No.762/PUN/2018 – Nandkumar M. Agarwal**

5. The facts and circumstances of these two appeals are admittedly similar to those of Sh. Nilesh N. Agarwal. In the

case of Sh. Anesh N. Agarwal, the Id. CIT(A) sustained the addition at Rs.10,56,852/-; whereas in the case of Sh. Nandkumar M. Agarwal, he sustained the addition at 13,98,470/-. Sh. Anesh N. Agarwal is brother of Sh. Nilesh N. Agarwal, whose appeal has been disposed off above. Sh. Nandkumar M. Agarwal is father of Sh. Nilesh N. Agarwal. In view of the fact that the facts and circumstances of these two appeals are admittedly similar, following the view taken hereinabove, I set-aside the impugned orders and remit the matter to the file of AO. I order accordingly and direct the AO to frame the assessments afresh in conformity with the directions given in the case of Sh. Nilesh N. Agarwal above.

6. In the result, all the three appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 21<sup>st</sup> February, 2019.

**Sd/-**  
**(R.S.SYAL)**  
**उपाध्यक्ष/ VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 21<sup>st</sup> February, 2019  
सतीश

**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 (Appeals)-3, Pune
4. The Pr. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /  
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

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

		Date	
1.	Draft dictated on	20-02-2019	Sr.PS
2.	Draft placed before author	21-02-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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