

आयकर अपील[य अधिकरण] पुणे न्यायपीठ "बी" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.898/PUN/2015

निर्धारण वर्ष / Assessment year : 2000-01

Premchand Thakarsi  
Choksi & Sons,  
1462, Saraf Bazar,  
Jijamata Chowk,  
Nashik.

..... अपीलार्थी /  
Appellant

PAN No.AADFP7201M.

बनाम v/s

The Asst. Commissioner of Income Tax,  
Central Circle 1, Nashik.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 25.01.2019	घोषणा की तारीख / Date of Pronouncement: 28.02.2019
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**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 12, Pune dated 26.03.2015 for the assessment year 2000-01.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a partnership firm having three partners namely, (1) Shri Premchand T. Choksi (HUF) (2) Shri Pravin P. Choksi (HUF) and (3) Shri Rajendre P. Choksi and are in the business of Goldsmith. A

search and seizure action u/s 132(1) of the Act was conducted on 21.01.2004 in the Amba Group of cases at Nashik. The business premises of M/s. Premchand Thakarsi Choksi & Sons along with residential premises of various groups were also covered in the search. Thereafter, a notice u/s 153A of the Act was issued to the assessee on 25.03.2004 and served on assessee on 31.03.2004. In response to notice u/s 153A of the Act, assessee furnished the return of income for A.Y. 2000-01 on 13.08.2004 declaring total income of Rs.1,30,558/-. Thereafter, the case was taken up for scrutiny and subsequently, assessment was framed u/s 153A of the Act on 28.03.2006 whereby the total income was determined at Rs.27,10,860/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A), who vide order dt.06.08.2007 in appeal No.CIT(A)-I/266/2006-07 dismissed the appeal of assessee. Thereafter, assessee preferred appeal before the Tribunal. Tribunal vide order dt.30.06.2011 in ITA No.67/PN/2008 in the group of cases, including the assessee restored the matter to the file of AO. Pursuant to the directions of Tribunal, AO vide assessment order dt.28.03.2013 passed u/s 153A r.w.s. 143(3) of the Act determined the total income at Rs.32,42,291/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.26.03.2015 (in appeal No.PN/CIT(A)-12/NSK-CIT(A)-I/164/2013-14/441/2013-14) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the grounds which were subsequently concised by the assessee which reads as under :

*“1. On the facts & circumstances of case & in law lower authorities have erred in making an addition of Rs. 2,49,500/- on account of unexplained investment. The said addition being based on mere presumption and not supported by any documentary evidence therefore entire addition deserves to be struck down, Further lower authorities also erred in concluding that addition of RS.1 ,23,186/- made by Assessing officer on*

*account of gross profit @ 7.92% on unrecorded sales 15,55,388/-, particularly when assessing officer has separately made addition of unrecorded sales calculated for the whole year. Learned CIT further erred in directly assessing to tax on net profit on such unrecorded sales instead of gross profit.*

*2. On the facts and in the circumstances of the case and in law the learned CIT(A) is not justified in confirming the addition of Rs. 23,30,802/- made by the AO on account of alleged unaccounted stock by disregarding appellants contention and documentary evidences and submission in support of its contention*

*3. On the facts and in the circumstances of the case the learned CIT(A) is not justified in confirming the addition of Rs.5,31,431/- made by the AO on gross profit @ 7.92% on estimated unrecorded sales for the year of Rs.67,09,994/-, particularly when the firm was not in existence for the whole year, Without prejudice to the same the learned CIT (A) is also not justified in not directing AO to tax net profit on such unrecorded sales instead of gross profit. Learned CIT (A) further erred in confirming said addition by disregarding the fact that in the original Assessment Order. Learned Assessing Officer has allowed telescopic benefit.*

*4. On the basis of facts and in the circumstances of the case the AO please be directed to charge interest under specific provisions of subsection (3) of section 234A and subsection (3) of section 234B of the act. The appellant craves for the addition to, deletion, alteration, modification of any of the above grounds of appeals.*

3. 1<sup>st</sup> ground is with respect to addition of Rs.2,49,500/- on account of “unexplained investment”.

3.1. During the course of search, certain documents and books were seized from the business premises of the assessee. The assessee was asked to explain the transactions contained in the documents seized. The statement of Shri Pravinchandra Choksi was also recorded u/s 132(4) of the Act, wherein he stated that the books relates to the assessee and it contains various amounts received respectively from various customers on account of sale. It was further stated by him that the transactions were not recorded in the regular books of assessee's firm. The documents seized (as per item No.85) which were for the period from 22.12.1999 to 31.03.2000 showed the total amounts of sales at Rs.15,55,388/-. Assessee admitted that the aforesaid sales were not recorded in the regular books of accounts. The profit on such

unaccounted sales was offered at 5% amounting to Rs.77,769/- as income in A.Y. 2000-01. AO on perusing the trading account submitted with the return of income noticed that on the recorded sales of Rs.25,66,568/-, assessee had shown gross profit of Rs.6,22,272/-, which included the labour charges receipt of Rs.4,06,332/-. After reducing the amount of labour charges from the gross profit, the effective gross profit on trading transactions worked out at Rs.2,15,940/- which worked out to 8.41% of assessee's recorded sales. The assessee was therefore asked to show cause as to why the gross profit on such unrecorded sales not be considered as 8.41% as against 5% offered by the assessee. The assessee was also show caused as to why the amount of such credit sales not be treated as unexplained and treated as income. Assessee worked out the rate of gross profit at 7.92% as against 8.41% worked out by the AO and assessee thus agreed for gross profit addition at 7.92% on the suppressed sales at Rs.15,55,338/-. Assessee further stated that the actual amount receivable on account of credit sales was Rs.2,49,000/-. AO thereafter considered the profit on un-recorded sales at 7.92% and worked out the profit of Rs.1,23,186/- as concealed income of the assessee but since assessee had admitted undisclosed and unexplained investments in debtors of Rs.2,49,500/- on account of unrecorded credit sales, AO made addition of Rs.2,49,000/- and no separate addition on account of gross profit of Rs.1,23,186/- was made. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who after considering the assessee's submissions, the remand report of the AO and assessee's reply to the remand report upheld the order of AO by observing that the amount was worked out by the AO based on the seized paper and statement of Shri Pravinchandra Choksi wherein he admitted that the

seized documents show the amount of receivables. He has further noted that assessee did not furnish any evidence or working which could demonstrate that there were no receivables or the amount worked out by the AO was incorrect. Ld.CIT(A) upheld the order of AO by noting that assessee's unaccounted purchases remained blocked till the realization of the amount receivables from debtors and therefore such amount was considered as 'initial investment' in unaccounted purchases. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

4. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that no addition is called for in the present case. Ld. D.R. on the other hand, supported the order of lower authorities.

5. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition on account of "unexplained debtors". We find that AO had worked out the addition based on the seized papers referring unaccounted sales and the statement of Praveenchandra Choksi, who has admitted the same. The addition of Rs.1,23,186/- is to be made in the hands of assessee as admitted during assessment proceedings. Further, the AO was of the view that debtors to the tune of Rs.2,49,500/- are also to be added being on account of unrecorded credit sales. We find no merit in the same. Addition is restricted to Rs.1,23,186/-. **Thus, the ground of appeal No.1 is partly allowed.**

6. 2<sup>nd</sup> ground is with respect to addition of Rs.23,30,802/- on account of alleged unaccounted stock.

6.1. As per the register of assessee which was found during the course of search, it was noticed that it contains the details of opening stock, inward, goods, sales, sales on approval and closing stock on a particular day. It was seen that on 31.03.2000 there was a stock of gold of 17186.380 grams. It was noticed that in the return of income filed by the assessee in response to notice u/s 153A of the Act assessee had shown closing stock of gold of 4665.020 grams as against the stock of 17186.380 grams and accordingly had not shown the closing stock of 12521.360 grams. It was also noticed that assessee had valued the closing stock of gold at Rs.4,200/- per Tola. The assessee was asked to reconcile the working. Assessee furnished the explanation of the stock which is reproduced by the AO at para 6.2 of the assessment order. It was inter-alia submitted by assessee that the stock register was combined stock register of the family and thus there was no excess stock as on 31.03.2000. The submissions of the assessee were not found acceptable to the AO. AO noted that in the statement recorded u/s 132(4) of the Act, Shri Praveenchandra P. Choksi confirmed the register being of the assessee firm. AO also noted that assessee had not furnished any evidence in support of his claim that the stock of 2539.00 grams belong to Shri Premchand Thakarsi Choksi and 620.238 grams belongs to Pravinchand Choksi. The submission of the assessee that 2145 grams of gold was offered for taxation in the return of income and 1324.390 grams was offered by Premchand T. Choksi in his individual capacity was also not found acceptable. AO thereafter computed the actual excess stock at

5549.530 grams (as noted in Para 6.7 of the assessment order and valuing the same at Rs.420/- per gram, worked out the amount of excess stock at Rs.23,30,802/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who after considering the submissions of the assessee, remand report and assessee's reply to the remand report for the reasons stated in para 2.2.13 to 2.2.30 confirmed the action of the AO. Aggrieved by the order of Ld.CIT(A) assessee is now in appeal before us.

7. Before us, Ld.A.R. reiterated the submissions made before lower authorities and further pointed to the assessee's reply vide letter dt.07.10.2005 which was reproduced at para 6.2 of the assessment order. From the table, which is reproduced by AO in the assessment order submitted that the gold at 2145 grams was offered to taxation. During the search, action u/s 132 of the Act, stock of gold of 3469.390 grams was offered in the return of income of Mr. Premchand T. Choksi in his individual capacity. In support of his contention, he referred to the computation of income of firm which is placed at Page 26 of the Paper Book and Page 27, which is computation of income of Mr. Premchand T. Choksi in his individual capacity. He thereafter submitted that once the addition has been made in the individual capacity, the addition of the same amount would result into double taxation. With respect to gold of 2539 grams, he submitted that it related to Premchand T. Choksi and gold of 620.238 grams related to Pravinchand Choksi, Proprietor of M/s. Thakarsi Jewellers. He submitted that since the aforesaid gold did not belong to assessee, the same could not be added in his hands. Ld. D.R. on the other hand, submitted that no evidence has been furnished by the assessee to

support his contention about the stocks being offered by the respective persons. He thus supported the order of AO.

8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to addition on account of "unexplained stock". We find that before AO, assessee had furnished reconciliation of stock and according to that record 2145 grams and 1324 grams have been offered for taxation during the survey action u/s 133A of the Act by the firm and Premchand T. Choksi in his individual capacity respectively. In support of the contention that the aforesaid quantity of gold has been offered to tax by the respective assesseees, we find that in the computation of income, the stock of gold has been offered by the respective assesseees. In view of the fact that those amounts have already been offered to tax as unaccounted stock, we are of the view that no addition of the same stock is called for in assessee's hand and therefore direct its deletion. As far as, the stock of 2539 grams and 620.238 grams of gold is concerned, no plausible explanation has been given. In view of these facts, we find no reason to interfere to the extent of addition of value of gold of 2539 grams and 620.238 grams in the hands of assessee is concerned. **Thus, the ground of appeal No.2 is partly allowed.**

9. 3<sup>rd</sup> ground is with respect to addition of Rs.5,31,431/- towards gross profit on unaccounted sales.

9.1. The AO in original assessment order had not made any separate addition on this account because of telescopic effect. Since, we have upheld the addition on account of gross profit on suppressed sales and

unaccounted stock of gold, then no further addition is warranted.

**Thus, the ground of appeal No.3 is allowed.**

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

Order pronounced on 28<sup>th</sup> day of February, 2019.

Sd/- (SUSHMA CHOWLA) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
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पुणे Pune; दिनांक Dated : 28<sup>th</sup> February, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-12, Pune.
4. Pr. CIT, Central, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

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