

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", 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 Nos.1228 to 1233/PUN/2018

निर्धारण वर्ष / Assessment Years : 2003-04 to 2008-09

Mr. Illiyas Badsha Shaikh,
Shama Chirmure Stall,
100 Feet Road,
Opp. D Mart,
Sangli – 416416

.... अपीलार्थी/Appellant

PAN: AXWPS8917P

Vs.

The Income Tax Officer,
Wad 1(2), Sangli

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C.H. Naniwadekar
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 27.02.2019	घोषणा की तारीख / Date of Pronouncement: 05.03.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of six appeals filed by assessee are against respective orders of CIT(A)-1, Kolhapur, dated 04.05.2018 and 07.05.2018 relating to different assessment years 2003-04 to 2008-09 against respective orders passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to the same assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in ITA No.1228/PUN/2018, relating to assessment year 2003-04 has raised the following grounds of appeal:-

1. *The learned CIT(A) erred on facts and in law in upholding the decision of the AO for estimating gross profit at the rate of 10% instead of 4.25%. He failed to appreciate the facts and submissions made in this behalf.*
2. *The learned CIT(A) erred on facts and in law in upholding the decision of the AO for making addition of Rs.72,000/- on account of salary expense. He failed to appreciate the facts and submissions made in this behalf.*

4. The first issue raised in all the appeals is against estimation of gross profit in the hands of assessee.

5. Briefly, in the facts of the case, Survey action under section 133A of the Act was carried out at the business premises of assessee on 20.11.2009. During the course of Survey, statement of assessee was recorded. The assessee was engaged in the manufacturing and trading of Murmura (puffed rice). On the basis of impounded documents, reasons were recorded for reopening the assessment. Since no return of income was filed by the assessee, the Assessing Officer was of the view that income chargeable to tax had escaped assessment within meaning of section 147 of the Act. Thereafter, notice under section 148 of the Act was issued to the assessee. The assessee furnished return of income declaring total income of ₹ 22,110/-. The assessee pointed out that no regular books of account were being maintained in respect of business activities. The assessee had declared turnover of ₹ 1,23,58,028/-, on the basis of cash deposited in the bank account and credit sales on the said

turnover. The assessee had estimated gross profit @ 4.25% i.e. ₹ 5,25,216/-. The assessee was asked to explain as to why gross profit rate declared by the assessee should not be adopted at 10% as in similar line of business, the gross profit declared was 10% to 11% of the total turnover. The assessee objected to the same and stated that comparison of gross profit was possible only when both the units were working in the same conditions. The Assessing Officer noted that the assessee had neither maintained day-to-day stock register nor maintained any record of daily production / consumption and for various other reasons, the Assessing Officer was of the view that provisions of section 145(3) of the Act were attracted. The Assessing Officer also noted that in the case of Ramesh Vitthal Suryawanshi, Prop. of M/s. Suryawanshi Brothers who was being assessed with the same Ward, the gross profit declared was @ 10% to 11% and hence, the Assessing Officer estimated the income in the hands of assessee by taking gross profit @ 10% of the turnover i.e. ₹ 12,35,802/-.

6. The CIT(A) has upheld the order of Assessing Officer, against which the assessee is in appeal.

7. The learned Authorized Representative for the assessee before us pointed out that there is no merit in the order of Assessing Officer in this regard as the assessee was carrying on the business on wholesale basis, whereas the comparison was made with the results shown by a concern engaged in retail sale of the items which were being manufactured by the assessee. He also furnished tabulated chart before us and pointed out that similar gross profit rate has been shown from year to year and only in assessment year 2015-16 when

the assessee has converted his business into retailer of the same business, then the gross profit of 7.84% had been shown.

8. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

9. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is that after application of provisions of section 145(3) of the Act, the GP rate to be applied in the hands of assessee. The assessee was admittedly, engaged in the manufacture and sale of puffed rice on wholesale basis. The margin of profit earned on goods sold on wholesale basis is lower when compared to the margin of profit earned by retailers on the sale of same goods. The assessee before us has filed tabulated details of its turnover for the years and similar gross profit earned at 4.25% to 4.50% being declared from year to year. The gross profit declared by assessee has been estimated on the turnover declared by the assessee from year to year. The Assessing Officer has accepted the turnover declared by the assessee but has not accepted the gross profit rate applied by him. In fairness and in totality of the above said facts and circumstances, we deem it fit to restrict gross profit rate to 6%. The Assessing Officer is directed to compute the income in the hands of assessee in all the years under consideration. Accordingly, ground of appeal No.1 raised by the assessee in all the years is partly allowed.

10. Further, the assessee has raised ground of appeal No.2 against disallowance of salary under section 40A(2) of the Act in assessment years

2003-04 to 2005-06. The learned Authorized Representative for the assessee has not pressed the said ground of appeal and hence the same is dismissed as not pressed.

11. In the result, all the appeals of assessee are partly allowed.

Order pronounced on this 5th day of March, 2019.

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

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

पुणे / Pune; दिनांक Dated : 5th March, 2019.

GCVSR

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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