

आयकर अपीलिय 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 No.1331/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2010-11**

Mahesh Madhavrao Budukh,
3352, Halad Galli (Mahaver Marg),
Barshi, Solapur - 413401.

PAN : ABKPB0857H

.... अपीलार्थी/Appellant

Vs.

ACIT, Circle-2,
Solapur.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Written Submission
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: 29.04.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-9,
Pune dated 27.04.2018 for the Assessment Year 2010-11.

2. The grounds raised by the assessee are as under :-

“1) On the facts and circumstances of the case the learned ACIT not justified and erred in law in estimating suppressed gross sales on account of **gold of Rs.2,73,490/-** and on account of **silver of Rs.40,744/-** without any concrete evidence and information on record.

2) The learned ACIT erred in treating estimated suppressed gross sales on account of **gold and silver of Rs.3,14,234/-** as profit and added 100% to total income.

3) The learned CIT (Appeals)-7 not justified in enhancing **stock of Rs.8,08,950/-** and adding to total income **on account of gold**. The learned CIT(A) erred in valuation of closing stock at market price instead of cost price. The learned CIT(A) not deducted gross profit margin from market price of gold to arrive at cost price of stock.

4) The learned CIT (Appeals)-7 not justified in enhancing **stock of**

Rs.1,57,935/- and adding to total income **on account of silver**. The learned CIT(A) rightly valued stock of silver at cost price after deducting gross profit margin but the learned CIT(A) taken the market price of silver as on 31.03.2010 instead of market price as on 09.02.2010 i.e. date of survey.”

3. Briefly stated the relevant facts include that the assessee is engaged in the business of trading in gold and silver jewellery. The assessee also earned interest income from money lending business and majuri. There was survey action u/s 133A of the Act on the assessee's business premises on 09.02.2010. During the survey action, the assessee declared additional income of Rs.27,77,876/- towards the 'excess stock' of gold and silver. The assessee complied with the said declaration and included the same in the return of income. However, during the scrutiny proceedings, the Assessing Officer noticed that, during the previous assessment year, the average monthly sales of gold was Rs.2,73,490/- and the average monthly sales of silver was Rs.40,774/- during the period prior to the survey action. However, the assessee did not show any such sale during the months of February and March, 2010. Rejecting the assessee's submissions, the Assessing Officer estimated the sales for these two months and made addition of Rs.2,73,490/- and Rs.40,774/- on account of gold and silver sales respectively. The Assessing Officer further noted that the assessee claimed depreciation on car of Rs.46,425/-. The Assessing Officer disallowed the same as a car used for personal reason. Further, the Assessing Officer also disallowed 20% of the telephone expenses amounting to Rs.3,487/-. At the end of the assessment, the Assessing Officer computed the assessed income in the following manner :-

1.	On account of Gold	Rs.2,73,490/-
2.	On account of Silver	Rs. 40,744/-

3.	<i>Depreciation on car</i>	<i>Rs. 46,425/-</i>
4.	<i>Telephone Expenses</i>	<i>Rs. 3,487/-</i>
	<i>Total</i>	<i>Rs.3,64,146/-</i>

4. The CIT(A) not only partly allowed the appeal of the assessee, however, he made enhancement of assessment by adding the income of Rs.9,66,885/-. The assessee filed the written submission in this regard before the CIT(A) which was rejected by him and enhanced the assessment by Rs.9,66,885/- (Rs.8,08,950/- plus Rs.1,57,935/- as additional income on account of excess stock of gold and silver respectively).

5. Aggrieved with the above order of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds.

6. Before us, the ld. Counsel for the assessee filed the written submission and requested for deciding the issue based on the said written submission.

7. In ground nos.1 and 2, the assessee questioned the addition of Rs.3,14,234/- by way of estimation of gold and silver for the period after the date of survey i.e. February and March, 2010. We have already discussed in the above paragraphs that the Assessing Officer estimated the gold sales of Rs.2,73,490/- and the silver sales of Rs.40,744/- (Rs.2,73,490/- plus Rs.40,744/- = Rs.3,14,234/-). The assessee argued in the written submission that the assessee traded in gold and silver from 10.02.2010 to 31.03.2010 also and the same was not appreciated by the Assessing Officer and the CIT(A). The assessee also argued in the written submission that the estimation of entire sales of gold and silver for the two months is not appropriate and unsustainable. At the most, the profit

segment of the sales could have been added by the Assessing Officer and the CIT(A).

8. On hearing the Ld. DR, we find the Assessing Officer does not have any evidence to demonstrate that the assessee traded in gold and silver out of the books. The Assessing Officer did not have any evidence to substantiate that the assessee sold the gold and silver during the said period i.e. February and March, 2010 outside the books. Therefore, in our view, making such addition of this account by the Assessing Officer, constitutes the addition made merely on the surmises and conjectures. We cannot sustain such additions. Accordingly, ground no.1 and 2 raised by the assessee are allowed.

9. Regarding the issues raised in the ground nos.3 and 4, we find the addition of Rs.8,08,950/- and Rs.1,57,935/- are made on account of excess stock by the CIT(A) by way of enhancement of assessment. In this regard, the case of the assessee before us is that the CIT(A) made the enhancement by discovering a new source of income. It is an undisputed fact that the Assessing Officer never made any addition on account of excess stock which was already offered by the assessee during the survey action. We find identical issue had come up before the Tribunal in the case of Vijay Arjundas Luthra vide ITA Nos.535/PUN/2013 & 1354/PUN/2016 for the assessment years 2004-05 & 2005-06 order dated 16.08.2017, wherein the Tribunal adjudicated the similar issue. Relying on various judgements of the Hon'ble Supreme Court/High Courts and the decisions of the ITAT, the Tribunal set-aside the order of the CIT(A). The contents of para 23 and 24

of the said order of the Tribunal (supra) are relevant in this regard. For the sake of completeness, the said paragraphs are extracted hereunder :-

“23. Now, coming to the next addition which was made by the CIT(A) by way of enhancement notice is on account of unexplained receipts of Rs.1.05 crores. The Assessing Officer had considered the said seized documents and had estimated the profits in the hands of assessee by applying net profit rate. The Assessing Officer had considered the total receipts in the hands of assessee as per TDS certificates at Rs.3.71 crores and had also noted the non-receipt of TDS certificates from Nashik Municipal Corporation. In respect of TDS of Rs.27,581/-, which he held to be equivalent to contract receipts of Rs.11,07,670/- and the total contract receipts were calculated at Rs.3.82 crores. The Assessing Officer because of non-verifiability of expenses and the high turnover of contract, estimated the net profit at 6% of the gross receipts. The Assessing Officer thus, had accepted the total contract receipts in the hands of assessee but because of non-verifiability of expenses had estimated the net profit.

*24. The CIT(A) has found new source of income i.e. total receipts found in the Dummy HO Cash Book at Rs.1.05 crores and has made the addition on that account. The CIT(A) in the present case has travelled beyond the sources of income which was the subject matter of consideration by the Assessing Officer, wherein the Assessing Officer after accepting the contract receipts had doubted the expenses claimed by the assessee and accordingly, applied the net profit rate to determine the income in the hands of assessee. The CIT(A) had first started enquiries in respect of payments made by the assessee which was the issue considered by the Assessing Officer while completing assessment under section 143(3) of the Act. Later, the CIT(A) has issued the show cause notice, wherein reference was made to receipts, which were accepted by the Assessing Officer and not disturbed. In the absence of any enquiry by the Assessing Officer regarding receipts recorded in the Dummy HO Cash Book, the same was outside the purview of enhancement scope of the CIT(A). In case any new source of income is to be added in the hands of assessee which was not considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases, is to be dealt with under section 147/148 of the Act and / or under section 263 of the Act, where requisite conditions are fulfilled. Such is the proposition laid down by the Hon'ble High Court of Delhi in CIT Vs. Sardari Lal & Co. (supra). Applying the said propositions and the dictate of the Hon'ble Supreme Court on the issue, we hold that **it is not open to the CIT(A) to introduce in the assessment a new source of income and the assessment had to be confined to those items of income which were the subject matter of original assessment.** Accordingly, we reverse the order of CIT(A) in this regard and delete the addition of Rs.1.05 crores. The grounds of appeal raised by the assessee are thus, allowed.”*

10. The enhancement of assessment, that can be made by the CIT(A) does not include the enhancement by way of discovering the new source of income. In the present case, there was no addition made by the Assessing Officer on account of excess stock. This issue reached finding with survey

action and offer of additional income in the return of income. Considering the above set legal proposition on this issue, we are of the opinion the ground nos.2 and 3 do not survive. Hence, we reverse the order of the CIT(A) and allow the ground nos.2 and 3 in favour of the assessee. Thus, the ground nos.2 and 3 are allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced on this 29th day of April, 2019.

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

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

पुणे / Pune; दिनांक Dated : 29th April, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-9, Pune;
4. The Pr.CIT-6, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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