

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.220/PUN/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Pravin Shrinivas Bharadiya,
A/P. Vombori,
Tal. Rahuri,
Ahmednagar
PAN :ABQPB4836N

Vs. ITO, Ward-4,
Ahmednagar

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Prasad Bhandari
Shri M.K.Verma

Date of hearing 02-05-2019
Date of pronouncement 03-05-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-2, Pune on 15-06-2016 in relation to the assessment year 2009-10.

2. There is a delay of 845 days in presenting the appeal before the Tribunal. The assessee has given reasons by means of an affidavit which led to the belated filing of appeal. I am satisfied with such reasons. As such, the delay is condoned and the appeal is admitted for hearing.

3. On merits, the assessee is aggrieved by the confirmation of addition on the basis of application of 8% gross profit rate on bank deposits amounting to Rs.21,94,000/- treated by the AO as his sale and also the enhancement made by the Id. CIT(A) to the tune of Rs.4,38,800/-, estimating 1/5th of Rs.21.94 lakh as additional capital required.

4. Briefly stated, the facts of the case are that the Assessing Officer (AO) got some information about the assessee having deposited cash amounting to Rs.21,94,000/- in his saving bank account maintained with Nagar Urban Cooperative Bank Ltd. Vambori branch. On being called upon to explain the source of the deposit, it was submitted that the assessee was not doing any business of trading. The assessee further explained, by means of confirmation letters from small vendors, that they were not financially capable of purchasing goods in cash and it was the assessee who was purchasing goods on credit on their behalf, and returning money to his suppliers after receiving cash from them. Not convinced with the assessee's submissions, the AO held that the assessee was engaged in his own business as the purchases were made by him as principal. Applying 8% gross profit rate on such deposits of Rs.21.94 lakh, by treating the

same as assessee's turnover, the AO worked out and made an addition at Rs.1,75,520/-. The Id. CIT(A) made enhancement by opining that 1/5th of the amount of such sales made by the assessee outside books of account, was required as additional capital. He, therefore, enhanced the income by a further sum of Rs.4,38,000/-. The assessee is in appeal before the Tribunal.

5. I have heard both the sides and gone through the relevant material on record. It is an admitted position that the assessee, in fact, deposited a sum of Rs.21.94 lakh in his bank account. In support of the source of such deposits, the assessee submitted that he was purchasing goods from certain suppliers for onward supply to small vendors who were not capable of purchasing goods on credit. After receiving the amounts from such small vendors, the assessee was making payment to his suppliers. For this act, the assessee was charging commission @ 3%. The fact that the assessee purchased goods and then passed them over to small vendors has been admitted by such small vendors by means of confirmation letters, as called for by the AO. Page 26 of the paper book is a copy of bank account maintained by the assessee in which such cash received from small vendors was deposited. It can be seen that the opening balance in this bank

account was Rs.1292.49. On 15-07-2008, a sum of Rs.1,70,000/- was deposited and thereafter there are withdrawals for the equal amount through transfer entries to the suppliers. Similar pattern of transactions is prevailing throughout the year. After every cash deposit, there are withdrawals by journal entries. Balance in the account has almost remained similar after every transaction of squaring up. Giving effect to certain interest income etc., the closing balance in the bank account was still at Rs.3,703.64. The nature of transactions recorded in the bank account fortifies the assessee's stand that he was collecting cash from small vendors and then passing it over to his suppliers. Ledger account of the assessee in the books of M/s. Simratmal Chunilal Mutha, one of the suppliers of the assessee, is available at page 29 of the paper book. Blueprint of transactions in the said account deciphers that firstly, sales were made to the assessee and then amount was received from assessee through banking channel. A copy of some of the pages of cash book of the assessee has been placed at page 69 onwards of the paper book. It is thus clearly established that the assessee was purchasing goods and then handing over the same to small vendors. Against every sale to small vendors, there is a charge

of commission @ 3%. The above narration of facts amply proves that the stand taken by the assessee before the authorities below is not devoid of substance. Even though technically, these were transactions of purchases by the assessee, but such purchases were, in fact, made for onward supply to the small vendors from the very beginning. In my considered opinion, the authorities below were not justified in negating the assessee's stand and taking the entire amount of deposits in the bank account of the assessee as his own sale liable to tax @8%. At this stage, it is relevant to mention that the assessee did declare commission income at the rate of 3% in his books of account, which fact has not been denied by the AO. I, therefore, overturn the impugned order and order to delete the addition made by the Assessing Officer as further enhanced in the first appeal.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 03rd May, 2019.

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

पुणे Pune; दिनांक Dated : 03rd May, 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)-2, Pune
4. The Pr. CIT-1, 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 | 02-05-2019 | Sr.PS |
| 2. | Draft placed before author | 02-05-2019 | 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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