

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", 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.659/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

The Asst. Commissioner of Income Tax,
Central Circle 2(2), Pune

.... अपीलार्थी/Appellant

Vs.

Parag Kiran Gandhi,
1300, North Kasba,
Tilak Chowk,
Solapur - 413002

.... प्रत्यर्थी / Respondent

PAN: AAXPG4634K

प्रत्याक्षेप सं./CO No.23/PUN/2017

**निर्धारण वर्ष / Assessment Year : 2011-12
(out of ITA No.659/PUN/2015)**

Parag Kiran Gandhi,
1300, North Kasba,
Tilak Chowk,
Solapur - 413002

... प्रत्याक्षेपक/ Cross objector

PAN: AAXPG4634K

Vs.

The Asst. Commissioner of Income Tax,
Central Circle 2(2), Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Kishore Phadke
Revenue by : Ms. Sabhana Parveen

सुनवाई की तारीख /
Date of Hearing : 05.07.2019

घोषणा की तारीख /
Date of Pronouncement: 12.09.2019

आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

The appeal filed by Revenue is against the order of CIT(A)-12, Pune, dated 16.02.2015 relating to assessment year 2011-12 passed against the order under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'). The assessee has filed Cross Objection against the appeal of Revenue.

2. The appeal filed by Revenue and Cross Objection filed by assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The Revenue in ITA No.659/PUN/2015 has raised the following grounds of appeal:-

01. *On the facts and circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition amounting to Rs.39,54,920/- on account of excess gold found at the time of search without appreciating the circumstantial evidence and relying on the suspicious documents produced by the assessee to claim this excess gold as accounted for.*
02. *On the facts and circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition amounting to Rs.1,28,14,157 on account of excess stock found at the time of search without appreciating the circumstantial evidence and suspicious books of accounts maintained by the assessee. The Ld. CIT(A) also failed to appreciate the fact that the assessee had not maintained any quantitative details of the stock.*
03. *On the facts and circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition amounting to Rs.9,65,000/- on account of unaccounted investment in farm house found at the time of search without appreciating the circumstantial evidence and suspicious books of accounts maintained by the assessee.*
04. *On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating that statement given u/s 132(4) is in itself a good piece of evidence. The Ld. CIT(A) also failed to appreciate that the retraction on the impugned additions made by the A.O. is merely an after-thought. From the facts of the case it is clearly established that the documentary evidences produced by assessee in support of his retraction from the income disclosed earlier, was produced after a long gap of time from the search and were seen to be created.*

05. *The order of Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.*

4. The assessee in CO No.23/PUN/2017 has raised the following grounds of objections:-

1. *On the facts and circumstances of the case, the Learned CIT(A) was not justified in making addition of Rs.37,51,290/- on account of excess cash found at the time of search without appreciating the circumstantial evidence.*
2. *The addition of Rs.37,51,290/- may please be deleted.*

5. Briefly, in the facts of the case, the assessee is an individual deriving income from business as jeweler. Search under section 132 of the Act was conducted on Gandhi Group of cases at Solapur on 08.03.2011. During the course of search, the assessee had offered additional income of about ₹ 7 crores. However, the assessee filed retraction letter dated 14.06.2011 before JCIT retracting declaration totaling ₹ 2.69 crores. The Assessing Officer did not accept the retraction and added the same to total income declared in return of income and assessed the income in the hands of assessee at ₹ 7.94 crores as against the returned income of ₹ 5.25 crores.

6. Before the CIT(A), the assessee filed explanation vis-à-vis the retraction made by him, on account of excess declaration made on account of excess gold, excess stock, cash and investment in farmhouse. The assessee claimed that inadvertently and because of non-availability of data at the time of search, excess declaration was made. He placed reliance on the decision of Hon'ble Apex Court in Vinod Solanki Vs. Union of India in Civil Appeal No.7407 of 2008 arising out of SLP (C) No.3537 of 2008, dated 18.12.2008 UOI – 233, ELT 157 (SC) for the proposition that retraction corroborated by the cogent evidence is liable for acceptance. The detailed explanation which was filed before the CIT(A) along with additional evidence is incorporated at pages 5 to 15 of the

appellate order. The CIT(A) has deleted the addition made on account of excess gold ornaments of ₹ 39,54,920/- vide paras 2.1.6 and 2.1.7 and of ₹ 1,28,14,157/- on account of retraction of excess stock vide paras 2.1.8 to 2.1.10 and also retraction of investment in construction of farmhouse vide para 2.1.19. However, the CIT(A) upheld the addition on account of excess cash of ₹ 37,51,290/-.

7. The Revenue is in appeal against the order of CIT(A) in allowing the claims. The assessee has filed Cross Objection against addition upheld on account of excess cash of ₹ 37,51,290/-.

8. We have heard both the learned Authorized Representatives and proceed to decide the appeal filed by Revenue and Cross Objection filed by assessee. First, we take up Cross Objection filed by assessee, which is against addition of excess cash of ₹ 37,51,290/-. The assessee had declared cash found during the course of search, which was not matching with the cash recorded in the books of account as excess cash. The same was offered for taxation in the declaration made during the course of search. However, subsequently, the same was retracted. The assessee claims that the said cash do not belong to him but belong to various family members. However, the assessee has failed to establish its case of odd amounts being deposited by each of the family members with the assessee and in such circumstances, there is no merit in retraction made by assessee. Accordingly, we uphold the addition of ₹ 37,51,290/- and dismiss the Cross Objection filed by assessee.

9. Now, coming to the appeal filed by Revenue. In this regard, certain events need to be kept in mind. Search on Gandhi group was conducted on

08.03.2011. The first statement under section 132(4) of the Act, in which declaration was made by assessee was recorded on 09.03.2011 and second statement regarding some clarification on 15.04.2011. On 14.06.2011, the assessee made retraction on account of certain errors before the JCIT, Kolhapur, who prepared the appraisal report. Thereafter, the assessee filed an affidavit for partial retraction of declaration on 14.07.2011. In the return of income filed for the year under consideration on 29.09.2011 the assessee only declared income of ₹ 5.25 crores as against initial declaration of about ₹ 7 crores. Thereafter, assessment proceedings were initiated against the assessee and during the course of assessment proceedings, there was partial correction of retraction of declaration before the Assessing Officer. The assessee before us has filed tabulated details in this regard, which summarized the initial declaration and retraction before the authorities below. After the retraction, net declaration which has been finally made before the Assessing Officer was totaling ₹ 4.78 crores. It is not the case that the assessee has retracted initial declaration made by him in entirety; as against declaration of ₹ 6.93 crores, final declaration after retraction was ₹ 4.78 crores. The assessee before us has filed details in respect of gold stock, as per search party and gold stock as finally declared by assessee and has pointed out that difference was on account of application of market rate and also in some cases, the quantity of stock. Similar explanation has been filed in respect of silver stock and also investment in gold ornaments found, wherein certain ornaments do not belong to the assessee but belong to his family members. The CIT(A) has considered each of the plea of assessee including the quantity of items in question and has decided the issue.

10. The first issue which was decided was in respect of excess gold declared of ₹ 39,54,920/- and it has pointed out that entire gold weighing 2548.13 grams was explained, wherein gold ornaments weighing 261.970 grams were purchased and appeared in the Balance Sheet of respective family members. The gold weighing 673.570 grams was purchased during the year out of bank loan facilities availed by family members and the remaining part of gold weighing 1232 grams was acquired by three lady family members and male members during their lifetime. The said observations are in paras 2.1.6 and 2.1.7 of order of CIT(A). In the totality of the above said facts and circumstances, we find that the Revenue has failed to controvert the findings of CIT(A) and we uphold the deletion of addition of ₹ 39,54,920/-.

11. Now, coming to the next item i.e. excess stock of ₹ 1,28,14,157/-. The stock was of gold ornaments and silver. The assessee pointed out that first of all, the rate applied as on the date of search by search team was not correct and further gold ornaments of customers weighing 766.280 grams did not belong to the assessee. The CIT(A) has held that stock is to be valued either at the cost price or market price, whichever was lower. The search team had valued the gold and silver items at the market price, hence the valuation of said items at ₹ 4.12 crores was held to be justified by CIT(A).

12. The assessee before us has also explained the same and has pointed out that the said explanation was even given before the Assessing Officer. We find no merit in the order of Assessing Officer in this regard. Further, the assessee has also furnished evidences of gold ornaments weighing 766 grams, which belongs to its customers and not to him, but was lying with him.

Accordingly, we uphold the findings of CIT(A) in paras 2.1.8 to 2.1.10 and also uphold the deletion of addition of ₹ 1,28,14,157/-.

13. In respect of last item i.e. investment in construction of farmhouse, the assessee claimed that the expenditure was recorded in its books of account. The CIT(A) has deleted the said addition. The learned Departmental Representative for the Revenue has not controverted the findings of CIT(A) in this regard. Accordingly, we find no merit in the grounds of appeal raised by Revenue. Thus, the grounds of appeal raised by Revenue are dismissed.

14. In the result, both the appeal of Revenue and Cross Objection of assessee are dismissed.

Order pronounced on this 12th day of September, 2019.

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

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

पुणे / Pune; दिनांक Dated : 12th September, 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)-12, Pune;
4. The CIT(Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', 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