

आयकर अपीलिय 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.664/PUN/2017
निर्धारण वर्ष / Assessment year : 2013-14

A.M. Jalgaonwala Agro Products Pvt. Ltd.,
Kapad Bazar, Sirpur, Tal. Shirpur,
Dhule-425 405.

..... अपीलार्थी /
Appellant.

PAN: AABCA5276G.

बनाम v/s

The Income Tax Officer,
Ward-5, Dhule.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Ashish Mahendra Bhalgat.

Revenue by : Shri Pankaj Garg.

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| सुनवाई की तारीख / Date of Hearing : 14.08.2019 | घोषणा की तारीख / Date of Pronouncement: 16.10.2019 |
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 1, Nashik dated 13.02.2017 for the assessment year 2013-14.

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

Assessee is a Private Limited Company engaged in the business of dealing in all types of pipes, agricultural implements etc. Assessee electronically filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring total income of Rs.53,41,100/-. In this case, a survey operation u/s 133A of the Act was carried out on 21.11.2012 on the

business premises of the assessee wherein the assessee company had admitted additional income of 1,30,00,000/- for the discrepancies with regard to stock, cash and unaccounted transactions noted in the impounded material found during the survey. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of Act vide order dt.21.03.2016 determining the total income at Rs.1,84,52,810/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.13.02.2017 (in appeal No.Nsk/CIT(A)-1/25/2016-17) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now before us and has raised the following grounds :

“1. The learned CIT(A) erred in confirming the addition of Rs.1,30,00,000/- made by the A.O. without appreciating the said addition was not justified in law.

2. The learned CIT(A), erred in holding that the addition of Rs.1,30,00,000/- was justified on the ground that in the course of survey statement recorded u/s 133A, the assessee had declared additional income of Rs.1,30,00,000/- in respect of stock shortage and cash found and hence, it cannot go back on its declaration once the income was declared in the survey statement.

3. The learned CIT(A) failed to appreciate that that the said addition was made solely on the basis of the declaration made in the statement u/s 133A and the dept. had not pointed out any discrepancy in the books of accounts furnished by the assessee in the course of asst. proceedings to justify the addition of Rs.1,30,00,000/- on merits and hence, the addition was not warranted.

4. The learned CIT(A) erred in not appreciating that at the time of survey action conducted on 21.11.2012, the books of accounts were incomplete, however, after the end of the year, the books of accounts were prepared and as per the finalized books, the stock and cash was reconciled and the A.O. had accepted the said books without pointing out any discrepancy in the same and therefore, there was no reason to make any addition solely on the basis of the declaration made in the survey statement.

5. Without prejudice to the above grounds, the assessee submits that at the time of survey action, the 'inventory of stock valuing Rs.2,01,68,450/- was found as against the stock ofRs.3,77,36,365/- as per the incomplete books of accounts and hence, if at all, any addition is to be made, then only the G.P, @ 2.47% on the stock shortage should have been taxed and no further addition was justified on facts of the case.”

3. All the grounds being inter-connected are considered together.
4. During the course of assessment proceedings, AO noticed that assessee had not disclosed the additional income of Rs.1,30,00,000/- that was admitted during the survey in the return of income filed on 30.09.2013 for A.Y. 2013-14 and that assessee had retracted from the said statement in its written submissions dated on 15.12.2015. i.e., three years after the survey. The submissions of the assessee of not including the income declared during survey in the return of income were not found acceptable by the AO. AO thus made addition of Rs.1,30,00,000/- as additional income. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide ex-parte order dated 13.02.2017 (in appeal No.Nsk/CIT(A)-1/25/2016-17) dismissed the appeal of assessee.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

5. Before us, Ld.A.R. at the outset submitted that Ld.CIT(A) has passed an ex-parte order and not on merits. He further submitted that due to unavoidable circumstances, assessee could not appear before Ld.CIT(A). He submitted that if given a chance, assessee undertakes to appear before lower authorities and furnish all the required details to substantiate its case. With respect to the addition of Rs.1.30 crore made by AO, he submitted that assessee has not retracted the declaration made during the survey but on the contrary had included the income from the impounded material found during survey which has resulted in the increase in net profit to 1.45% as compared to the average net profits for last 5 years at 0.37%. He submitted that during

the course of assessment proceedings, the AO had verified the books of accounts with reference to the impounded material and the discrepancies that were not found verifiable were added to the income. He submitted that addition of Rs.1.30 crore made by AO would therefore amount to double addition of the same income. He therefore submitted that assessee be granted one more opportunity to explain his stand. Ld.D.R. on the other hand supported the order of AO and Ld.CIT(A) and objected to Ld.A.R.'s prayer for 2nd innings.

6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition of Rs.1,30,00,000/- on account of additional income offered by the assessee during the survey operation u/s 133A of the Act but not included in the return of income as per the Revenue authorities. The perusal of order of Ld.CIT(A) reveals that Ld.CIT(A) has passed an ex-parte order without deciding the issue on merits. In view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard, we are of the view that one more opportunity be granted to the assessee company to present its case before the authorities. We therefore restore the matter back to the file of Ld.CIT(A) to decide the issue on merits in accordance with law. Needless to state that Ld.CIT(A) shall grant adequate opportunity of hearing to both the parties. Assessee is also directed to promptly furnish all the details called for by the authorities. In view of our decision to restore the issue to Ld.CIT(A), we are not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 16th day of October, 2019.

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

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 16th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Nashik.
4. Pr. CIT-1, Nashik.
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.