

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,  
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.1212/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Murtuza Inayathusein Bohari,  
Prop. Raj Electricals,  
Amba Bazar, Shirpur, Tal. Shirpur,  
Dhule – 425 405.

..... अपीलार्थी /  
Appellant

PAN : ABAPB5543L.

बनाम v/s

The Income Tax Officer,  
Ward 1, Dhule.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Prayag Jha.

Revenue by : Shri Yashwant Tandale.

सुनवाई की तारीख / Date of Hearing : 19.09.2019	घोषणा की तारीख / Date of Pronouncement: 25.10.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 1, Nashik dated 06.03.2017 for A.Y. 2013-14.

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

Assessee is an individual stated to be Proprietor of Raj Electricals which is engaged in dealing in Electrical goods. In this case, Department had conducted survey u/s 133A of the Act on 21.11.2012 wherein the discrepancy with respect to excess stock and excess cash was found.

Assessee had voluntarily agreed for the additional income of Rs.5 lakhs in addition to the regular income. Assessee thereafter in the return of income filed electronically for A.Y. 2013-14 declared the total income of Rs.4,86,290/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 11.03.2016 and the total income was determined at Rs.11,06,290/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 06.03.2018 (in appeal No.Nsk/CIT(A)-1/715/2015-16) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee carried the matter before the Tribunal. Since there was no appearance on behalf of assessee, the Tribunal vide order dated 22.06.2018 in ITA No.1212/PUN/2017 dismissed the appeal of the assessee. Thereafter, assessee moved an M.A. praying for recalling of the order. After considering the submissions of assessee, the Tribunal in M.A.Nos.14 & 15/PUN/2019 vide order dated 01.03.2019 recalled the order passed in ITA No.1212/PUN/2017 for A.Y. 2013-14. Thus, the assessee is now in appeal in 2<sup>nd</sup> round. The grounds raised by the assessee reads as under :

*“1. The learned CIT(A) erred in confirming the addition of Rs.5,00,000/- 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.5,00,000/- was justified on the ground that in the course of survey statement recorded u/s 133A, the assessee had declared additional income of Rs.5,00,000/- on being unable to explain the sources of stock and cash found on date of survey and hence, he cannot go back on his declaration once the income was declared in the survey statement.*

*3. The learned CIT(A) failed to appreciate that that in the balance sheet and return of income filed post survey, the sources of the stock and cash were duly explained by the assessee and the dept. had not pointed out any discrepancy in the sources explained by the assessee and hence, the addition made solely on the basis of the declaration made in the statement u/s 133A was not justified in law.*

*4. The learned CIT(A) further erred in confirming the addition of Rs.1,20,000/- made by estimating household expenses without appreciating that the assessee had already declared returned income of Rs.4.86 lacs which was more than enough to explain the source of household expenditure and hence, the above addition made on the basis of presumption and surmises was not justified in law.”*

3. All the grounds being inter-connected are considered together.

4. AO noted that during the course of survey u/s 133A of the Act discrepancy with regard to discrepancy in stock of Rs.11,69,932/- and excess cash of Rs.70,462/- was found. Assessee had voluntarily agreed to declare the additional income of Rs.5,00,000/-. AO noted that however in the return of income filed by the assessee, subsequent to survey assessee had not included the admitted additional income of Rs.5 lakhs. The assessee was asked to explain as to why the additional income admitted during the course of survey has not offered to tax in the return of income. In the absence of any satisfactory explanation, AO noted that the additional income offered by the assessee was voluntary and there was nothing to show that the admission was extracted under any undue influence or coercion. He therefore held the additional income admitted by the assessee during the course of survey be brought to be tax and thus made addition of Rs.5 lac. AO also noted that assessee has not filed capital account and family details and he was therefore of the view that household expenses could not be examined properly and therefore he estimated the drawings of the assessee at Rs.1,20,000/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the additions made by the AO. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

5. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that the addition of Rs.5 lakhs has been made merely on the basis of admission of additional income by the assessee during the course of survey. He submitted that the statement recorded during the course of survey does not carry any evidentiary value and for which he placed reliance on the decision of Hon'ble Apex Court in the case of CIT Vs. M/s. S. Khadar Khan Son reported in 300 ITR 157. He further submitted that apart from making the addition of Rs.5 lakhs, AO has also made addition of Rs.1,20,000/- on account of low household expenses which is also not based on evidence. He therefore submitted that addition be deleted. He alternatively submitted that when the addition has already been made of Rs.5 lakhs, further addition of Rs.1,20,000/- is uncalled for, more so as there is no basis for its addition and therefore the addition be deleted. Ld. D.R. on the other hand supported the order of AO and Ld.CIT(A).

6. I have heard the rival submissions and perused the material on record. I find that Ld.CIT(A) after considering the decision cited by the assessee and various other decisions cited in the order has noted that there was no retraction of additional income by the assessee nor any material has been placed by assessee to show that the additional income was admitted by coercion or undue pressure. He has thus concluded that non-declaration of admitted income was a well planned devise to frustrate the efforts of the Department to unearth unaccounted income. These findings of Ld.CIT(A) has not been controverted by assessee. In such a situation, I find no reason to interfere with the order of Ld.CIT(A) as far as addition of Rs.5 lac is concerned. With respect to addition of Rs.1,20,000/- on account of low house hold expenses, I am of the view

that once the addition of Rs.5 lakhs has been made in the present case, it would take care of the addition of low household expenses of Rs.1,20,000/- and in such a situation, separate addition on account of low household expenses is not called for and therefore, I direct to delete the addition of Rs.1,20,000/-. Thus, the grounds of the assessee are partly allowed.

**7. In the result, the appeal of the assessee is partly allowed.**

Order pronounced on 25<sup>th</sup> day of October, 2019.

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

पुणे Pune; दिनांक Dated : 25<sup>th</sup> October, 2019.

Yamini

**आदेश की प्रतिलिपि अग्रहित/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, "एक सदस्य" /  
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

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