

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI S. S. VISWANETHRA RAVI, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1-3	2267/PUN/2016 2268/PUN/2016 2269/PUN/2016	Nikhil Gyanchand Baradiya, Prop. Nikhil Sales Corporation, 8 th Lane, Azad Road, Jaysingpur, Kolhapur- 416101. PAN: AEOPB3784N	ITO, Ward-1, Ichalkaranji.	2008-09 2009-10 2010-11
4-6	2270/PUN/2016 2271/PUN/2016 2272/PUN/2016	Smt. Taramani Gyanchand Baradiya, 8 th Lane, Azad Road, Jaysingpur, Kolhapur- 416101. PAN: AFDPB3900J	ITO, Ward-1, Ichalkaranji.	2007-08 2008-09 2009-10

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 07.11.2019
घोषणा की तारीख / Date of Pronouncement : 08.11.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are **six appeals** under consideration involving two different assessees and three different assessment years. All these six appeals are directed against the respective orders of the CIT(A)-2, Kolhapur commonly dated 29.07.2016.

2. Since the facts and issues involved in all these six appeals are common, all the six appeals were heard together and are being disposed of by this composite order.

3. The grounds are common in all these six appeals therefore, for the sake of brevity, we reproduce the grounds of appeal in ITA No.2267/PUN/2016 for the assessment year 2008-09 (Nikhil Gyanchand Baradiya) for adjudicating the appeals and the same are as under :-

“1) On the facts and circumstances of the case and in law the LD. CIT(A) was not justified in invoking the powers of enhancement enshrined in S. 251(1)(a) of the Act when the judicial precedents so far available have held that even the A.O. has no jurisdiction to make additions on the basis of AIR information received resorting to addition of entire deposits in the Bank account so not disclosed. The A.O. is obliged to assess the income thereon considering the said deposits as sales of the business with reasonable percentage of profit thereon. In view of this the Ld. CIT(A) was not justified in enhancing the income by directing to add the entire deposits in the bank account as against the addition of peak credit made by the A.O.

2) On the facts and circumstances of the case and in law the LD. CIT(A) travelled beyond his jurisdiction to enhance the income invoking the provisions of S. 251(1)(a) of the Act. Since the A.O. has not processed this source of income that is entire deposits in the bank as net income, the LD. CIT(A) absolutely erred in enhancing the income being equal to the deposits in the bank account by finding a new source not processed by the A.O. The action of the Ld. CIT(A) is not in consonance with the provisions of S. 251(1)(a) of the Act and hence illegal and without jurisdiction. It be quashed.

3) On the facts and circumstances of the case and in law the LD. CIT(A) ought to have considered the verdicts of the Hon'ble Supreme Court in its proper perspective which are to the effect that a power of enhancement under section 251(1)(a) does not include a power to discover a new source of income not considered by the A.O. The powers invoked by Ld. CIT(A) u/s. 251 are contrary to law and the binding precedents. The action of enhancement in the instant case is not within his powers and jurisdiction. It be quashed.

4) On the facts and circumstances of the case and in law the LD. CIT(A) in the instant case has introduced a new source of income that is to say all the deposits in the Savings Bank account, which account was originally not disclosed, as net income of the assessee. The enhancement made being illegal as without jurisdiction, be quashed.

5) On the facts and circumstances of the case and in law the A.O. was not justified in invoking the provisions of S. 147 of the Act, and failed to follow the mandate at the Hon'ble Supreme Court in GKN Driveshaft case (Supra) and further the LD. CIT(A) was not justified in confirming the said action of the A.O. without passing a "Speaking order" u/s. 250(6) of the Act, while enhancing the income. The same is bad in law and without jurisdiction. It be held accordingly.

6) On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the estimation made by the A.O. of Gross profit percentage resulting into addition of Rs. 2,85,692/- and that of the addition of peak credit of Rs 5,36,041/- without rejecting the books of account under section 145(3) of the Act. The additions being illegal and without jurisdiction be deleted.

7) On the facts and circumstances of the case and in law the levy of interest u/s. 234B and 234C is not justified.

8) *The appellant craves to leave, add/amend or alter any of the above grounds of appeal.*"

4. Before us, at the outset, ld. Counsel for the assessee brought our attention to the **additional evidences** filed by the assessee which are placed at pages 41 to 196, 225 to 330 and 362 to 431 of the Paper Book Volume -1. Further, ld. Counsel brought our attention to the prayer of the assessee for admission of the said additional evidences and submitted that the said additional evidences are in the form of purchase registers, purchase bills, confirmations of suppliers, sales register, sale bills and confirmation of customers for the respective assessment years.

5. Further, giving background facts of the case, ld. Counsel submitted that the assessee is a tobacco trader and had a Savings Bank Account maintained with Axis Bank at the back of the Revenue. The said SB Account was not disclosed to the Department. Based on the AIR-information, the Assessing Officer also invoked the provisions of section 131 of the Act and completed the assessment considering the said deposits made in the SB Account. The Assessing Officer treated the said deposits as a part of the turnover and estimated the profits applying the flat rate of 9% of the gross turnover.

6. During the proceedings before the CIT(A), the CIT(A) issued a notice of enhancement u/s 251(1)(a) of the Act and held that the estimation of GP rate on the said bank deposits is not proper. Accordingly, the CIT(A) enhanced the assessment and held that all the deposits constitute an unaccounted income of the assessee in the three different assessment years i.e. A.Ys. 2008-

09, 2009-10 and 2010-11 in both cases. Similar exercise was done by the CIT(A) and the additions were made in the case of Smt. Taramani Gyanchand Baradiya (mother of Shri Nikhil Gyanchand Baradiya) for three different assessment years 2007-08, 2008-09 and 2009-10.

7. Aggrieved with the above decisions of the CIT(A), the assessee is in appeals before the Tribunal.

8. Referring to the common grounds no.1 to 4 and 6, ld. Counsel for the assessee submitted that if the additional evidences are admitted, all these grounds no.1 to 4 and 6 need to be remanded to the file of the Assessing Officer for fresh adjudication in the light of the said additional evidences.

9. On the other hand, ld. DR for the assessee vehemently opposed the prayer of the assessee.

Preliminary Issue – Admission of Additional Evidences

10. We heard both the sides. We also examined the Paper Book and the contents of the letter filed by the assessee before us praying for admission of the said additional evidences. For the sake of completeness, the said prayer of the assessee is extracted as under :-

“1] In these appeals, the assessee has filed a Paper Book. In the said Paper Book, the assessee has filed additional evidences at Sr. Nos. 9 - 14, 22 - 27 and 35 -40. The additional evidences are in the form of purchase registers, purchase bills, confirmations of suppliers, sales register, sale bills and confirmation of customers for A.Ys. 2008 - 09 to 2010 - 11. The assessee submits that these documents were not submitted before lower authorities.

2] The assessee would like to state that in his case, the main issue is regarding taxability of deposits in the bank account. In the course of asst, proceedings, the assessee had clarified to the A.O. that the deposits in the bank account were on account of his business of trading in tobacco. The learned A.O.

accepted the contention of the assessee and had made an addition on account of gross profit on the undisclosed turnover and peak investment. The assessee filed an appeal against the said additions before learned CIT(A). In the course of the appellate proceedings, the learned CIT(A) issued an enhancement notice wherein he proposed to tax the deposits in the bank account as unexplained deposits. Finally, he has passed the order enhancing the income of the assessee by directing the A.O. to tax the deposits in the bank account as an undisclosed income of the assessee.

3] The assessee submits that the learned CIT(A) while making the enhancement has held that the assessee has not produced any evidence in the form of bills, details of parties to whom sales were effected in order to support its case. It is to be noted that in reply to the enhancement notice, the assessee had objected to the enhancement on the ground that it was amounting to finding new source of income which was invalid in law. The other documents could not be submitted before the learned CIT(A) since the assessee had objected to the jurisdiction of the learned CIT(A) to enhance the income on the said issue.

4] Now, only after the order of CIT(A), the assessee has been able to obtain the confirmation of the suppliers and customers who have confirmed of carrying out tobacco trading with the assessee. The assessee also enclosing the relevant purchase and sale bills in order to support his case. Considering the fact that the assessee had challenged the jurisdiction of the CIT(A) on enhancing the income, the above details could not be furnished before the learned CIT(A). Accordingly, the assessee submits that there is a reasonable cause on the part of the assessee in not submitting the above documents and therefore, the assessee requests for admission of the same as an additional evidence. The assessee would be grateful if the above evidences are admitted.”

11. Further, we also examined the quality of the said additional evidences and find that the same constitutes purchase bills involving the suppliers/buyers of the tobacco. These documents go to the root of the matter. Considering the same, we are of the opinion, the admission of the said additional evidences will be in the interest of justice. Therefore, we consider it appropriate to admit the same and, on admission of the same, the relevant papers in form of additional evidences are remanded to the file of the Assessing Officer in both the group cases for use and finalization of the assessment afresh on this issue. Thus, the preliminary issue relating to admission of the additional evidences is allowed and in the interest of justice all these papers along with the issue remanded to the file of the Assessing Officer for fresh adjudication. Accordingly, Assessing Officer is hereby

ITA Nos.2267 to 2272/PUN/2016

directed to pass a speaking order after considering the said additional evidences and after granting reasonable opportunity of being heard to the assessee in accordance with set principle of natural justice. Thus, the common grounds no.1 to 4 and 6 are allowed for statistical purposes.

12. Ground no.5 was not pressed by the assessee and the same is dismissed as not pressed.

13. Grounds no.6 and 7 are general in nature and the same are dismissed as such.

14. In the result, all the six appeals of the respective assesseees are partly allowed for statistical purposes.

Order pronounced on 08th day of November, 2019.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 08th November, 2019.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur.
4. The CIT-II, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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