

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 405/PUN/2017

निर्धारण वर्ष / Assessment Year : 2007-08

M/s. Travelline International, Khandelwal Jain & Associates Chartered Accountants, Ist Floor, Alankar Cinema Building, Near Railway Station, Pune 411 001 PAN : AADFT0998F	Vs.	ITO, Ward-8(3), Pune
Appellant		Respondent

Appellant by Shri Rajiv Thakkar
Respondent by Shri Ajay Dhoke

Date of hearing 10-12-2019
Date of pronouncement 16-12-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 05-10-2016 passed by the CIT(A)-6, Pune in relation to the assessment year 2007-08.

2. The additional ground raised by the assessee was not pressed. The same is, therefore, dismissed.

3. The only issue raised in the appeal is against the confirmation of addition of Rs.14.00 lakh.

4. Briefly, stated, the facts of the case are that the assessee was subjected to survey action u/s.133A of the Income-tax Act, 1961 (hereinafter called 'the Act') on 13-03-2007. In the course of survey, statement of the partner was recorded. In response to question nos.7, 8, and 10, he made a declaration of income to the tune of Rs.56.00 lakh, comprising of Rs.26.00 lakh towards unexplained business promotion expenses; Rs.25.00 lakh towards unaccounted receipts; and Rs.5.00 lakh towards other omissions and errors. However, the return was filed with the additional income of Rs.17.00 lakh. The Assessing Officer (AO) made addition of Rs.39.00 lakh (Rs.56.00 lakh – Rs.17.00 lakh) on the ground that the assessee ought to have declared the income offered during the course of survey. The Id. CIT(A) sustained the addition at Rs.14.00 lakh thereby deleting the addition of Rs.25.00 lakh on account of undisclosed income. The assessee is in appeal

before the Tribunal urging for the deletion of the addition sustained.

5. We have heard the rival submissions and gone through the relevant material on record. The assessee was subjected to survey action. In the course of survey, the statement of the partner was recorded, a copy of which has been placed for our consideration. In response to question no.7, he admitted to have paid commission between 5% to 10% for securing customers for its Hotel and other Tourism places business, which was not recorded in the books of account. In response to question no.8, he admitted that there were unaccounted receipts to the tune of Rs.25.00 lakh. In response to question no.10, he surrendered Rs.5.00 lakh on account of other omissions and commissions. The assessee actually offered a sum of Rs.17.00 lakh in the return of income with the following chart, as has been incorporated on page 3 of the assessment order :

Particulars	Amount (Rs.)
Unaccounted Investment in residential flat made out of withdrawals from the firm	10,71,000
Unexplained business promotion expenses admitted at the survey	26,00,000
Total	36,71,000
Less : Unaccounted receipts utilized for aforesaid payments	25,00,000
Balance (shortfall)	11,71,000
Additional income offered to cover all omissions & commissions to avoid any possible litigation & to buy peace of mind	5,00,000
Total	16,71,000
Income offered (rounded off to the nearest Rs.1,00,000/-)	17,00,000

6. It can be seen from the above chart that the assessee offered Rs.10,71,000/- on account of unaccounted investment in residential flat, which has no connection with the surrender of Rs.56.00 lakh made by the assessee in total. Obviously, this amount ought to have been included by the assessee in the return. Thereafter, there is an item of Rs.26.00 lakh, which was on account of business promotion expenses admitted by the assessee at the time of survey incurred in the shape of commission paid to certain parties who were bringing in customers for the assessee's hotel business. The assessee admitted to have received Rs.25.00 lakh over and above the accounted receipts. Both the figures of receipts and expenses

are emanating from the statement of the assessee. Apart from that, there is no reference to any evidence divulging the receipt or payment of undisclosed income/expenditure.

7. One needs to differentiate between the two situations, viz., one in which undisclosed income is earned and unexplained expenditure is incurred, which spending is *de hors* the earning of income and two, in which undisclosed income is earned by spending undisclosed expenditure. For example, if undisclosed income is earned and the same is spent in purchase of jewellery, in such a case, there will be addition only for the earning of the unexplained income because the outflow of the income in the shape of expenditure will be from the inflow of the undisclosed income. On the other hand, if some undisclosed income is earned and for earning that income some undisclosed expenditure is also incurred, then it is the net of income *vis-a-vis* expenditure, which will be added. It is so because the unexplained expenditure for earning the undisclosed income would be met out of such undisclosed income. In the instant case, we are confronted with the facts

which are germane to the second situation, in which some undisclosed business income was admitted to have been earned and simultaneously some undisclosed expenditure was also incurred for the incurring of income. In such a scenario, it is only the excess of one over the other, which can be charged to tax. Adverting to the facts of the instant case, it is seen that there is net outflow of Rs.1.00 lakh which calls for addition in as much as the assessee received business receipt of Rs.25.00 lakh outside the books of account and also spent business expenses of Rs.26.00 lakh outside of the books of account. The payment of commission to certain persons for fetching customers has direct relation with the running of Hotel business from which unaccounted receipts of Rs.25.00 lakh were earned. Further, the payment of commission is a normal incidence of business and is not hit by Explanation 1 to section 37(1) of the Act. Once this is the position, we fail to appreciate as to how any addition other than Rs.1.00 lakh on this score can be made, apart from addition of Rs.10,71,000/- on account of investment in flat and Rs.5,00,000/- towards additional income offered by the assessee on account of

omissions and commissions. When these three amounts are added up, the total comes to Rs.16,71,000/-. As against that, the assessee offered Rs.17.00 lakh as additional income. In this view of the matter, there is no reason for making or sustaining any addition over and above this amount. We, therefore, order to delete the addition of Rs.14.00 lakh sustained by the Id. CIT(A).

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 16th
December, 2019.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 16th December, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune
4. The Pr. CIT -5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“बी” / DR ‘B’, 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	10-12-2019	Sr.PS
2.	Draft placed before author	11-12-2019	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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