

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

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

आयकर अपील सं. / **ITA No.1172/PUN/2019**  
निर्धारण वर्ष / **Assessment Year : 2015-16**

Ranjit Dattaray Mane,  
Madhali Galli, A/p Koparde,  
Kolhapur-416204.

PAN : ARHPM2698C

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-1(1),  
Kolhapur.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingate  
प्रत्यर्थी की ओर से / Respondent by : Shri S. P. Walimbe

सुनवाई की तारीख / <b>Date of Hearing : 16.12.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 31.12.2019</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the assessee against the order of CIT(A)-1, Kolhapur dated 19.01.2018 for the Assessment Year 2015-16.

2. The grounds raised by the assessee are as under :-

“1. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the additions made by the AO u/s 69 of Rs.6,03,082 taxed u/s 115BBE on the allegation that the appellant had no business activities and that the return of income filed by the appellant for the year under appeal during the period of demonetization was for justifying the cash deposits of the appellant in his bank accounts during demonetization period.

2. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the additions made by the AO u/s 69 even though all the assets were duly reflected in the balance sheet filed before the ITO as also in his return of income.

3. *On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the additions made by the AO u/s 69 without reducing there from the opening values of the assets, is incorrect inasmuch as, even if the allegation of the ITO of inflation of the assets to justify the cash deposits during demonetization period' is to be accepted, the addition ought to be only of the enhanced values.*

4. *On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the additions made by the AO u/s 69 without giving credit to the income declared by the appellant of Rs.3,02,990/- in his return for the year under consideration.*

*The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing."*

3. Briefly explaining the background facts, ld. Counsel for the assessee submitted that there was information about cash deposits of Rs.16,27,340/- in the later assessment year 2017-18. The assessee reported conversion of old currency amounting to Rs.7,74,500/- too. In this context, the assessee filed the returns of income for the assessment years 2015-16 and 2016-17 belatedly on 28.12.2016. During the assessment proceedings, the Assessing Officer noted that the assessee invoked the provisions of section 44AD of the Act on the business of sale of chicken. During the scrutiny proceedings, the Assessing Officer asked the assessee to file relevant details in support of claims like business of chicken sales turnover and related purchase bills, sales bills, details of sundry creditors, sundry debtors and stock-in-trade etc. The relevant details were not furnished by the assessee. Accordingly, suspecting the existence of the business, the Assessing Officer rejected the claim u/s 44AD of the Act and income returned by the assessee was taxed u/s 69 of the Act along with denial of other claims of the assessee in the return of income relating to

sundry debtors, stock-in-trade, cash etc. The Assessing Officer made addition of Rs.6,03,080/- u/s 69 of the Act as per discussion given in para 9 of his order. The CIT(A) confirmed the same.

4. Aggrieved with the same, the assessee is in appeal before the Tribunal with the above extracted grounds.

5. Before me, at the outset, ld. Counsel for the assessee submitted that this is a case where the assessee never maintained any books of account. He further mentioned that the Assessing Officer completed the assessment by adding the cash deposits and old currency in the assessment year 2017-18. According to him, rejection of the assessee's claim u/s 44AD of the Act in the current year is not sustainable. During the proceedings, assessee was asked to submit any evidence regarding the claim of purchase and sale of chickens, the business activity claimed by the assessee. The assessee's AR could not file a single invoice in support of the same. In the factual matrix of the above, we perused the para 9 of the assessment order and the same is extracted as under :-

*"9. In view of above, the undisclosed income totalling to Rs.6,03,082 manipulated and shown in the form of profit of Rs.3,02,990 + Sundry debtors of Rs.1,25,496 + stock in trade of Rs.1,74,596 and cash in hand of Rs.2,569 is brought to tax as deemed income of the assessee as per provisions of section 69 chargeable tax u/s.115BBE. For concealing the particulars of income, penal proceedings u/s.271(1)(c) are separately initiated. Further, though the assessee was income chargeable to tax has failed to file his return of income u/s. 139(1), penal proceedings u/s.271F are also initiated for delay in filing the return of income."*

6. Further, we also examined the contents of para 5 of the assessment order. For want of details of addition as well as the logic for confirming the said addition and the same reads as under :-

*“5. For declaring income u/s.44AD, it is mandatory that assessee should maintain the purchase bills, sales bills, details of creditors, debtors and stock and the same is figures are required to be reported in the relevant columns of the ITR. However, as admitted, the assessee failed to maintain these details. In a nut shell, the assessee has failed to produce any document which shows that the assessee has done business of purchase and sale of chicken, the list of the persons to whom credit sales were made & amounts are to be received shown as debtors, list of persons from whom purchases were made to whom the amount is payable shown as creditors and details of stock-in-hand as on 31.3.2015. Had the assessee really carried out the business, the assessee would have maintained some of the above details which proves the carrying of business and would have produced some of the bills atleast. However, nothing has forth come from the assessee to prove its business activity. Considering all these, it is crystal clear that the assessee has filed his return of income for the A.Y.2015-16 & A.Y.2016-17 only with a motive to build a capital and fabricated the documents in the form of return of income in order to explain the deposit of cash made during period of demonetization. This proves that the assessee was having undisclosed income with him during the year under consideration and showed the same in the form of income from business, sundry debtors, stock-in-trade and cash in hand.”*

7. From the above, it is evident that the assessee has the background of earning cash from unknown sources and depositing the cash in the bank accounts and maintaining cash reserves. The Assessing Officer rightly asked for the evidence of turnover of chicken business and received noting reply in support of the same. Therefore, there is no evidence whatsoever regarding the claim of chicken business. Existence of some business is pre-requisite for invoking the provisions of section 44AD of the Act. Assessee failed to do so. Maintaining or otherwise of books is a different issue. The onus is normally on the assessee to demonstrate the existence of his business and earning of income from the same. There is requirement

of demonstrating the correctness of the claim. The assessee also failed to prove that the sundry debtors are genuine. Considering all the factual matrix as well as reasoning outlined by me above, I am of the opinion that the order of the CIT(A) is fair and reasonable and does not call for any interference for want of discharge/onus. Thus, the grounds raised by the assessee are dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 31<sup>st</sup> day of December, 2019.

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

पुणे / Pune; दिनांक Dated : 31<sup>st</sup> December, 2019.  
*Sujeet*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Kolhapur;
4. The Pr. CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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