

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.1251/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2007-08**

Kishor Shankarrao Yadav,
Prop. New Shankarrao Govindrao
& Company,
Somwar Peth, Shirala, Dist. Sangli.

PAN : AACPY6794P

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-2,
Sangli.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishor Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 19.12.2019	घोषणा की तारीख / Date of Pronouncement: 31.12.2019
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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 16.05.2018 for the Assessment Year 2007-08.

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

- 1.1 *The learned CIT(A) erred in confirming addition of Rs. 15,13,112/-.*
- 1.2 *The teamed CIT(A) failed to appreciate that the assessee has properly explained the value of stock, debtors and cash found during the course of survey with reference to the statement of affairs and balance sheet filed in the course of earlier assessment orders, which have been duly accepted by the AO while framing the assessment for those respective years.*
- 1.3 *The addition of Rs.15,31,112/- may please be deleted.*
2. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Explaining the brief facts, the Id. Counsel for the assessee submitted that the assessee is a hardware trader and there was a survey action u/s

133A of the Act on 19.02.2007. The survey action resulted in discovery of discrepancies (i) Stock-in-trade – Rs.15,05,502/-; (ii) Sundry debtors – Rs.6,69,898/-; and (iii) Cash in hand – Rs.25,610/-. The total discrepancies aggregate to Rs.22,01,110/-. The assessee offered the same as additional income during the survey action. However, during the filing of return of income, the assessee did not offer such additional income on account of stock and cash discrepancies. Therefore, the Assessing Officer made addition on this two counts and they are confirmed by the CIT(A) during the first appellate proceedings.

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 considering the smallness of the cash discrepancy, the same is offered to tax and therefore, relevant ground is not pressed before me. Considering the smallness of the amount, I proceed to dismiss the relevant ground.

6. That leaves the core addition relating to “stock discrepancy” amounting to Rs.15,05,502/- for adjudication. In this regard, ld. Counsel mentioned that this issue requires to be remanded to the file of the CIT(A) for fresh adjudication since number of issues are not properly appreciated by the CIT(A). In this regard, stating that the statement made by the assessee during the survey action, is not sacrosanct, ld. Counsel mentioned that making such addition on account of stock discrepancy relying on survey statement, is unsustainable. According to ld. AR, the said stock was purchased by the assessee using the bank loans/secured loans from

Cooperative Bank and it has the effect on the stock discrepancy noted during the survey action. This aspect was already intimated to the revenue authorities. Mentioning that the stock statements of the earlier assessment years were appreciated and accepted by the Revenue in the past, Id. Counsel mentioned that the assessee is old one and has been doing the same business over many years. The stock discrepancies being related to the opening stock, closing stock of various years, the making of addition of Rs.15,05,502/- is unwarranted and not appropriate. Further, Id. Counsel mentioned that the assessee's turnover over is so small and provisions of section 44AF of the Act apply to this case and therefore, item-wised additions is uncalled for.

7. On the other hand, Id. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A).

8. On hearing both the sides, I find that it is an undisputed fact that the assessee took bank loan for purchase of the stock. The details of the loan transaction is evident from the financial statements of various assessment years including that of the current year. Making entire discrepancies if any as addition ignoring the facts on the sources of investments in stock, is not correct. The assessee has taken loan from a Cooperative Bank which found part of the investments in the stock. This aspect was completely ignored by the revenue authorities while making the addition. Therefore, the statement made by the assessee during the survey action is not tune with the set principles of natural justice. The statement given by the assessee during the survey action is not sacrosanct as discussed by the CIT(A) in his order referring to the judgement of the Hon'ble Apex Court in the case of

CIT vs. S. Khader Khan Son, 352 ITR 480 (SC). Income Tax Authorities failed to consider this loan transaction explanation in a correct perspective. I find nexus of the loan to the said stock discrepancy. Therefore, I am of the opinion that the CIT(A) should consider the existing loan taken by the assessee from the Cooperative Bank as source of investments and adjudicate the issue afresh. The CIT(A) shall grant reasonable opportunity of being heard to the assessee in accordance with set principles of natural justice. Thus, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 31st day of December, 2019.

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

पुणे / Pune; दिनांक Dated : 31st 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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