

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1397/PUN/2019

निर्धारण वर्ष / Assessment Year : 2007-08

Sudhakar Motiram Kadam
Kadam Niwas,
Patil Vasti, A/p Akluj,
Solapur - 413101

PAN : AJUPK3907D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 1(4), Pandharpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pratik B. Sandbhor

Revenue by : Smt. Elsy Mathew, ACIT

सुनवाई की तारीख / Date of Hearing : 06.02.2020

घोषणा की तारीख / Date of Pronouncement : 07.02.2020

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the Id. CIT(Appeals)-9, Pune on 17.06.2019 in relation to the assessment year 2007-08.

2. The first issue raised in the appeal is against confirmation of addition of Rs.2,69,000/- made by the Assessing

Officer (AO) u/s 68 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. Briefly stated facts of the case are that the assessee is a civil contractor carrying out the business in the name and style of M/s. S.M. Kadam. Return was filed declaring total income at Rs.9,40,760/-. In the assessment proceedings, the AO observed that sundry creditors to the tune of Rs.50,86,860/- were appearing in the assessee's Balance Sheet. On being called upon to furnish confirmations from the sundry creditors, the assessee furnished all except in the case of M/s. Yashoda Construction with outstanding amount of Rs.2,69,000/-. The AO made the addition. Before the ld. CIT(A), the assessee submitted that the time limit provided by the AO was too short for enabling him to file necessary confirmations. The assessee furnished copies of Profit and Loss Account and Balance Sheet of M/s. Yashoda Construction, in which the assessee was shown as a debtor for Rs.2,69,000/-. The ld. CIT(A) called for a remand report from the AO who harped on Rule 46A of the Income-tax Rules, 1962 (hereinafter referred to as 'the Rules') for making out a case for the rejection of the additional evidence. Without prejudice, the AO also referred the matter to the concerned AO of the proprietor of M/s. Yashoda Construction. The other AO endorsed the view that the return was filed in time. He however, expressed inability to furnish the necessary record which were more than 10 years old. The ld.

CIT(A), considering the remand report, chose to confirm the addition. Aggrieved thereby, the assessee has approached the Tribunal.

4. I have heard both the parties and perused the relevant material available on record. It is observed that the assessee declared, *inter-alia*, loan credit of Rs.2,69,000/- in the name of M/s. Yashoda Construction. Though, the relevant evidence was not filed at the assessment stage because of paucity of time, the assessee did furnish copy of return of M/s. Yashoda Construction along with Profit and Loss Account and Balance Sheet, indicating that the said creditor had acknowledged such a balance receivable from the assessee, which was also reflected in his Balance Sheet. Once the creditor had admitted the transaction and also incorporated the same in his accounts, there remained nothing more to prove the genuineness of the transaction, more so, when the AO of the creditor also did not raise any doubt over it. Considering the above facts, I order to delete the addition.

5. The only other ground is against confirmation of *ad hoc* disallowance of Rs.25,000/- out of expenses.

6. The facts apropos this ground are that the assessee debited Rs.92,65,070/- towards Salary to labourers. The AO found certain infirmities in the details furnished in as much as the expenses were mostly backed by self-made vouchers. The assessee agreed for *ad hoc* disallowance of Rs.25,000/- before

the AO, which addition was made and came to be countenanced in the first appeal. Now the assessee is aggrieved by the confirmation of such an addition.

7. Having heard both the sides and perused the relevant material on record, it is observed that the assessee had recorded Rs.92,65,070/- towards salary to labourers, which expenses were not properly backed by external vouchers. When confronted, the assessee agreed for an *ad hoc* disallowance of Rs.25,000/- during the course of assessment proceedings by considering the magnitude of total expenses *vis-à-vis* expenses not properly supported by vouchers. This being a factual admission by the assessee, cannot be raked up in the appellate proceedings. Though, there is no legal bar on challenging an agreed addition, but the fact of the matter is that a valid challenge can be laid before the appellate authorities only if such an admission before the AO was not in consonance with law. If, on the other hand, an admission is based purely on factual matrix, then the assessee cannot challenge the same before the appellate authorities without there being any contrary evidence. The reason is obvious that when an assessee agrees for an addition, the AO does not proceed further in his examination on that issue and closes it by recording the concession of the assessee. The later challenge to such an admission *de hors* any contrary evidence cannot bring the arms of the clock back enabling the AO to continue from the stage where he left the issue on the assessee agreeing for the surrender. In such a scenario, the assessee cannot be allowed to resile from the agreed addition made before the AO in the backdrop of a pure factual panorama. The extant addition, being an agreed addition on purely

factual aspects without any thing contrary, cannot, ergo, be interfered with. I, therefore, countenance the impugned order on this score. This ground fails.

8. In the result, the appeal is partly allowed.

Order pronounced on 7th day of February, 2020.

Sd/-
R.S. SYAL
उपाध्यक्ष / VICE-PRESIDENT

पुणे / Pune; दिनांक / Dated : 7th February, 2020.
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent
3. The CIT (Appeals)-9, Pune.
4. The Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच, पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//True copy//

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

		Date	
1	Draft dictated on	06.02.2020	Sr. PS/PS
2	Draft placed before author	06.02.2020	Sr. PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr. PS/PS
6	Kept for pronouncement on		Sr. PS/PS
7	Date of uploading of order		Sr. PS/PS
8	File sent to Bench Clerk		Sr. PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		

*