

आयकर अपीलीय 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.626/PUN/2018**  
निर्धारण वर्ष / **Assessment Year : 2013-14**

Asha Dattatray Patil,  
207, Baliram Peth,  
Jalgaon-425001.

PAN : CBSPP9267K

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(1),  
Jalgaon.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / **ITA No.627/PUN/2018**  
निर्धारण वर्ष / **Assessment Year : 2013-14**

Vijay Dattatray Patil,  
207, Baliram Peth,  
Jalgaon-425001.

PAN : BIHPP0344Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(1),  
Jalgaon.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare  
Revenue by : Shri Abhijit Chaudhuri

सुनवाई की तारीख / Date of Hearing : 13.11.2019  
घोषणा की तारीख / Date of Pronouncement : 06.01.2020

**आदेश / ORDER**

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

There are **two appeals** under consideration involving two different assesseses for the common assessment year 2013-14. Both the appeals are

directed against the common order of the CIT(A)-2, Nashik dated 08.02.2018.

2. Briefly stated the relevant facts include that the Assessing Officer passed the orders u/s 143(3) of the Act commonly dated 17.03.2016 in both cases. Both the assesseees are engaged in the business of sale of lands, plots and construction of building, bungalows and houses etc under the name and style of "Patil Buildcon Builders and Developers". Both these builders belong to the same group. There was survey action on these two assesseees u/s 133A of the Act in December, 2012. The survey action resulted in the discovery of non-filing of the return of income, non-maintenance of books of accounts, undisclosed assets/investments etc. Based on the incriminating documents found and impounded during the survey, the assessee gave declaration of undisclosed income amounting to Rs.3.56 crores (rounded up) involving 5 persons. Asha Dattatray Patil (assessee), Vijay Dattatray Patil (assessee) and other three persons filed their declaration. The said declaration included Rs.11,00,000/- of Asha Dattatray Patil for the assessment year 2013-14 on account of investment. Accordingly, Vijay Dattatray Patil disclosed Rs.1,71,477/- as undisclosed income for the year under consideration i.e. a part of Rs.24,25,431/-. We shall now take up assessee-wise appeal for adjudication in the following paragraphs. However, the same amounts were not disclosed in their respective returns of income fully.

**ITA No.626/PUN/2018 – Asha Dattatray Patil  
Rs.11,00,000/- as undisclosed income**

3. In response to the notice issued u/s 143(2) r.w.s. 142(1) of the Act, the return was filed and said disclosure of Rs.11 lakhs was not disclosed fully. The questionnaire was issued by the Assessing Officer. The assessee offered Rs.3,78,000/- only in the return and invoked the provisions of section 44AD of the Act. During the scrutiny proceedings, based on the cash flow statements and return of income filed for earlier assessment years, the assessee submitted that she has opening balance of cash of Rs.2.50 lakhs as on 01.04.2010. Further, assessee considered the net income offered by the assessee for the assessment year 2011-12 and 2012-13 totalling to Rs.8,14,730/- and explained the sources for undisclosed assets. As per the assessee, if the said amount are considered, the discrepancy of Rs.11,00,000/- stand explained partly and it will be reduced to Rs.2,85,270/-. Therefore, while filing the return of income, the said amounts are included as additional income of the assessee. The Assessing Officer accepted the above working of the assessee and made the scrutiny assessment and determined the assessed income of Rs.6,11,600/- against the returned income of Rs.3,26,330/-.

4. During the first appellate proceedings, there are new developments. The CIT(A) took a different view with reference to the offer of Rs.11,00,000/-. The CIT(A) enhanced the assessment after giving show-cause notice and determined the enhanced income and the issue against the assessee. The contents of para 6 to 8 of the order of the CIT(A) are

relevant in this regard. It is the case of the Assessing Officer and the CIT(A) that the opening balance as on 01.04.2010 is without an evidence. Similarly, First Appellate Authority held that the income offered by the assessee for the assessment years 2011-12 and 2012-13 with income of Rs.8,14,730/- for both years is an output of the afterthought. The evidence furnished by the assessee critically examined by the CIT(A) and rejected the same. The CIT(A) reasoned that Rs.11,00,000/- of additional income offered by the assessee in survey action is to meet the unexplained investment. CIT(A) noted that the return of income for the assessment years 2011-12 and 2012-13 were filed after the gap of one year from the day of survey in the month of March, 2013 i.e. after the survey. There is no evidence that the assessee earned income in those two years. As per the CIT(A), Rs.11,00,000/- of undisclosed income was given on account of purchase of land – cum - the construction of the house and the assessee failure to file year-wise flow of income with evidences/payments for the construction as well as purchase of land, shall go against the assessee. The opening cash balances as on 01.04.2010 were also un-evidenced. The CIT(A) also reasoned that those explanations were newly synthesized or discovered during the assessment proceedings and there were not part of the survey proceedings u/s 133A of the Act. These new arguments since un-evidenced, is not sustainable in law. The CIT(A) also reasoned how a old lady of 68 years conducted business and also undertook the said construction business activities and held that the assessee failed to discharge the onus relating to the new claims/arguments made by the

assessee in her returns of income for all three years i.e. A.Y. 2011-12 to 2013-14. Eventually, the CIT(A) enhanced the assessment by raising the following :-

*“8. On going through the reply submitted by the assessee, 8 sample bills have been submitted, out of which 3 do not have any signatures and the remaining 5 are not signed by the assessee but there are short initials. The complete details of the parties to whom the material was sold are also not there as also admitted by the AR. From the serial no. of the bills and the details mentioned in the bills it can be easily made out that the documents have been prepared only for the purpose of claiming business income u/s 44AD. As discussed above, Asha Patil is 68 years old lady and the business of building material requires finding a customer, procurement, transportation and delivery of material, collection of money. It looks highly improbable that an aged lady can handle such a business. The assessee could not file any evidence to show that she herself was doing business. It is apparent that showing business in her name is an afterthought to create capital in her name and explain the investments made in her name by filing returns after the date of survey and avail basic exemption. The plea of the assessee to accept the opening capital and the income of Rs.3,26,330/- show during the year is rejected. The assessee has made total investment of Rs.15,00,085/- out of which Rs.11 lacs was disclosed during survey. The AO has only disallowed Rs.2,85,270/-. In my considered opinion, the assessee has unexplained investment of Rs.11,00,000/- in immovable properties for which she has not been able to satisfactorily explain the sources of such investments, therefore, the amount needs to be taxed u/s 69. Assessee has also got unexplained money of Rs.4,00,085/- (15,00,085 – 11,00,000), which needs to be taxed u/s 69A. The unexplained investment and unexplained money of Rs.15,00,085/- is deemed to be the income of the assessee for the year under consideration.”*

5. Thus, the CIT(A) enhanced the assessment. In the process, the CIT(A) held that unexplained investment in land and construction should be fully brought to tax. Accordingly, the investment of Rs.15,00,085/-; and not Rs.2,85,270/- as held by the Assessing Officer, or Rs.11,00,000/- offered by the assessee, stand taxed at the level of the First Appellate Authority.

6. Before me, Id. Counsel for the assessee filed a Paper Book and written submission in support of the case of the assessee.

7. Heard both the sides on the issue raised above and considered the written submission newly filed by the ld. Counsel for the assessee before me. I find there is no dispute about the discovery of undisclosed assets i.e. land and construction of building. The dispute revolves around the 'sources for the same'. Post-survey action, assessee undertook the activity of setting right her income tax records. However, there is no full proof evidence to demonstrate the claim made in the newly filed returns for the earlier assessment years. Ld. AR filed written submission with new arguments. It is not proper to reject the same without due scrutiny. Considering the same, in my opinion, there is requirement of examine the said written submissions furnished by the ld. Counsel for the assessee. As discussed in the court, the same should be examined by the lower authorities. Accordingly, the Assessing Officer is directed to examine the issue afresh after addressing the written submissions/arguments raised in the said written submissions. Needless to say, the Assessing Officer shall decide the issue after granting reasonable opportunity of being heard to the assessee as per set principles of natural justice. Thus, the relevant grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee in **ITA No.626/PUN/2018** is allowed for statistical purposes.

**ITA No.627/PUN/2018 – Vijay Dattatray Patil**

9. As stated earlier, the facts and issues involved in ITA No.626/PUN/2018 are identical to this appeal (ITA No.627/PUN/2018),

therefore, our decision in ITA No.626/PUN/2018 shall apply *mutatis mutandis* to this appeal. Accordingly, the appeal of the assessee in **ITA No.627/PUN/2018** is allowed for statistical purposes.

10. Resultantly, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 06<sup>th</sup> day of January, 2020.

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

पुणे / Pune; दिनांक Dated : 06<sup>th</sup> January, 2020.  
*Sujeet*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Nashik;
4. The Pr. CIT-2, Nashik;
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