

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.631/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

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| Kailash Kanhaiyalal Gidwani, C/o. Shri Gurumukh Gidwani, Yogesh Sales Corporation, 285, Market Yard, First Lane, Sangli PAN : ADGPG5025J | Vs. | ACIT, Circle-2, Sangli |
| (Appellant) | | (Respondent) |

आयकर अपील सं. / ITA No.326/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

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| Sunil Kanhaiyalal Gidwani, C.S.No.35, Laxmi Bunglow, Revenue Colony, South Shivajinagar, Sangli – 416 416 PAN : ADEPG9973Q | Vs. | ACIT, Circle-1, Sangli |
| (Appellant) | | (Respondent) |

Assessee(s) by : Shri Sunil Ganoo
Revenue by : Shri Piyush Kumar Singh Yadav

Date of hearing 01-03-2022

Date of pronouncement 02-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the connected and related assesses pertain to the assessment year 2010-11. Since common issues are raised in both the appeals, I am, therefore, proceeding to

dispose them off by this consolidated order for the sake of convenience.

ITA No.631/PUN/2015 – Kailash K. Gidwani :

2. The assessee has filed revised grounds of appeal. The first issue raised in this appeal is against the confirmation of addition of Rs.13,12,990/- made by the Assessing Officer (AO) u/s.68 of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the are that the assessee declared total income of Rs.7,32,960/- from Turmeric trading activity. Gross profit of Rs.13,12,990/- was shown from Turmeric trading, which was reduced by deduction towards direct expenses and indirect expenses, resulting into net profit of Rs.8,40,123/-. The AO observed that the so-called Turmeric trading activity was not supported by any evidence, such as, L.R. Nos., Storage receipts, Freight/Transport receipts and Hamali charges receipts etc. He, therefore, treated the entire gross profit of Rs.13,12,990/- as unexplained cash credit u/s.68 of the Act.

4. The second issue which is also connected with the first issue is about the addition of Rs.17,67,880/-. When the AO

was dealing with the taxability of Rs.13,12,990/-, being, gross profit from Turmeric trading and canvassing a view about the non-genuineness of the Turmeric trading activity, the assessee submitted that Mahalaxmi Marketing, Sangli with its proprietor Mr. Bharat Jaypal Nilakhe (in short 'Bharat Nilakhe') was involved in the business of purchase and sale of Turmeric on behalf of the assessee. The AO observed that there were numerous entries of cash deposits in the bank account of Sh. Bharat Nilakhe. He recorded the statement of Sh. Bharat Nilakhe u/s.131 of the Act, who admitted that he was engaged in the trading of Turmeric on commission basis by explaining that he purchased goods from farmers and then sold to various traders on behalf of the assessee. After deducting commission at 1%, he paid the profit to the assessee. It was further explained that the huge amounts of cash deposits in his bank account represented advance receipts from traders and difference in sale and purchase bills. The AO observed that Sh. Bharat Nilakhe paid Rs.17,67,880/- to the assessee by means of some cheques against which cash was deposited prior to such issuance of cheques. The AO opined that the amount of Rs.17,67,880/- was nothing but the

assessee's income u/s.68 of the Act. He, therefore, made separate addition of Rs.17,67,880/-. The ld. CIT(A) confirmed these two additions.

5. I have heard the rival submissions and gone through the relevant material on record. The assessee's Profit and loss account has been appended at page 4 of the paper book, which shows Direct income of Rs.13,12,990.30 (Turmeric trading). Thereafter, there is deduction towards Commission and Hamali with the gross profit coming to Rs.12,60,590/-. Then, the assessee claimed deduction towards Indirect expenses, namely, Petrol, Professional fees and Vehicle expenses etc. and ultimately came out with a figure of net profit of Rs.8,40,123/- This amount of Rs.8.40 lakh was offered by the assessee for taxation. The assessee's case is that such income was mainly earned from purchase and sale of turmeric, being, the business activity carried on through Sh. Bharat Nilakhe, who was making purchases and sales on behalf of the assessee and paying the net profit to the assessee. In support of the transactions, the assessee furnished all the purchase and sale bills of turmeric. The AO rejected the contention on the ground that the assessee could not furnish L.R. Receipt

Numbers, Freight/Transport receipts etc. The assessee elaborated the above *modus operandi* of his business, which was also supported by Sh. Bharat Nilakhe in his statement recorded by the AO u/s.131 of the Act corroborating that he was making purchase and sale transactions of Turmeric on behalf of the assessee and was remitting net amount after deducting his commission at 1%. The AO repelled the statement given by Sh. Bharat Nilakhe without assigning any justifiable reason. During the course of hearing before the Tribunal on an earlier occasion, the Id. AR submitted that Sh. Bharat Nilakhe carried out similar business activity of purchase and sale of Turmeric for various traders at Sangli, running into more than 100. The Id. DR was directed to call for a status report from the concerned AOs about the treatment of such turmeric business in the hands of such more than 100 traders who carried on the business in similar fashion through Sh. Bharat Nilkahe. A report dated 15-11-2021 has been filed on behalf of the Revenue in which it has been admitted that the assessments of about 100 assesseees were reopened by various Assessing Officers at Sangli on account of their trading transactions with Sh. Bharat Nilakhe, which have been

completed by the respective AOs “*without making any addition to the returned income*”. It has further been stated that all of them substantiated their cases with relevant evidence, which the assessee could not. I am unable to appreciate the view point of the AO in making addition of the gross commission in the hands of the assessee alone on the ground that the transactions with Sh. Bharat Nilakhe were not genuine, when similar transactions undertaken by him with around 100 traders situated at Sangli were accepted by the respective AOs as genuine. Once the transactions relating to Turmeric trading activity were fully disclosed by the assessee with the corresponding Profit of Rs.8.40 lakh, I am unable to comprehend the view point of the AO that the entire gross commission of Rs.13,12,990/- was chargeable to tax. Here is a case in which the assessee *suo motu* offered income from Turmeric trading activity at Rs.8.40 lakh. The AO has not only taxed this income but also made an addition of Rs.13.12 lakh on account of gross commission income from Sh. Bharat Nilakhe. He went a step further by also adding a sum of Rs.17.67 lakh, when received from Sh. Bharat Nilakhe on account of profit from sale and purchase of turmeric, which

also included a sum of Rs.4,54,800/- in the name of Sh. Kailash Gidwani HUF account. In view of the fact that the transactions of the assessee concerning purchase and sale of Turmeric were genuinely conducted through Sh. Bharat Nilakhe, in the same way in which he did with other more than 100 traders in Sangli, genuineness of all of which has been accepted by the Department, I am of the considered opinion that there is no logic in making or sustaining the additions of Rs.13.12 lakh and Rs.17.67 lakh in the hands of the assessee, which are just off shoot of such a trading activity. These additions are directed to be deleted.

6. The next issue raised in this appeal is against the addition of Rs.11,79,895/- made by the AO u/s.2(22)(e) of the Act.

7. The factual scenario concerning this issue is that the assessee received a sum of Rs.11,79,895/- from M/s Apeksha Impex Ltd. which was shown as liability. Since the assessee was a shareholder having 25% shareholding in the company, the AO treated the same as deemed dividend u/s.2(22)(e) of the Act. The assessee contended before the Id. CIT(A) that this amount was actually received in the preceding year and was also subjected to tax during such earlier year and that no

fresh advance was received during the year relevant to the assessment year under consideration. The Id. CIT(A) directed the AO to verify his records and if the transaction related to previous year relevant to the assessment year 2009-10, then no addition should be made.

8. Having heard the rival submissions and perused the relevant material on record, it is seen that the assessee contended before the Id. CIT(A) that the sum in question was received and taxed in the immediately preceding year. The Id. CIT(A) sent the matter back to the AO for carrying out necessary verification in this regard, which ought to have been done by him alone because now there is no power with the CIT(A) to restore the matter to the AO. The Id. DR failed to bring on record any material contrary to the assessee's claim as made before the Id. CIT(A) that the sum of Rs.11,79,895/- was received during the earlier year from M/s Apeksha Impex Ltd. I, therefore, order to delete the addition.

9. In the result, the appeal is allowed.

ITA No.326/PUN/2017 – Sunil K. Gidwani :

10. Sh. Sunil K. Gidwani is brother of the above appellant, viz., Sh. Kailash K Gidwani. For the year under consideration,

the assessee declared total income of Rs.12,08,340/-, mainly derived from Turmeric trading. The AO made additions towards the gross amount of commission as income from undisclosed sources u/s.68 of the Act and also the amount received from Sh. Bharat Nilakhe in the same way as he did in the case of Sh. Kailash K. Gidwani. The Id. CIT(A) partly sustained the same.

11. I have heard both the sides and gone through the relevant material on record. Both the sides are in agreement that the facts and circumstances of this appeal are *mutatis mutandis* similar to those of Mr. Kailash K. Gidwani. Following the view taken hereinabove, I order to delete the additions so sustained on the above scores.

12. In the result, the appeal is allowed.

Order pronounced in the Open Court on 02nd March, 2022.

**Sd/-
(R.S.SYAL)**

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 02nd March, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-1 & 2, Kolhapur
4. The Pr. CIT-1 & 2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “SMC”
/ DR ‘SMC’, 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 | 01-03-2022 | Sr.PS |
| 2. | Draft placed before author | 02-03-2022 | 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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