

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D. BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1454/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Mr. Rajesh Niranjn Shah,
39, Mantri Court,
Wellesley Road, Sangam,
Pune - 411001

PAN : ACHPS9907K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle - 2, Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.2358/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Mr. Rajesh Niranjn Shah,
39, Mantri Court,
Wellesley Road, Sangam,
Pune - 411001

PAN : ACHPS9907K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 7(5), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sagar Tilak
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 28-02-2022

घोषणा की तारीख / Date of Pronouncement : 04-03-2022

आदेश / ORDER**PER S.S. VISWANETHRA RAVI, JM :**

These two appeals by the assessee against the separate order dated 24-02-2017 and 24-07-2017 passed by the Commissioner of Income Tax (Appeals)-5, Pune [‘CIT(A)’] for assessment year 2010-11.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 1454/PUN/2017 for A.Y. 2010-11.

4. Ground Nos. 1 to 3 raised by the assessee challenging the action of CIT(A) in confirming the addition made by the AO on account of purchases treating the same as hawala purchases u/s. 69C of the Act in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. We note that the assessee is an individual declared a total income of Rs.46,17,720/-. The AO determined the same at Rs.84,73,270/- inter alia making addition on account of hawala purchases and disallowance u/s. 14A of the Act. The assessee challenged the same before the CIT(A). The CIT(A) confirmed the order of AO. The ld. AR contended that the assessee made purchases to an extent of Rs.15,03,751/- relating to five parties and AO held entire purchases as hawala purchases. The ld. AR placed on

record the decision of Co-ordinate Bench of the Tribunal and by referring to Para Nos. 5 to 7 in the case of Dilawar R. Shaikh Vs. DCIT in ITA Nos. 1832 to 1834/PUN/2017 and argued that the AO could not have added entire purchases to the total income and must have taken only gross profit. The ld. DR relied on the orders of authorities below. Admittedly, there is no dispute that the AO added entire purchases to the total income of the assessee holding that the assessee failed to produce any of the evidences to prove that there was physical movement of goods which was confirmed by the CIT(A). We note that in the case of Dilawar R. Shaikh (supra) on similar circumstances the Co-ordinate Bench held that the addition on account of entire purchases is not correct and 10% of gross profit could meet the ends of justice. In the present case also, we note that the assessee produced bills raised by all the six parties and in some cases credit notes given by the said parties before the AO. The AO added entire purchases only on the ground that the assessee could not produce any evidences showing physical movement of goods. The AO made addition only on the pretext that there was no evidence showing the physical movement of goods purchases, in our opinion, is not correct to treat the entire purchases as bogus and gross profit should be determined at 10%. Therefore, by following the finding of Co-ordinate Bench in the case of Dilawar R. Shaikh (supra) we direct the AO to determine gross profit at 10% on such alleged purchases. Thus, the ground Nos. 1 to 3 raised by the assessee are allowed.

6. Ground Nos. 4 and 5 raised by the assessee relating to disallowance made u/s. 14A of the Act in the facts and circumstances of the case.

7. The AO held that the assessee received exempt income on account of transfer of units of mutual funds and dividend received. The AO asked assessee to give objections for application of provisions u/s. 14A of the Act. It was explained no disallowance u/s. 14A of the Act is applicable since no expenditure has been incurred to earn the exempt income. The AO did not accept the said submissions of assessee and proceeded to disallow expenses by applying the methodology provided under Rule 8D of the Rules. Accordingly, the AO disallowed expenditure to an extent of Rs.23,51,799/- (Rs.10,13,469/- + Rs.54,297/-). It shows there is incorrect calculation made by the AO showing total disallowance as Rs.23,51,799/- instead of Rs.10,67,766/-. The CIT(A) also confirmed the addition made by the AO without acknowledging the incorrect calculation. Therefore, the disallowance made by the AO is only Rs.10,67,766/- but not Rs.23,51,799/-.

8. We note that the CIT(A) reproduced the details of investments as on 31-03-2010 furnished by the assessee in the impugned order at Page No. 16. The ld. AR contended that the said investments as reproduced by the CIT(A) are Fixed Deposits (FDs) which are classified as other than equity scheme which does not yield dividend income. The ld. AR drew our attention to the Balance sheet as on 31-03-2010 and submitted the investments shown under the head "Current Assets" is only Rs.74,25,558/- which consists of FDs and Debt Securities. The ld. AR argued that these investments does not yield dividend income but earns taxable income and the assessee offered the said taxable income for tax. The ld. DR relied on the order of authorities below. There is no dispute regarding the details of investments as on 31-03-2010 totaling to Rs.74,25,558/- as evident in Balance sheet at Page No. 127 of the paper

book be that of the chart reproduced by the CIT(A) in its order at Page No. 16 wherein it is noted that the assessee held the income of such FDs and Debt Securities as taxable. Admittedly, the AO and CIT(A) did not record the amount of exempt income earned by the assessee except making observation that the assessee earned exempt income.

9. We find the computation of income as on 31-03-2010 at Page No. 122 of the paper book wherein we note that total exempt income as claimed by the assessee is Rs.8,62,777/- as per Annexure at Page No. 123 and exempt capital gains from transfer of equity shares to an extent of Rs.18,84,130/- at Page No. 125 of the paper book. Therefore, it is clear from the record that the assessee earned exempt income and claimed dividend income as exempt u/s. 10(34) of the Act in Page No. 126 of the paper book. Thus, we deem it proper to remand the issue to the file of AO for computing the disallowance of expenditure relating to the investments yielded exempt income. The assessee is liberty to file evidences, if any, in support of his claim. Thus, ground Nos. 4 and 5 raised by the assessee are allowed for statistical purpose.

ITA No. 2358/PUN/2017

10. We note that the assessee raised two grounds involving one issue questioning the action of CIT(A) in confirming the order of AO in making the addition on account of hawala purchases. Both sides are unanimous in stating that the issue raised in the appeal and the facts in ITA No. 2358/PUN/2017 are identical to ITA No. 1454/PUN/2017. Since, the facts in ITA No. 2358/PUN/2017 are similar to ITA No. 1454/PUN/2017, the findings given by us while deciding the ground Nos. 1 to 3 of the appeal of assessee in ITA No. 1454/PUN/2017 would *mutatis mutandis* apply to ITA

No. 2358/PUN/2017, as well. The appeal of assessee is allowed, accordingly.

11. To sum up, the appeal of assessee in ITA No. 1454/PUN/2017 is allowed for statistical purpose and the appeal of assessee in ITA No. 2358/PUN/2017 is allowed.

Order pronounced in the open court on 04th March, 2022.

Sd/-
(Jamlappa D. Battull)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th March, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune
4. The Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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