

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1436/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sharad Namdeo Gawade, Gawade Nagar, Link Road, Chinchwad, Pune 411 033 PAN : AAYPG3067F	Vs.	ITO, Ward-9(2), Pune
(Appellant)		(Respondent)

Appellant by None
Respondent by Shri M.G. Jasnani

Date of hearing 10-03-2022
Date of pronouncement 10-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-13, Pune on 18-07-2018 in relation to the assessment year 2013-14.

2. The only issue raised in this appeal is against the confirmation of the addition of Rs.24.00 lakh made by the Assessing Officer (AO).

3. Tersely stated, the facts of the case are that a survey was conducted at the assessee's business premises on 03-10-2012, in which the assessee offered an income of Rs.24.00 lakh from the sale of TDR. The return of income was filed declaring income of Rs.11,67,150/-. Since the offered income of Rs.24.00 lakh was not shown distinctly, the Assessing Officer (AO) made an addition of the

equal sum by rejecting the assessee's contention of having offered Rs.24.00 lakh as part of total contract receipts. The Id. CIT(A) affirmed the same, against which the assessee has approached the Tribunal.

4. I have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. It can be seen from the impugned order that the assessee offered income of Rs.24.00 lakh from sale of TDR and eventually filed the return declaring income of Rs.11,67,150/-. The case of the assessee is that the said sum of Rs.24.00 lakh was included in the total business contract receipts of Rs.36,51,980/-. Since there was loss of Rs.20,32,975/- from the contract business, the net income offered by the assessee covered full amount of income offered towards sale of TDR at Rs.24.00 lakh. The assessee also supported the contention of loss from the contract business by submitting that he undertook retention wall construction on the Pavna river side, during the relevant year which was made in the summer season and the construction collapsed in June, 2012. As a result of that, he had to reconstruct the collapsed retention wall at his own cost, without receiving any corresponding receipts for the second time. This contention made before the authorities as found recorded on page 3 of

the impugned order, has not been controverted by any plausible reasoning except for not relying on the same. Simply because the assessee wrongly included the sum of Rs.24.00 lakh in the contract receipts, after offering it during the course of survey, it cannot be said that the assessee did not offer such an income. Going with the position as it stands, it emerges that the assessee incurred business loss and earned capital gain of Rs.24.00 lakh. It is after the set off of business loss against the capital gain from sale of TDR, that the net income was offered. Section 71(2) of the Act permits set off of losses under any head of income other than capital gain against the income under the head `Capital gains`. In that view of the matter, the assessee's contention cannot be rejected. I, therefore, overturn the impugned order and order to delete the addition made and sustained by the authorities below.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 10th March, 2022.

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

पुणे Pune; दिनांक Dated : 10th March, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-5, Pune
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	10-03-2022	Sr.PS
2.	Draft placed before author	10-03-2022	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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