

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
 AND
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.2302/PUN/2017
 निर्धारण वर्ष / Assessment Year : 1999-2000**

Shri Badrinarayan Nandkishor Ladda,
 514, Natu Building, Gaon Bhag,
 Sangli – 416416

PAN : AAEPL9449E

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle -1,
 Sangli

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
 Revenue by : Shri M. Jasnani

सुनवाई की तारीख / Date of Hearing : 08-03-2022

घोषणा की तारीख / Date of Pronouncement : 10-05-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 27-07-2017 passed by the Commissioner of Income Tax (Appeals)-1, Kolhapur [‘CIT(A)'] for assessment year 1999-2000.

2. The assessee raised ground Nos. 1.1 to 1.4 challenging the action of CIT(A) in confirming the addition of Rs.75,18,072/- on the basis of preponderance of probabilities in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee is an individual derived income from Govt. Transport Contract business and commission from LIC in the year under consideration. The case of the AO was that the assessee was awarded with transport contract work for lifting rice from godown of FCI, Kolhapur and distribute the same to the different schools under the Mid-Day Meal Scheme framed by the Government of Maharashtra. The assessee misused the said authorization by lifting the goods from the godowns and did not deliver to its destination. In view of the same the AO computed that an amount of Rs.75,18,072/- concerning entire value of non-delivery of rice added to the income of the assessee. The CIT(A) discussed the issue in Para No. 7 of the impugned order. The contention of the assessee was that he was wrongly implicated in rice scam and the accusation made by the District Supply Officer in the FIR were not proved. The CIT(A) confirmed the order of AO to an extent of Rs.75,18,072/- on account of income from rice scam by holding that *the assessee is a transport contractor which makes one to presume that he is possibly involved in misappropriation. The overall involvement of the appellant in the scam cannot be ruled out. The income earned out of scheme is also normally quite high, on the basis of preponderance of the probability in the matter* On plain reading of the finding of CIT(A) clearly suggests there was no evidence before the CIT(A) to hold that the assessee misappropriated rice and his involvement in the scam. The CIT(A) only held that the involvement of assessee cannot be

ruled out and assuming the same held misappropriation of rice cannot be denied without any basis. The ld. AR placed on record judgment dated 02-08-2004 on the file of Chief Judicial Magistrate at Kolhapur in Crim. Case No. 149/2000. We note that admittedly, an FIR was registered against the assessee u/s. 406 and 407 of IPC. The ld. Trial Court by considering prosecution evidences acquitted the assessee from the offence punishable u/s. 406 and 407 of the IPC. The Trial Court observed Mr. Vijay Dani (PW-1) and Mr. Dabde (PW-16) admitted the allegations against the assessee regarding committed misappropriation of rice lifted from godown of FCI, Kolhapur, but however, the prosecution failed to prove that the rice was delivered from the godown of FCI, Kolhapur to the accused and no officer or person from FCI godown, Kolhapur was examined. Further, no statement was recorded by the IO (PW-16) or not a single document is seized by the FCI godown, Kolhapur. Mr. Dabde also admitted the importance and necessary to record statements of the officers concerning FCI godown, Kolhapur as well as to seize the documents from them during the course of investigation. By observing so, the Trial Court held there is no absolute evidences adduced by the prosecution against the assessee regarding delivery of rice to him from FCI godown, Kolhapur vide Para No. 20 of the said judgment.

4. In the present Income Tax proceedings also the AO and CIT(A) did not bring on record any evidence or statement regarding that the assessee lifted the rice from godown and misappropriated for his gain except making an observation that his role cannot be denied. When there is no concrete evidence to show that the assessee misused the authorization given by the authorities to lift the goods and did not deliver its destination, in our

opinion, the addition made by the AO as confirmed by the CIT(A) in this regard of Rs.75,18,072/- fails and it is deleted. Thus, the ground Nos. 1 to 5 raised by the assessee are allowed.

5. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 10th May, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 10th May, 2022.
रवि

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

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