

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

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

आयकर अपील सं. / ITA Nos.1846 & 1847/PUN/2016
निर्धारण वर्ष / Assessment Years: 2008-09 & 2009-10

M/s. Laxmisen Agencies, BF/01/C, 1697-A, Sakoli Corner, Kedar Plaza, Kolhapur- 416001. PAN : AABFL4690E	Vs.	ITO, Ward-1(2), Kolhapur.
Appellant		Respondent

Assessee by : Shri M. K. Kulkarni
Revenue by : Shri S. P. Walimbe

Date of hearing : 31.05.2022
Date of pronouncement : 22.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the common order of Id. Commissioner of Income Tax (Appeals)- 1, Kolhapur ['the CIT(A)'] dated 13.07.2016 for the assessment years 2008-09 and 2009-10.

2. Since the identical facts and issues are involved in the above captioned two appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.1846/PUN/2016 for the assessment year 2008-09 are stated herein.

ITA No.1846/PUN/2016, A.Y. 2008-09 :

4. Briefly, the facts of the case are that the appellant is a partnership firm. It is engaged in the business of wholesale pharmaceutical products. The return of income for the assessment year 2008-09 was filed on 17.03.2009 declaring total income of Rs.1,14,120/-. Against the said return of income, no assessment was made. Subsequently, based on the information received from ITO, Ward-2(2), Kolhapur that the assessee made unaccounted purchases from Wockhardt Company Ltd., the Assessing Officer formed an opinion that the income had escaped assessment to tax, accordingly, issued notice u/s 148 of the Income Tax Act, 1961 ('the Act') on 19.03.2013 after recording the reasons. In reply, the assessee filed a letter dated 12.08.2013 stating that the return of income was filed on 17.03.2009 be treated as return of income in response to notice u/s 148 of the Act.

5. During the reassessment proceedings, the Assessing Officer had called upon the appellant to furnish the details or explain the

source for total purchases of Rs.81,71,263/- made from Wockhardt Company Ltd. as detailed in para 3 of the assessment order, for which no information was filed. Thereafter, the Assessing Officer had recorded the statements from the partners of the firm viz. Managing Partner, Shri Dilip Talekar on 16.12.2011, 28.11.2013 and 11.02.2014. In the statement recorded u/s 131 of the Act by the Assessing Officer, the Managing Partner, Shri Dilip Talekar on 16.12.2011 had stated that :-

- (i) During the financial year 2007-08, only small bills amounting to Rs.1.25 lakhs were reflected in the books of accounts of the appellant firm and other bills were not accounted for in the books of accounts of the appellant firm.
- (ii) The total cash payments made to Wockhardt Company Ltd. during the financial year 2007-08 are of Rs.75,10,883/-.
- (iii) The cash deposits were stated to have been made by one Mr. Sunil alias Shravankumar Kole, Medical Representative of Wockhardt Company Ltd.. All unaccounted transactions were handled by the said Mr. Sunil alias Shravankumar Kole.
- (vi) The deposits in the Savings Bank Account No.2379 with Karad Urban Bank Ltd., Kolhapur, no evidence in support of the source of cash deposits made in the personal savings account with Karad Urban Bank Ltd., Kolhapur was produced.
- (v) The credit notes issued by the Wockhardt Company Ltd. are not disclosed in the books of account.

(vi) No explanation was given as to the source of payment made from ICICI Bank bearing Account No.016605004563 towards purchase made from Wockhardt Company Ltd.. Even the statements of Shri Shravankumar Kole, Shri Akshay Sawant and Shri Sameer Mehta were also recorded by the Assessing Officer, who had denied having deposited any money in the bank account to make payment to Wockhardt Company Ltd.. Even the statement of Shri Sameer N. Mehta had confirmed that all the cash deposits in the savings bank accounts were made by Shri Dilip Talekar. Even Shri Akshay Sawant also made similar statements.

6. That facts that emerges from the above mentioned statements is that the cash was deposited in their bank accounts for on behalf of the appellant firm to make purchases of Rs.75,10,883/- from Wockhardt Company Ltd. which were not recorded in the books of account. Out of the above purchases, an amount of Rs.59,59,614/- was deposited in cash for purchase of DDs in bank accounts of the partners and sources to the said deposits remained unexplained. Even no explanation was offered as to why the credit notes of Rs.3,50,930/- received during the financial year 2007-08 remain unaccounted. No explanation in respect of cash credits of Rs.16,03,288/- was filed. In the circumstances, the Assessing Officer made additions of (i) Rs.81,71,263/- as unexplained

expenditure u/s 69C of the Act, (ii) Rs.6,41,444/- on account of gross profit on unaccounted sales, (iii) Rs.3,50,930/- on account of unaccounted credit notes received from Wockhardt Company Ltd., (iv) Rs.16,03,288/- on account of unexplained expenditure u/s 68 of the Act.

7. Being aggrieved by the order of assessment, an appeal was filed before the ld. CIT(A) who vide impugned order confirmed the additions by detailed reasoned order.

8. Being aggrieved, the appellant is in appeal before us challenging the findings of the ld. CIT(A) confirming the addition of Rs.81,71,263/- made under the provisions of section 69C, addition on account of credit notes of Rs.3,50,930/- and addition on account of credits of Rs.16,03,288/-.

9. Before us, an additional ground of appeal also raised by the assessee contesting that the order of assessment is barred by limitation.

10. First, we shall deal with the additional ground of appeal since it goes to very root of the matter. It is submitted that the order of the assessment passed by the Assessing Officer is barred by limitation. It is submitted that notice u/s 148 was issued on 19.03.2013 and as per the provisions of section 153(3), the

assessment should be completed within 9 months i.e. on or before 31.12.2013, since the assessment order was completed on 28.03.2014. Thus, it is contended that order of assessment is barred by limitation.

11. On the other hand, ld. Sr. DR opposed the submission made on behalf of the assessee that the assessment order is barred by limitation.

12. We heard the rival submissions and perused the material on record. In the present case, undisputedly a notice u/s 148 was issued and served on 19.03.2013. The provisions of sub-section (3) of section 153 provide that the order of re-assessment shall be made within period of one year from the end of the financial year in which the notice u/s 148 was served. In the present case, the notice u/s 148 was undisputedly served on or before 31.03.2013. Therefore, the reassessment order is required to be passed within a period of one year from the end of the financial year in which the notice u/s 148 was served i.e. on or before 31.03.2014. In the present case, the assessment was passed on 28.03.2014 which is well within the time period prescribed under the Act. Therefore, we do not find any merit in the said contention raised on behalf of the assessee that the

order of assessment is barred by limitation. Thus, additional ground of appeal filed before us stands dismissed.

13. Ground of appeal no.1 to 9 challenges the addition on account of unexplained expenditure of Rs.81,71,263/- made u/s 69C of the Act. We have carefully gone through the assessment order. The undisputed facts of case are that during the financial year 2007-08, the appellant had made payment for purchases of Rs.81,71,263/- towards the unaccounted purchases of the assessee firm. The assessee had not offered any explanation in support of the source of unexplained expenditure. The provisions of section 69C along with proviso of the Act reads as under :-

“Unexplained expenditure, etc.

69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

14. On perusal of the above provisions of section 69C, it is clear that if an assessee fails to offer explanation in support of sources of expenditure incurred, the amount of expenditure has to be added to the total income of the assessee. The proviso inserted to the said

provisions of the Act provides that the unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income. In the present case, it is undisputed fact that the payment made towards unaccounted purchases and the sources thereof also remained unexplained, therefore, the Assessing Officer had rightly brought to tax the said sum of Rs.81,71,263/-. The Hon'ble Andhra Pradesh High Court in the case of Srinivasa Ferro Alloys Ltd. vs. ACIT, 368 ITR 424 held that the provisions of section 69C would take in its sweep not only of expenditure which were reflected in books of account but also unaccounted expenditure which were not reflected in the books of account and there is no distinction in these provisions between the amounts forming part of the books of account and unaccounted expenditure. Since the assessee had failed to offer any explanation, the Assessing Officer had rightly brought to tax said sum. We do not find any merit in the ground of appeal no.1 to 9 raised by the assessee. Thus, the ground of appeal no.1 to 9 stands dismissed.

15. Ground of appeal no.10 challenges the addition on account of credit notes of Rs.3,50,930/-. It is an admitted fact that the appellant firm had not accounted for income arising on credit notes

issued by Wockhardt Company Ltd.. Therefore, the Assessing Officer is properly bringing to said amount to tax.

16. Ground of appeal no.11 challenges the addition on account of credits of Rs.16,03,288/-. It is an admitted fact that the appellant firm had failed to discharge the onus lying upon him under the provisions of section 68 to prove the identity, creditworthiness and genuineness of this cash credits before the lower authorities as well as before us. In the circumstances, we uphold the addition made by the Assessing Officer. Thus, this ground of appeal no.11 stands dismissed.

17. In the result, the appeal filed by the assessee in ITA No.1846/PUN2016 for A.Y. 2008-09 stands dismissed.

ITA No.1847/PUN/2016, A.Y. 2009-10 :

18. Since the facts and issues involved in both the above appeals are identical, therefore, our decision in ITA No.1846/PUN/2016 for the A.Y. 2008-09 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.1847/PUN/2016 for A.Y. 2009-10. Accordingly, the appeal of the assessee in ITA No.1847/PUN/2016 for A.Y. 2009-10 stands dismissed.

19. Resultantly, both the appeals of the assessee stands dismissed as indicated above.

Order pronounced on this 22nd day of June, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd June, 2022.

Sujeet

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 CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.