

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.2015 & 2016/PUN/2019
निर्धारण वर्ष / Assessment Years: 2015-16 & 2016-17

Ashwini Ravindra Birole, 2055, Sadashiv Peth, Anant Residency, 1 st Floor, Tilak Road, Pune- 411002. PAN : AFIPB3249R	Vs.	ITO, Ward-6(3), Pune.
Appellant		Respondent

Assessee by : Shri Suhas P. Bora
Revenue by : Shri S. P. Walimbe

Date of hearing : 14.06.2022
Date of pronouncement : 29.06.2022

आदेश / ORDER

PER S. S. GODARA, JM:

These assessee's twin appeals ITA No.2015 and 2016/PUN/2019 for assessment years 2015-16 and 2016-17 arise against the CIT(A)- 4, Pune's as many orders; both dated 30.10.2019 passed in case no. PN/CIT(A)-4/ Ward-6(3), Pune/442/ 2017-18/455 and PN/CIT(A)-4/ Ward-6(3), Pune/214/ 2018-19/454 respectively; involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case files perused.

2. It emerges at the outset that the assessee's identical substantive ground(s) pleaded in both the appeals challenges correctness of section 69 unexplained money deposit addition of Rs.64,67,568/- and Rs.83,57,314/-; assessment year wise, respectively made in the lower proceedings.

3. There is hardly any dispute that the assessee all along has claimed to have carried out trading in steel sector as per her detailed paper books running into 62 pages in A.Y, 2015-16 and 117 pages in latter A.Y. 2016-17; respectively. Learned counsel vehemently argued that once the assessee has proved herself to have been carrying out the foregoing trading activity and all the relevant details of purchases and sales form part of records, both the learned lower authorities have erred in law and on facts in declining her the benefit of presumptive scheme of taxation u/s 44AD of the Act.

4. The Revenue has drawn strong support from both the learned lower authorities' action making the impugned section 69A addition in these twin assessment years.

5. We have given our thoughtful consideration to the assessee's vehement arguments and find no merit therein. We make it clear that apart from filing the foregoing documentary evidence, she has even failed to place on record either any VAT/sales tax registration as well as the corresponding business place's details or go-down

receipts or any other supportive evidence. Hon'ble apex court's landmark decisions in *Sumati Dayal vs. CIT* (1995) 214 ITR 801 (SC) and *CIT vs. Durga Prasad More* (1972) 82 ITR 540 (SC) have settled the law long back that any evidence filed in income tax proceedings has to be considered in the light of human probabilities and after removing all blinkers. We apply the very reasoning herein as well to note that apart from claiming herself as a trader in steel items in both these assessment years, the assessee has not proved her actual business activity at all so as to rebut the learned lower authorities' findings. We thus affirm both these additions of Rs.64,67,568/- and Rs.83,57,314/- in principle.

6. The fact also remains that the assessee's impugned bank account(s) had seen multiple withdrawals and deposits entries as it is evident from para 6 page 3 in assessment order dated 27.12.2017 for A.Y, 2015-16 before us. The factual position it is not different in the latter A.Y. 2016-17 as well. We therefore direct the learned Assessing Officer to consider addition of the "peak" sum only after considering telescopic benefit of former assessment year's addition amount in latter assessment year; as per law within three effective opportunities of hearing. It is further made clear that it shall be the assessee's onus only to claim and prove her "peak" amount(s) by filing all necessary detailed evidence at her own risk and

responsibility in consequential proceedings which shall be considered in accordance with law. Ordered accordingly.

No other argument or ground has been raised before us.

7. These assessee's twin appeals are partly allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced on this 29th day of June, 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th June, 2022.
Sujeet (DOC)

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

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