

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.372/PUN/2020

निर्धारण वर्ष / Assessment Year: 2010-11

Vijay Baban Gunjal, Kesnand Phata, Sant Tukaram Nagar, A/p Wagholi, Haveli, Pune-412207. PAN : AMYPG4227D	Vs.	ITO, Ward-12(4), Pune.
Appellant		Respondent

Assessee by : Shri Deepak S. Sasar

Revenue by : Shri M. G. Jasnani

Date of hearing : 26.07.2022

Date of pronouncement : 27.07.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee's appeal for assessment year 2010-11 arises against the CIT(A)-5, Pune's order dated 04.10.2019 passed in case no.PN/CIT(A)-5/ITO, Ward 12(4), Pune/10281/2017-18 involving proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal challenges section 68/69A addition of Rs.24,28,290/- representing alleges unexplained cash credit. There is hardly in

dispute that the assessee had made cash deposits of Rs.35.60 lakhs which stood added u/s 68 of the Act in the course of assessment framed herein on 19.12.2017. The CIT(A)'s findings in para 5.6 have admittedly accepted the assessee's case that section 68 would not be applicable once there are no books of accounts but the bank passbook only in his case. The learned lower appellate authority holds that the impugned addition has to be made u/s 69A of the Act thereby exercising the alleged co-terminus powers.

This leaves the assessee's aggrieved.

3. I have given my thoughtful consideration to vehement rival contentions and find merit in assessee's arguments. This is for the reason that once the CIT(A) has disagreed with section 68 addition, the very addition be made under a different head runs contrary to the settled contours of his lower appellate jurisdiction as held in CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC), CIT vs. Union Tyers (1990) 240 ITR 556 (Delhi) and CIT vs. M/s. Sadari Lal & Company (2001) 251 ITR 864 (Delhi). I therefore delete the impugned section 69A addition for this precise reason alone.

All other pleadings on merits are rendered academic.

4. Delay of 101 days in filing of the instant appeal attributable to various communication gaps and outbreak of Covid-19 Pandemic at its initial stage, stands condoned.

5. This assessee's appeal is allowed in above terms.

Order pronounced on this 27th day of July, 2022.

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

पुणे / Pune; दिनांक / Dated : 27th July, 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)-5, Pune.
4. The Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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