

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.9/PUN/2021
निर्धारण वर्ष / Assessment Year: 2015-16

Balaji Construction, Balaji Palace, Sr. No.8, Solapur By-Pass, Kharadi, Pune- 411014. PAN : AABFB0167E	Vs.	ITO, Ward-7(3), Pune.
Appellant		Respondent

Assessee by : Shri Suhas Bora
Revenue by : Shri M. G. Jasnani
Date of hearing : 28.07.2022
Date of pronouncement : 28.07.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee's appeal for assessment year 2015-16 arises against the CIT(A)-5, Pune's order dated 21.05.2018 passed in case no.PN/CIT(A)-5/ITO, Wd-7(3), Pune/10192/2017-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. It emerges at the outset that the assessee's sole substantive grievance challenges correctness of addition amount of Rs.12,30,417/- made in the course of assessment as an instance of

cessation of liability u/s 41(1) of the Act; which in turn has been treated as unexplained cash credits u/s 68 in the CIT(A)'s lower appellate discussion.

3. I have given my thoughtful consideration to vehement rival stands against and in support of the foregoing twin issues involving the very sum of Rs.12,30,417/-. Suffice to say, Mr. Jasnani could not pinpoint any specific material on assessee's books evidencing actual cessation or remission; as the case may be, so as to attract section 41(1) of the Act. I thus quote CIT vs. Bhogilal Ramjibhai Atara (2014) 43 taxmann.com 55 (Gujarat) and Vardhman Overseas (2012) 343 ITR 408 (Delhi) to delete the impugned addition for this precise reason alone.

4. The legal position regarding section 68 addition of the very sum also fails the test of legality as it amount to hold together a new head of income in first appellate proceedings not sustainable in light of CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC), CIT vs. Union Tyres (1990) 240 ITR 556 (Delhi) and CIT vs. Sardarilal & Co. (2001) 251 ITR 864 (Delhi) (FB). The same also stands deleted therefore.

No other ground or argument has been pressed during the course of hearing.

5. Delay of 850 days in filing of the instant appeal is condoned since majority of this prescribed limitation falls in Covid-19 Pandemic outbreak. The Revenue's is also fair enough in not disputing the assessee's solemn averments in its condonation petition/affidavit dated 06.01.2021.

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

Order pronounced on this 28th day of July, 2022.

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

पुणे / Pune; दिनांक / Dated : 28th 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.