

आयकर अपीलीय अधिकरण “A” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI R.S.SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं/ ITA No.1695/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Milind Mangilal Jain, D.H. Plaza, Saraf Bazar, Bhavani Peth, Jalgaon Maharashtra – 425 001 PAN : AEZPJ3272J	Vs.	ITO, Ward-1(2), Jalgaon
(Appellant)		Respondent)

Assessee by : Shri Hari Krishan
Revenue by : Shri Ramesh P. Murkunde

सुनवाई की तारीख / Date of Hearing : 21.09.2022

घोषणा की तारीख / Date of Pronouncement: 21.09.2022

आदेश / ORDER

PER R.S.SYAL, VP:

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Nashik on 01-08-2019 in relation to the assessment year 2015-16.

2. The first issue raised in the memorandum of appeal along with the additional ground is against the confirmation of addition of Rs.96,61,500/- and its taxability at the rate prescribed under section 115BBE of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee is engaged in sale and purchase of gold and silver jewellery. He filed his return

u/s.44AD declaring income @8% on sales of Rs.62.03 lakh. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had maintained two bank accounts with HDFC Bank Ltd. outside the books of account. On being called upon to explain as to why the amounts of Rs.53,69,000/- and Rs.42,92,500/- deposited in these two bank accounts with numbers 0180150007680 and 01802020004158 be not added to the total income, the assessee submitted that these accounts were used for making purchases of jewellery from Amritsar and Mumbai. Unconvinced, the AO treated the entire deposits in these two bank accounts totaling to Rs.96,61,500/- as the assessee's unexplained income and charged the same to tax u/s.115BBE of the Act. The assessee contended before the Id. CIT(A) that the amounts deposited in the bank accounts were towards sale of the jewellery and the amount withdrawn was used for making purchases of jewellery from Amritsar and Mumbai. The Id. CIT(A) also remained unconvinced and upheld the addition made by the AO. Aggrieved thereby, the assessee has approached the Tribunal.

4. We have heard the rival submissions and gone through the relevant material on record. It is an undisputed fact that the assessee is engaged in business of sale and purchase of jewellery and filed return declaring income under presumptive scheme at 8% of the gross revenue. It is also equally undisputed that the assessee maintained the above said two bank

accounts which were not declared. The AO has added all the deposits in these bank accounts for making the addition. We have gone through these bank accounts. Copy of the first bank account is placed at page 67 onwards of the paper book, from which it can be seen that there are only cash deposits and withdrawals through ATM. Further, all the deposits and withdrawals are in round figures. Similar is the position regarding the second bank account, whose copy has been placed at page 81 onwards of the paper book. In that account also, all the deposits and withdrawals are in cash and the transactions are in round figures. From a perusal of the two bank accounts, it can be seen that the assessee was regularly depositing and withdrawing the amount in/from the above said two bank accounts. In that scenario, the entire deposits cannot be added to the total income. It is only the peak balance from these two bank accounts individually, which can be subjected to tax. The addition for more than that can be justified only if the AO shows that the withdrawals from the bank accounts were used elsewhere. In the instant case, the AO has not made out such a case. In that view of the matter, it is only the peak balance in these two bank accounts which can be added to the total income of the assessee.

5. It is further seen that the assessee has consistently taken a stand before the authorities below that all deposits and withdrawals in the bank accounts represented the purchase and sale of jewellery. If that is the

case, then the deposit side of the bank accounts would be construed as the sales made and deposited in the bank account, which would be subjected to tax at 8% towards profit from such trading, being, the same rate which has been offered by the assessee on regular sales. To sum up, there will be two additions on account of these two bank accounts; (1) peak balance from the two accounts will be added separately and subjected to tax at the rate prescribed u/s.115BBE; and (2) profit from such sale of jewellery outside the books of account as recorded as deposits in the bank accounts will be charged to tax @ 8% at normal rate of taxation.

6. The only other ground which survives in this appeal is against the confirmation of addition of Rs.22,84,500/-. The facts apropos this ground are that the assessee furnished a balance sheet during the course of assessment proceedings at the instance of the AO, in which investment in gold jewellery was shown at Rs.22,84,500/-. The AO treated such amount as unexplained investment and made the addition for the said sum, which was echoed in the first appeal.

7. Having heard the rival submissions and gone through the relevant material on record, it is seen that the assessee has been regularly engaged in the jewellery business. He has declared revenue of Rs.62.03 lakh for the year under consideration. It goes without saying that no business can be carried out without maintaining stock, more specifically

if it is business of jewellery. Once the assessee has declared his income u/s.44AD and it is a no-account case, the AO cannot resort to the balance sheet filed by the assessee during the course of assessment proceedings to pick up the item of inventory of gold at Rs.22.84 lakh and make addition for the same. If that be the logic, then the AO will end up making addition for all the items of assets shown in the balance sheet, which is unfounded. We, therefore, order to delete the addition.

8. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 21st day of September, 2022.

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

Sd/-
R.S.SYAL
VICE PRESIDENT

पुणे / Pune; दिनांक / Dated : 21st September, 2022
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT(Appeals)-2, Nashik
4. The Pr.CIT-2, Nashik.
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.

		Date	
1.	Draft dictated on	21-09-2022	Sr.PS
2.	Draft placed before author	21-09-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*