

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, PUNE

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

आयकरअपीलसं. / ITA No.1702/PUN/2019
निर्धारणवर्ष / Assessment Year : 2014-15

The Dy.CIT, Circle-1, Jalgaon.	Vs	M/s.Rajmal Lakhichand, 169, Balaji Peth, Jalgaon - 425001. PAN: AACFR 8609 L
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Nikhil Pathak – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	22/07/2022
Date of pronouncement	13/10/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Revenue is directed against the order of Id. Commissioner of Income Tax(Appeals)-2, Nashik, dated 23.08.2019 for the A.Y. 2014-15. The assessee has raised the following grounds of appeal:

- “1. *On the facts and in the circumstances of the case, the Ld. CIT(A)-2 Nasik erred in giving relief by estimating the income of assessee and not on the basis of the facts of the case.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A)-2 Nasik erred in deleting the addition on account of low Melting gains shown by the assessee compared to earlier financial years.*
3. *On the facts and in the circumstances of the case and in law, the order of the Ld.CIT(A)-2, Nasik be cancelled on the above issue and that of the A.O be restored.*

4. *The appellant craves leave to add, alter, modify, delete amend any of the grounds with prior permission of the Hon'ble CIT, as per the circumstances of the case."*

2. Brief facts of the case are that the assessee is in the business of manufacturing of gold and silver ornaments and trading of ornaments. During the year, the Assessing Officer(AO) observed that the assessee has shown melting gain at 0.59%. For earlier years, the melting gain was as under:

On perusal of the books of account, it was noticed that the assessee has shown melting gain 0.59% as melting Gains. The comparison of the melting gains shown by the assessee for the last four financial years is tabulated as below:

<i>Financial Year</i>	<i>Melting gain percentage</i>
<i>2010-11</i>	<i>9.07%</i>
<i>2011-12</i>	<i>8.53%</i>
<i>2012-13</i>	<i>6.83%</i>
<i>2013-14</i>	<i>0.59%</i>

3. The AO asked the assessee to explain the reason for lower melting gain. However, the AO was not satisfied with the reply of the assessee. The AO in para 6 sub para 3 has held as under:

"3. Further, it is true that the melting gain depends on the purity of old ornaments or gold given by the customers. However, the melting gain ratio shown by the assessee is less than its own melting gains shown for the previous years.

4. The average value of the melting gains in the market is around 4-6%.

Therefore, considering the above reasons and the melting gains of AY 2013-14, the melting gains is adopted at 6%.”

4. Aggrieved by the addition, the assessee filed appeal before the ld.CIT(A). The ld.CIT(A) allowed this ground of the assessee. In para 8.3, the ld.CIT(A) has held as under:

“8.3 In this regard, in appellant's own case, the Hon'ble ITAT, Pune in ITA No.532 & 663/PUN/2013 and ITA No. 607/PUN/2013 for assessment year 2009-10, dated 16/01/2015 has decided in favour of the appellant holding as under-

"8.38 we find force in the above argument of the Ld Counsel for the assessee. We have perused the month wise breakup of the melting gain declared by the assessee and fined that there is variation. We also find force in the argument of the Ld Counsel for the assessee that when assessee is maintaining the record showing the old ornaments issued for refining purpose on the weight basis, when there should have been no jurisdiction for rejecting the said record. The Ld (CIT(A) has mechanically approved the approach of the AO for holding that AO has correctly worked out the melting gain. We find that the AO has attached the chart to the assessment order being Annexure-3 for the period April 2008 to March 2009. We also find that AO has made break up for two periods i.e. 01.04.2008 and 28.11.2008 to 31.03.2009. How the period can be bifurcated for working out the yearly average is not known. We also find force in the contention of the Ld. Counsel for the assessee that when old ornaments are purchased from the third parties, the purity of the gold is determined by using Kasuati which is one stone. There is no other scientific method whereby it can be concluded that the gain estimated at the time of purchased of the old ornament

(MOD) was perfect. Moreover, the assessee is consistently following the particular method and that method has never been questioned by the revenue. In our opinion, there is no justification to support the addition made by the AO and confirmed by the Ld. CIT(A) in respect of alleged suppression of the melting gain. We accordingly delete the said addition. In the result, respective grounds taken by the assessee are allowed.

Respectfully following the decision of Hon'ble ITAT Pune, wherein the facts of the case are squarely applicable in the case of the appellant, Therefore, I am of the considered view that the A.O. is not justified in making addition of Rs. 1,94,05,998/- on account low melting gain. Therefore, the addition of Rs.1,94,05,998/- made by the A.O. is deleted and the ground of appeal raised by the appellant is allowed.”

5. Aggrieved by the order of the ld.CIT(A), the Department has filed appeal before this Tribunal. The ld.Departmental Representative(ld.DR) for the Revenue vehemently relied on the order of the AO. The ld.Authorised Representative(ld.AR) for the assessee filed a paper book containing 166 pages. The ld.AR took us through the melting gain register which was at page no.47 of the paper book and explained that the assessee is properly maintaining melting gain / loss register. The ld.AR submitted that the AO has not pointed out any defect in the melting gain register or audited books of accounts. Therefore, the addition made by the AO was rightly deleted by the ld.CIT(A).

6. We have heard both the parties and perused the records. It is a fact that assessee purchases old ornaments. The purity depends on many factors. It is very difficult to generalise the purity. We have gone through the melting gain register which was submitted in the paper book. It is observed that assessee has maintained a proper register. The AO has not pointed out any defect in the said melting gain / loss register. The AO has also not pointed out any defect in the books of accounts maintained by the assessee. It is also a fact that the ITAT Pune Bench in assessee's own case for earlier year has decided this issue in favour of assessee. Therefore, we are of the opinion that the Id.CIT(A) has rightly directed the AO to delete the addition following the ITAT Pune Bench's decision for the A.Y. 2009-10, accordingly, grounds of appeal raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 13th October, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 13th Oct, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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