

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.938/PUN/2022

निर्धारण वर्ष / Assessment Year : 2019-20

Manoj Vishwanath Patil, Prop. of Vishwanath R. Patil Jewellers, Shop No.16, D.H. Plaza Market, Saraf Bazar, Jalgaon – 425001 Maharashtra PAN : AKEPP6782E	Vs.	DCIT, Central Circle-1, Nashik
Appellant		Respondent

Assessee by None (written submissions filed)
Revenue by Shri Arvind Desai

Date of hearing 05-07-2023
Date of pronouncement 06-07-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee arises out of the order dated 30-11-2022 passed by the CIT(A) in National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2019-20.

2. The only issue raised herein is against the taxability of Rs.34,36,621/- u/s.115BBE as against regular income reported by the assessee.

3. Briefly stated, the facts of the case are that the assessee was subjected to survey u/s.133A on 25-10-2018. Excess stock of Rs.31,84,121/- was found. Expenditure on building to the tune of

Rs.2,52,500/- was also found to have been incurred by the assessee which was not recorded. The assessee surrendered both the amounts totalling to Rs.34,36,621/- and offered them in the return of income filed. The AO reduced these two amounts from the total income offered and treated them as undisclosed money (stock) u/s 69 and unexplained money (cash investment) u/s.69B and taxed them u/s.115BBE at 60%. The ld. CIT(A) affirmed the view taken by the AO, against which the assessee has come up in appeal before the Tribunal.

4. I have heard the ld. DR and gone through the relevant material on record. There is no appearance from the side of the assessee. However, written submissions have been filed, which have been considered.

5. The first amount is excess stock found during the course of survey, which was duly offered for taxation and also included in the return of income. This amount representing excess stock is undisclosed business income and not unexplained investment. As such, the question of its taxability u/s.115BBE does not arise. Similar view has been taken by the Pune benches of the tribunal in *Ashok K. Kriplani (ITA No.252/PUN/2023 dt. 03-07-2023)* in which it has been held that excess stock found during the course of survey cannot

be considered as unexplained investment u/s.69 of the Act. In reaching this conclusion, the Tribunal, in turn, relied on the judgment of the Hon'ble Rajasthan High Court in *CIT Vs. Bajargan Traders (2017) 86 taxmann.com 295 (Rajasthan)*. This ground is thus allowed.

6. The second amount is Rs.2,52,500/- which has been taxed u/s.69B. The assessee was found to have suppressed cost of construction by a sum of Rs.2,52,500/- which was admitted during the course of survey. This is clearly in the nature of unexplained investment falls u/s.69B of the Act and hence has to be subjected to tax u/s.115BBE of the Act. Unlike undisclosed business income on account of excess stock, this amount represents unexplained investment. I, therefore, approve the view taken by the ld. CIT(A) to this extent.

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

Order pronounced in the Open Court on 06th July, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 06th July, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

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

		Date	
1.	Draft dictated on	05-07-2023	Sr.PS
2.	Draft placed before author	05-07-2023	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.		

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