

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.95/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Vasantrao Jayavantrao Mugale, 1 Mugle Hospital, Highway Road Omerga Osmanabad- 413606. PAN : AAVPM0306N	Vs.	DCIT, Aurangabad. Circle-1,
Appellant		Respondent

Assessee by : Shri Bhupendra Shah
Revenue by : Shri M. G. Jasnani

Date of hearing : 26.06.2023
Date of pronouncement : 12.07.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-12, Pune [‘the CIT(A)’] dated 14.12.2022 for the assessment year 2019-20.

2. Briefly, the facts of the case are that the appellant is an individual engaged in the business of medical profession under the name and style of “M/s. Mugale Hospital”. The appellant had filed

the Return of Income for the assessment year 2019-20 on 31.10.2019 declaring total income of Rs.92,37,140/-. The survey operations were conducted under the provisions of section 133A of the Income Tax Act, 1961 ('the Act') on 14.02.2019. During the course of such survey operation, the appellant had declared a sum of Rs.65,19,385/-. Out of which, a sum of Rs.7,73,885/- was declared on account of excess cash found and a sum of Rs.57,45,500/- was declared as unrecorded receipts and the same was shown in the regular return of income filed by the assessee. The Assessing Officer subjected in case of Rs.7,73,885/- under the provisions of section 115BBE of the Income Tax Act, 1961 ('the Act') by holding that the appellant had failed to offer explanation as to source of excess cash funds.

Even on appeal before the Id. CIT(A), the same was confirmed.

3. Being aggrieved, the appellant is in appeal before us in the present appeal.

4. We heard the rival submissions and perused the material on record. The undisputed position is that the appellant had shown the

income offered during the course of survey operation in the return of income. In answer to question no.10, the appellant clearly stated that he is willing to offer a sum of Rs.57,45,500/- on account of unrecorded professional receipts and the same was offered to tax. Even the excess cash found of Rs.7,73,885/- can be telescoped against the unrecorded receipts of Rs.57,45,500/-. Therefore, it cannot be said that the source for the excess cash was not explained, as the source is clearly explained to be regular business professional receipts. Therefore, the income can be brought to tax under the head “business income” not under the head “other sources”. The ratio of Hon’ble Rajasthan High Court in the case of CIT vs. Bajargan Traders, 86 taxmann.com 295 (Rajasthan) is clearly applicable to the facts of the present case. The decision of the Hon’ble Madras High Court in the case of M/s. SVS Oils Mills vs. ACIT, 113 taxmann.com 388 (Madras) and the decision of the Hon’ble Punjab & Haryana High Court in the case of Kim Pharma Pvt. Ltd. vs. CIT, 216 Taxman 153 (P&H) have no application to the facts of the present case. Therefore, we direct the Assessing Officer not to tax the excess cash found under the provisions of

section 115BBE of the Act. Thus, the grounds of appeal filed by the assessee stand allowed.

5. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 12th day of July, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th July, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT (Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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