

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.79/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Vijay Shriram Gundale,
Gundale Saree Center,
Kurula Post Kurula,
Tq. Kandhar, Dist.-Nanded

PAN : AICPG7322H

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Central Circle – 1,
Aurangabad

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.80/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Vidyatai Vijay Gundale,
Shriram Collection,
Kurula Post Kurula,
Tq. Kandhar, Dist.-Nanded

PAN : AZZPG0026E

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Central Circle – 1,
Aurangabad

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.81/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Rajiv Shriram Gundale,
Gundale Jewellers,
Kurula Post Kurula,
Tq. Kandhar, Dist.-Nanded

PAN : AHXPG5883B

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Central Circle – 1,
Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri Ajay Kumar Kesari

सुनवाई की तारीख / Date of Hearing : 01-08-2023

घोषणा की तारीख / Date of Pronouncement : 03-08-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These three appeals by the different assessees against the common order dated 28-11-2022 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)’] for assessment year 2019-20.

2. Since, the issues raised in these three appeals are similar basing on the same identical facts, we proceed to hear these three appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 79/PUN/2023 for A.Y. 2019-20.

4. The assessee raised sole ground of appeal challenging the action of CIT(A) in confirming the order of AO in treating the amount of

Rs.37,00,000/- as unexplained investment u/s. 69B of the Act, consequently, charging the same under the provisions of section 115BBE of the Act.

5. Brief facts of the case are that the assessee is an individual engaged in the business of comprising sale of readymade garments, hosiery items, shirting and suiting items, etc. The assessee conducts its business under the name and style as "M/s. Gundale Saree Center". A survey action u/s. 133A of the Act was conducted on 20-02-2019 and books of accounts and other documents were impounded. The assessee filed return of income declaring a total income of Rs.62,90,290/-. The AO show caused the assessee as to why the excess stock of Rs.37,00,000/- should not be treated as income u/s. 69B of the Act. According to the AO, the assessee neither explained the excess stock during the course of survey nor furnished any supporting documentary evidences for such unaccounted excess stock. The AO concluded that the income disclosed by the assessee during the course of survey on account of excess stock to an extent of Rs.37,00,000/- is liable to be assessed u/s. 69B of the Act and charged the tax u/s. 115BBE of the Act. The CIT(A) confirmed the order of AO by holding the nature of income regarding the excess stock remained unexplained. Having aggrieved, the assessee is before us.

6. Shri Hari Krishan, the ld. AR submits that the assessee clearly stated the difference in valuation of stock in answer to Q. No. 10 and in order to buy peace of mind offered the difference as income from business in return of income. During the course of assessment proceedings also the assessee explained the nature and source of alleged excess stock is derived and part and parcel of regular business income and requires to be charged under income from business under the normal provisions rates of tax. He submits that the assessee has no other business except family business

engaged in clothing and vehemently argued the deeming provisions u/s. 69B of the Act is not applicable to the facts on hand as excess stock was offered and credited to the profit and loss account. The ld. DR, Shri Ajay Kumar Kesari relied on the order of CIT(A).

7. Heard both the parties and perused the material available on record. There is no dispute regarding offering of additional income on account of excess stock for an amount of Rs.37,00,000/- during the course of survey. We note that as rightly pointed by the ld. AR which is not disputed by the ld. DR crediting the said additional income to profit and loss account and by including in the computation of income in the total income of the assessee which clearly demonstrate the assessee offered the same as business income. The ld. AR vehemently submitted the assessee explained the difference in valuation stock as per the books explained by the assessee through answers to Q. Nos. 10 and 11 of the statement u/s. 131 of the Act and also in response to notice invoking the provisions u/s. 115BBE of the Act during the course of assessment proceedings. We note that the Q. No. 10 is reproduced by the CIT(A) at page No. 10 of the impugned order and on perusal of the same, we note that the assessee explained the difference of Rs.37,00,000/- as stock purchased on high demand during the marriage seasons and bills will be received late. Therefore, it can be fairly concluded that the excess stock as found during the course of survey is nothing but business income flowing from assessee's regular business.

8. The Hon'ble High Court of Rajasthan in the case of Bajargan Traders reported in (2017) 86 taxmann.com 295 (Rajasthan) was pleased to observe that the amount surrendered under unrecorded stock has to be brought to tax under the head "business income" as the excess stock which has been found during the course of survey is the investment in procurement of

such stock is clearly identifiable and related to the regular business stock of the assessee. The Hon'ble High Court clearly held the investment in excess stock has to be brought to tax under the head "business income" but not under the head "income from other sources". The Mumbai Benches of the Tribunal in the case of Govind Godomal Lulla (supra) held undisclosed investment in the case of excess stock found during carrying on business and the same is generated out of business income, no provisions of section 69B of the Act would attract. Further, the Jodhpur Benches of the Tribunal in the case of Shri Lovish Singhal (supra) held the excess stock/cash found during the course of survey is taxable under the business and no provision u/s. 115BBE of the Act is attracted. In the present case as discussed above without any dispute the assessee offered additional income under excess stock during the course of survey and same was entered in the books of account as on the last day of financial year ending on 31-03-2019 and offered the said amounts to tax under the business income. Therefore, in our opinion, the ratio laid down by the Hon'ble High Court of Rajasthan in the case of Bajargan Traders (supra) which was followed by the Jodhpur Benches of Tribunal is similar and identical to the issue in the present case. Therefore, the CIT(A) is not justified in confirming the order of AO in excluding the alleged additional income offered during the course of survey and attracting the provisions u/s. 69B of the Act, consequently, the charging u/s. 115BBE of the Act. Thus, the order of CIT(A) is set aside and the grounds raised by the assessee are allowed.

9. The ld. AR submits that the assessee is not interested to prosecute additional grounds. Hence, the same are dismissed as not pressed.

10. In the result, the appeal of assessee is allowed.

ITA Nos. 80 & 81/PUN/2023, A.Y. 2019-20

11. We find that the issues raised in the appeal and the facts in ITA Nos. 80 & 81/PUN/2023 are identical to ITA No. 79/PUN/2023 except the variance in amount. Since, the facts in ITA Nos. 80 & 81/PUN/2023 are similar to ITA No. 79/PUN/2023, the findings given by us while deciding the appeal of assessee in ITA No. 79/PUN/2023 would *mutatis mutandis* apply to ITA Nos. 80 & 81/PUN/2023, as well. Accordingly, both the appeals of assesseees are allowed.

12. To sum up, all the appeals of assesseees are allowed.

Order pronounced in the open court on 03rd August, 2023.

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

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd August, 2023.
रवि

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 DGIT (Inv.), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune