

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC" : PUNE

SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A.No.811/PUN./2023
Assessment Year 2010-2011

Rajasthan Stone Industries, Plot No.V-88, Opp. Hotel Nilambari, Near Kusumba Ajinta Road, MIDC Area, Jalgaon – 425 003 PAN AAHFR4251P	vs.	The Income Tax Officer, Ward - 1 (3), Jalgaon Maharashtra.
(Applicant)		(Respondent)

For Assessee :	-None-
For Revenue :	Smt. Sonal Sonkavde

Date of Hearing :	21.08.2023
Date of Pronouncement :	22.08.2023

ORDER

PER INTURI RAMA RAO, A.M. :

This assessee's appeal for assessment year 2010-11, arises against the CIT(A), Pune-11, Pune's Din and Order No. ITBA/APL/S/250/2023-24/1053002191(1), dated 19.05.2023, involving proceedings u/s. 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short "the Act").

2. Briefly the facts of the case are as under :

The assessee-appellant is a partnership firm duly constituted under the Indian Partnership Act, 1932, engaged in the business of cutting, polishing of various types of stones. The return of income for the assessment year 2010-11 was filed on 23.07.2010 declaring income of Rs.5,80,910/-.

Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 13.02.2013 passed u/sec.143(3) of the Act at a total income of Rs.6,16,210/- as against the returned income of Rs.5,80,910/-. Subsequently, the said assessment was set aside by the learned Pr. CIT-2, Nashik vide order passed u/sec.263 of the Act dated 09.03.2015 on the ground that the Assessing Officer had allowed excess remuneration to partners of Rs.1,69,777/- by considering the excess income of Rs.7,50,190/- declared by the assessee during the course of survey as business income. Consequent to the order of the learned Pr. CIT-2, Nashik, the Assessing Officer completed the assessment vide order dated 29.02.2016 disallowing the excess remuneration of Rs.1,69,777/- by treating the income declared during the course of survey proceedings as 'Income from other sources', rejecting the contention of the assessee-appellant that it is the business income of the firm credited to P & L A/c.

3. Being aggrieved by the above addition, the by the assessee-appellant filed an appeal before the Ld. CIT(A) contending, inter alia, that the excess income declared during the course of survey proceedings represent business income and there is no evidence on record to show that the additional income is not derived from business activity. However, the Ld.

CIT(A) placing reliance on the decision of Punjab & Haryana High Court in the case of Kim Pharma Pvt. Ltd. vs. CIT [2013] 216 Taxman 153 (P&H) and Madras High Court in the case of M/s. SVS Oils Mills vs. ACIT [2020] 113 taxmann.com 388 (Mad.), confirmed the action of the Assessing Officer.

4. Being aggrieved, the assessee-appellant filed the present appeal before the Tribunal. The appeal was called earlier on two occasions. However, none appeared for the assessee despite service of notice of hearing. I, therefore, proceed to decide the appeal on merits, after hearing the Learned DR.

5. The issue in the present appeal relates to the quantum of deduction allowable u/sec.40(b) in respect of the remuneration paid to the partners. There is no disparity between the return of income and assessed income. The bone contention between the assessee and the department is with regard to 'Head of income' under which the income declared during the course of survey proceedings to be assessed. It is the contention of the assessee-appellant that the excess income declared during the course of survey proceedings is credited to the P & L A/c as it is derived from business carried on by the assessee-appellant firm. Whereas the Assessing Officer was of the opinion that the excess income declared should be assessed under the head "Income from other

sources” which does not qualify for book profits as defined under the provisions of Sec.40(b) of the Act for the purpose of computing the quantum of allowable remuneration to the partners. The Assessing Officer failed to note that once the income is credited to the P & L A/c, the presumption is that income is derived from business only and there is no evidence on record by the Assessing Officer to show that the assessee-appellant firm had derived this excess income under the head other than the business carried on by the assessee-appellant. Further once the income is credited to P & L A/c, it cannot be said that the source of the excess income is unexplained. The decisions relied on by the learned CIT(A) viz., Hon’ble Punjab & Haryana High Court in the case of Kim Pharma Pvt. Ltd. vs. CIT [2013] 216 Taxman 153 (P&H) and Hon’ble Madras High Court in the case of M/s. SVS Oils Mills vs. ACIT [2020] 113 taxmann.com 388 (Mad.) have no application to the facts of the present case, inasmuch as, those cases are relates to ‘where no explanation as to the source of the excess stock was found and not shown in the P & L A/c. Whereas in the present case the excess income was credited to the P & L A/c and, therefore, it cannot be said that excess income is derived from income from other sources. For this proposition, I derive strength from the ratio of decision of Hon’ble Rajasthan High Court in the case of CIT vs. Bajargan Traders [2017] 86 taxmann.com 295 (Raj.) is squarely applicable to the facts of

the present case and, therefore, I am of the opinion that the excess income declared during the course of survey proceedings cannot be treated as unexplained income of the assessee-appellant since credited to P & L A/c and cannot be assessed as income from other sources, but, under income from business. I, therefore, set aside the order of the Ld. CIT(A) and allow the appeal of the assessee.

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

Order pronounced in the open Court on 22.08.2023.

Sd/-
[INTURI RAMA RAO]
ACCOUNTANT MEMBER

Pune, Dated 22nd August, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A), Pune-11, Pune
4.	The Pr. CIT-1, Nashik
5.	D.R. ITAT, Pune "SMC" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.