

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.461/PUN/2022
Assessment Year : 2012-13

Ramchandra Maruti Mohite, 17-3, Shiv Parvati, Nagala Park, Kolhapur – 416 003 Maharashtra PAN : ABGPM8695J	Vs.	ACIT, Central Circle, Kolhapur
Appellant		Respondent

Assessee by None
Revenue by Shri Ajay Kumar Kesari
Date of hearing 22-08-2023
Date of pronouncement 23-08-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dt. 09-03-2022 passed by the CIT(A), Pune-11 u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2012-13.

2. There is no appearance from the assessee despite numerous opportunities granted. As such, we are, proceeding to dispose of the appeal *ex parte* qua the assessee.

3. Ground No.1 is against not allowing set off of business loss amounting to Rs.58,19,713/-.

4. After hearing the ld. DR and perusing the relevant material on record, it appears that the Assessing Officer (AO) did not grant the set off of the loss against the addition of Rs.3.89 crore. The ld. CIT(A) directed the AO to verify the assessment record and allow the set off as per the provisions of the Act. Section 251(1) of the Act does not empower the CIT(A) to send the matter back to the AO for reconsideration. He can only confirm, reduce, enhance or annul the assessment. In the light of this statutory position, the impugned order, sending the matter back to the AO, cannot be countenanced. We, therefore, set aside the impugned order and direct the ld. CIT(A) to decide this issue himself. He is at liberty to call for any remand report from the AO in this regard, if warranted.

5. The only other ground is against the confirmation of addition of Rs.3.89 crore. Briefly stated, the facts of the case are that the assessee was subjected to search operation u/s.132 of the Act on 25-08-2011. During the course of search, the assessee surrendered a sum of Rs.3.89 crore to cover up the discrepancies in the seized papers etc. However, while filing the return, the said income was not offered for taxation. The AO made the addition, which came to be sustained in the appeal. Aggrieved thereby, the assessee has approached the Tribunal.

6. Having regard to the facts of the case, it is seen that the assessee himself made a surrender of Rs.3.89 crore during the course of search. In the statement recorded u/s.132(4), the assessee offered the amount in question: *“To cover up the discrepancies noticed in the sized papers, i.e. on account of excess/bogus claim of work expenditure etc.”* Statement u/s.132(4) has a binding force and can be treated as an evidence in the assessment proceedings. Since the assessee surrendered such an amount in his statement u/s.132(4) but did not include in the return of income, in our considered opinion, the Id. CIT(A) was justified in upholding the addition made on this score. We, therefore, countenance the impugned order on this score.

7. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 23rd August, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 23rd August, 2023
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT(Central), Pune
4. DR, ITAT, 'B' 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	22-08-2023	Sr.PS
2.	Draft placed before author	23-08-2023	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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