

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.395/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Anil Prabahkar Korgaonkar (HUF), 345, E Ward, Shahupuri, Kolhapur- 416003. PAN : AAEHK4407R	Vs.	ACIT, Central Circle- Kolhapur.
Appellant		Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Smt. Sonal Sonkavde

Date of hearing : 24.08.2023
Date of pronouncement : 30.08.2023

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)-11, Pune [‘the CIT(A)’] dated 20.02.2023 for the assessment year 2019-20.

2. Briefly, the facts of the case are that the appellant is a HUF and is engaged in the business of Hotel under the name and style of “Hotel Hill Top”. The Return of Income for the assessment year 2019-20 was filed on 19.02.2020 declaring total income of Rs.30,80,930/-. Against the said return of income, the assessment

was completed by the Asst. Commissioner of Income Tax, Central Circle, Kolhapur ('the Assessing Officer') vide order dated 23.09.2021 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') accepting the returned income. However, the Assessing Officer held that the income declared during the course of survey proceedings conducted on 21.10.2019 should be assessed to tax u/s 115BBE of the Act. The factual background of the case is as under:

During the course of survey proceedings conducted in the business premises of the appellant on 22.10.2019 certain incriminating documents were stated to have been impounded vide Bundle No.1 containing 79 pages. The said impounded documents revealed the cash receipts from the business of Hotel which were not accounted in the books of account, regularly maintained by the appellant. It is further revealed that during the previous year relevant to the assessment year 2019-20, a sum of Rs.13,46,586/- was not accounted in the books of account of HUF. When this information was confronted to the managing partner of the assessee, Shri Ashish Korgaokar, who is Karta of HUF, accepted that these are the business receipts and agreed to offer the tax and this amount was also credited to the Profit & Loss Account. However, the

Assessing Officer treated this money as unexplained income u/s 69 of the Act and also held that it should be assessed under the provisions of section 115BBE of the Act.

3. Being aggrieved by the action of the Assessing Officer, an appeal was filed before the ld. CIT(A), who vide impugned order, confirmed the action of the Assessing Officer placing reliance on 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) by holding that the appellant had declared the additional income on account of running business of Hotel.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The ld. AR contends that during the course of survey proceedings, the appellant offered the additional income under the head "business" and credited to the Profit & Loss Account and the same was assessed under the head "income from business". Having chosen to assess the additional income under the head "income from business", the Assessing Officer is barred to apply the provisions of section 115BBE of the Act.

6. On the other hand, ld. Sr. DR placing reliance on the order of the ld. CIT(A) submits that the order of the ld. CIT(A) is very well reasoned and requires no interference.

7. I heard the rival submissions and perused the material on record. The issue in the present appeal relates to the applicability of provisions of section 115BBE of the Act in respect of income declared during the course of survey proceedings and offered the tax in the return of income filed by the appellant. There is no dispute about the quantum of addition to be made nor was there any dispute regarding the head of income under which the same was to be assessed to tax. The dispute is only with regard to the applicability of the provisions of section 115BBE of the Act. Admittedly, the income offered, during the course of survey proceedings, was credited to the Profit & Loss Account and it was stated that the additional income is derived from the business of Hotel carried on by the appellant. Admittedly, the assessee had offered such additional income under the head "income from business" and the Assessing Officer also assessed the same under the head "income from business". Thus, it cannot be said that the source for additional income remains unexplained. Therefore, the provisions

of section 115BBE have no application to the facts of the present case. Thus, the grounds of appeal filed by the assessee stand allowed.

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

Order pronounced on this 30th day of August, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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