



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “ए” न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE ‘A’ BENCH, PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 788/PUN/2023

निर्धारण वर्ष / Assessment Year : 2017-18

Anil Govind Wable
6106, Sarjapura,
Ahmednagar – 414 001
PAN: AABPW5018K

..... अपीलार्थी / *Appellant*

बनाम / V/s

Dy. Commissioner of Income Tax,
Circle, Ahmednagar.

..... प्रत्यर्थी / *Respondent*

द्वारा / Appearances

Assessee by: Mr Prasad Bhandari & Ravindra Darekar

Revenue by: Mr Ramnath P Murkude

सुनवाई की तारीख / Date of conclusive Hearing : 27/09/2023

घोषणा की तारीख / Date of Pronouncement : 01/11/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal is directed against the order of Commissioner of Income Tax (Appeals)-11, Pune dt. 12/05/2023 passed u/s 250 of the Income-tax Act, 1961 [for short ‘the Act’], which ascended out of assessment order dt. 12/12/2019 passed u/s 143(3) by Dy. Commissioner of Income Tax, Circle, Ahmednagar [for short ‘AO’] for assessment year 2017-18 [for short ‘AY’].

2. The brief fact as borne out case records are that;

2.1 The assessee is a Civil Contractor, had filed his return of income for AY 2017-18 on 22/09/2017 declaring total income of ₹69,28,160/-. Immediately thereafter a survey action u/s 133A of the Act was conducted on the assessee



on 10/10/2017, wherein certain incriminating material was found and impounded by the Revenue. These incriminating documents contained details of cash expenses amounting to ₹94,25,200/- incurred by the assessee during the year under consideration. In a statement recorded during the course of survey, the assessee admitted the fact that these cash expense/payments were not routed through the books of accounts maintained by him and resultantly an additional income of ₹94,25,200/- representing the unaccounted cash expenditure was declared by the assessee.

2.2As per the assessment order, during the assessment proceedings, the assessee filed a revised Profit and Loss account and revised balance sheet wherein the said additional income of ₹94,25,000/- was incorporated. The assessee also paid self-assessment taxes of ₹24,05,600/- on such additional income. However, the assessee did not file any revised return. While completing the assessment, the Ld. AO held that such additional income of ₹94,25,200/- being out of books is taxable u/s 69C of the Act as the said income corresponds to unexplained cash expenditure. Accordingly, the total income of the assessee at ₹1,63,53,360/- by bringing to tax unexplained cash expenditure ₹94,25,200/- to the returned income and charged to tax u/s 115BBE of the Act.

2.3Aggrieved assessee assailed the aforesaid addition in an appeal before first appellate authority. The Ld. CIT(A), however did not inspire with the



submission of the appellant, thus came to dismiss the appeal confirming the addition and its taxability u/s 115BBE of the Act.

3. The appellant raised following grounds through the appeal memo:

1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that, the ld. AO has erred in taxing the additional income declared by the assessee in the course of survey as deemed income by wrongly applying the provisions of sec.69C of the Act. It further be held that the 1st appellate authority is not justified in confirming the action of the AO in this respect. Just and proper relief be granted to the appellant in this respect.

2. On the facts and circumstances prevailing in the case and in law the Respected CIT(A)-11, Pune grossly erred in confirming the addition made by ld. AO considering the URD purchases declared during the survey at Rs.17,06,500/- as Unaccounted Expenses whereas the same were already recorded in the regular books of account and payments thereof were made by account payee cheques. Thus the Ld. Assessing Officer erred in making addition of accounted expenses as unaccounted one. Hence, the said addition of Rs. 17,06,500 may please be deleted.

3. On the facts and circumstances prevailing in the case the ld. CIT(A) has erred in

i. holding that the declaration of additional income given in Survey action is being retracted by the assessee, when the assessee has nowhere made such claim &

ii. Not giving telescopic effect of closing stock declared in revised Trading, Profit & Loss A/c and Balance sheet for year ended on 31/03/2017, duly accepted by the AO.

4. On the facts and circumstances prevailing in the case and in law the respected CIT(A)-11, Pune erred in confirming the addition made by the ld. AO. The ld. AO has erred in not allowing opportunity of being heard before invoking the provisions of Sec. 69C of Act, on the basis of survey statement u/s 133A, thereby denying the principal of natural justice.

4. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing'

5. We heard rival contentions of both the parties and subject to the provisions of rule 18 of ITAT, Rules perused material placed on record, case laws relied upon and duly considered the facts of the case in light of settled legal position which are forewarned to learned representatives of both side.



6. The issue involved is that when there is a survey or search action wherein certain undisclosed income is found, under which head it is to be brought to tax and at what rate the tax should be charged. This issue has been discussed by various High Courts and Tribunals from time to time and depending on the facts of the case, it was decided as to whether such income was taxable as 'business income' or 'deemed income assessable u/s 68, 69 or 69A to 69D of the Act. It is apt to state here that, section 115BBE of the Act, was amended by Finance Act, 2016 w.e.f. AY 2017-18 now specifically levies tax on such unexplained items deemed as income at the aggregate of:

a) The amount of Income Tax calculated on the income referred to in sections 68, 69, 69A to 69D at the rate of 60 per cent (plus surcharge @ 25% on such tax and cess, as applicable). Thus, effectively the rate comes to 77.25 per cent if such income is reflected in the return of income furnished u/s 139 of the Act. It may be noted that if such income is not reflected in the return of income furnished u/s 139, then penalty of 10 per cent on tax payable u/s 115BBE shall be imposed u/s. 271AAC w.e.f. AY 2017-18. The amount of Income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in sections 68, 69, 69A to 69D of the Act. Moreover, no deduction in respect of any expenditure or allowance (or set off of any loss) shall be allowed to the assessee under any provision of the Income-tax Act in computing his income referred to in sections 68, 69, 69A to 69D of the Act.



7. The claim of the department in bringing unexplained cash expenditure of ₹94,25,200/- to tax is such that incriminating documents seized revealed that these cash expense were not recorded in the books of account and this fact was duly confirmed by the appellant on oath in a statement recorded. Displacing Revenue's version, the appellant without touching all the grounds raised in appeals claims that these cash expenses were part of computation and emanating out of book. The dispute over taxability would have rested if this factual aspect could have verified from audited books of account (if any) maintained by the assessee with that of incriminating material brought on record by the Revenue, which is a miss here. For the reason we deem it fit to remand the issue back to the file of Ld. CIT(A) with a direction to vouch the claim of the appellant and deal with the subject matter in accordance with applicable provisions of law and pass a speaking order in terms of section 250(6) of the Act. It would go without saying that, the appellant shall be given effective and reasonable opportunity to represent his case.

8. In result, the appeal of the assessee is allowed for statistical purpose.

U/r 34 of ITAT Rules, order pronounced in open court on this Wednesday 01st day of November, 2023.

-S/d-

SATBEER SINGH GODARA
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st day of November, 2023.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

4. The CIT, Concerned

5. DR, ITAT, Bench 'A', Pune

Ashwini

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A) -11, Pune (MH-India)

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.