

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

I.T.A.No.384/PUN./2023
Assessment Year 2019-2020

Shri Prakash Ramesh Wadhvani, 595, D-Ward, Bazar Gate, Kolhapur PIN – 416 002 Maharashtra. PAN AALPW8691A	vs.	The ACIT, Central Circle, Aayakar Bhawan, 31-C/2, E-Ward, Tarabai Park, Kolhapur – 416 003. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Sourabh Nayak, JCIT

Date of Hearing :	29.01.2024
Date of Pronouncement :	01.02.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2019-2020, arises against the CIT(A), Pune-11, Pune's Din and Order No. ITBA/APL/S/250/2022-23/1049460332(1), dated 06.02.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Cased called twice. None appears at assessee's behest. A perusal of instant case file reveals that today is the 17th opportunity of hearing to the assessee since he never appeared from 11.08.2023 on the nine opportunities. He is accordingly proceeded ex-parte.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“The learned CIT (A) erred on facts and in law in upholding the addition u/s 43B of the Act amounting to Rs.81,310 of late fees paid under the GST Laws. He failed to appreciate the facts as well as the legal precedents in the matter in its proper perspective. [Rs.25,125/-].*
2. *The learned CIT (A) erred on facts and in law in upholding the addition of Rs.51,49,500 u/s 69A of the Act of advances received in cash which were not accounted in the books of accounts without appreciating the fact that the assessee has added the same in his sales amount and offered to tax accordingly. He failed to appreciate the facts as well as the legal precedents in the matter in its proper perspective. [Rs.15,91,195/-]*
3. *The learned CIT (A) erred on facts and in law in upholding the addition of Rs.51,49,500 u/s 69A of the Act without appreciating the fact that no such cash was found during survey action which is a pre-requisite for addition u/s 69A of the Act. [Rs.16,16,320/-]*
4. *The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”*

3. Learned DR first of all took us to the former issue of disallowance of GST late fee amounting to Rs.81,310/-

wherein the assessee's bills as well as supporting challans etc. have nowhere been submitted till date for the necessary factual verification. The same factual position has continued before us as well in sec.254(1) second appellate hearings. Rejected accordingly.

4. Next comes the latter issue of sec.69A addition of Rs.51,49,500/- assessed u/sec.115BBE of the Act by the Assessing Officer in the impugned assessment dated 30.09.2021 as affirmed in the CIT(A)'s order vide following detailed discussion :

15. In the present case, the appellant is undertaking the trading of stationary items. It is an undisputed fact that during the survey operation, certain notebooks were found and impounded. These notebooks contain the details of amount received by the appellant. When confronted, the appellant stated that these are advances in cash against the orders and subsequently declared these unrecorded advances amounting to Rs. 51,49,500/- as additional income. The relevant portion of the statement dated 27.02.2019 is as under:

Q. In your statement recorded on 26.02.2019, you have stated that you would go through the receipt books impounded by the survey team and the same would be verified w.r.t. your books of accounts of M/s. Nitin Traders. Have you gone through the same?

Ans: Yes, I have gone through the same. I know there are some discrepancies in accounting.

Q.5I am showing you Annexure-A to order u/s 133A(3)(ia) of the I.T. Act, 1961, passed on 26.02.2019- Receipt books serially numbered as No. 1 to No. 3. Please go through the same and explain the entries recorded therein.

Ans. The said receipt books serially Numbered at No. 1 to No. 3 belong to my business M/s. Nitin Traders and the same contain the **details of advances** received of Rs. 51,49,500/- in cash against the order. The same amounts have not been recorded in my regular books of accounts. There are some mistakes crept in while recording books of accounts.

Q.6You have admitted that there are mistakes in recording correct sale receipt. Please comment.

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*Ans. As regards **unrecorded advances** of Rs. 51,49,500/-, I am unable to explain the same, therefore, I am voluntarily declaring Rs. 51,49,500/- as my additional income over and above my regular income for the A.Y. 2019-20. I also state that I will not claim any expenses against Rs. 51,49,500/- and I also promise to pay due advance tax thereon over and above my regular income for A.Y. 2019-20.*

16. The above reply clearly indicates that the impounded documents contain details of cash advances received by the appellant. Although the appellant stated that these cash advances are his business receipts against orders however he could not give the details of the persons from whom such advances were received. Neither the appellant could produce corresponding sale bills. Mere stating that the advances are related to business without producing any documentary evidence is not sufficient to explain that such advances are flowing from business operations. **The appellant never stated that these are unaccounted sales but his submission was that these are cash advances against orders.** As discussed earlier in this order, the onus of explaining the specific source from which such unexplained advances are flowing is on the assessee and not on the department. In the present case, the appellant has miserably failed to discharge the said onus. The contention of the appellant is that the unexplained cash advances, discovered during the survey operation, should be taxed as business income even without proving any nexus between his business and unaccounted cash advances. Acceptance of such contention may lead to a situation where a tax payer receiving cash advances having no connection with the business can subsequently claim that the same is taxable at normal rate, being his business income. This situation is clearly against the intentions of legislature wherein the legislature has mandated that such undisclosed income should be taxed at special rates provided u/s 115BBE of the Act. The appellant is required to prove the business connection between the cash advances and his business, which could not be done by the appellant.

17. The appellant has further claimed that such advances cannot be taxed as deemed income u/s 69A of the Act because no corresponding cash in physical form was found during the survey operation. A perusal of sec. 69A suggest that the finding of physical cash is not a mandatory condition under this section and the pre-requisite is that the assessee is found to be the owner of any money, bullion, jewellery or other valuable article. Since in the present case, the appellant has been found to be owner of unaccounted cash receipts which has been accepted by the appellant, therefore, it cannot be said that the

appellant is not the owner of money corresponding to cash advances recorded in the impounded documents. In the present case, the nature of additional income is not clearly explained during the survey nor during assessment proceedings and the appellant has not demonstrated that the said income is flowing from business, with the help of supporting evidences. Considering the totality of facts of the case, the action of the assessing officer of treating the income corresponding to unaccounted cash advances, as deemed income u/s 69A of the Act is upheld. The ground nos. 2 to 3 raised by the appellant are **DISMISSED**.

5. It has thus come on record that the assessee has not been able to prove the impugned advances' "genuineness" during the course of assessment as well as before the CIT(A) by filing the relevant supportive material. We accordingly see no reason to accept his instant second substantive ground as well.

6. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 01.02.2024.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 01st February, 2024

VBP/-

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1.	The applicant
2.	The respondent
3.	The NFAC, Delhi
4.	The CIT, concerned
5.	D.R. ITAT, Pune "SMC" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.