

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.1386/PUN./2023
Assessment Year 2017-2018

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| Mr. Rajendra Manilal Shah, Near Kanya Shala, Uttam Niwas, Islampur, Sangli. PIN – 415 409 PAN AVZPS0571Q Maharashtra. | vs. | Income Tax Officer, Ward-5, Aayakar Bhawan, Bhinge Bldg., Miraj Road, Opp. Z.P, Sangli – 416 416. Maharashtra. |
| (Appellant) | | (Respondent) |

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| For Assessee : | CA Narendra Joshi |
| For Revenue : | Shri Basavaraj Hiremath |

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| Date of Hearing : | 04.03.2024 |
| Date of Pronouncement : | 04.03.2024 |

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2017-18, arises against the CIT(A), Pune-11, Pune's Din and Order No.ITBA/APL/S/250/2023-24/1056327738(1), dated 20.09.2023, involving proceedings u/s.144 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

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

1. *"The Ld. CIT appeals erred in confirming profit of 8% of the gross receipt based on section 44AD of the Act without appreciating the fact that the based on the actual accounting*

records the appellant has profit margin of 1% to 2.5% on the gross turnover.

- 2. The Ld CIT appeal failed to appreciate that the assessee has not opted for section 44AD which is presumptive tax scheme upto Rs.2 Crore of turnover and considered profit percentage prescribed under that section while confirming the addition made by the AO.*
- 3. The Ld CIT appeal failed to take note of the assessment order passed in the case of the assessee for the subsequent year wherein the lower profit percentage has been accepted by the AO without any change in the business activities of the assessee.*
- 4. The Ld CIT appeal erred in confirming addition of Rs.15,14,500 made by the AO under section 69A without appreciating the fact that the assessee has been regularly depositing cash in the bank account and deposit during the demonetization was not an exceptional event considering the nature of business activities of the assessee.*
- 5. The assessee craves his right to add, amend, edit, alter or delete any or all of the grounds of appeal.”*

3. It is clear at the outset that the assessee's first and foremost substantive grievance challenges both the learned lower authorities action assessing his G.P. @ 8% u/sec.44Ad of the Act. Learned counsel's sole substantive argument during the course of hearing is that the assessee had been admittedly assessed at much

lesser rates ranging between 1.5% to 2% in preceding assessment year(s). This clinching fact has gone un-rebutted from the department side. The assessee has further quoted earlier years assessment orders as well during the course of hearing. The fact however remains that all this material has not been filed along with the necessary details. Faced with the situation, I partly accept the assessee's contentions and direct the learned Assessing Officer to frame afresh computation of assessee's G.P. @ 2.5% in these peculiar facts and circumstances. The assessee partly succeeds in his first substantive grievance in very terms. Ordered accordingly.

4. Next comes the assessee's second substantive grievance challenges sec.69A addition of Rs.15,14,500/- representing cash deposits during demonetization. His case during the course of hearing is that both the learned lower authorities have wrongly excluded the same from his business turnover. Learned counsel could hardly dispute that the clinching reconciliation to this effect has not been properly filed. Faced with the situation, he undertook to plead and prove the impugned reconciliation of the assessee's business turnover vis-à-vis cash deposits during demonetization, if afforded one more effective opportunity. I, therefore, deem it appropriate in these facts and circumstances to restore the instant fourth substantive ground back to the Assessing Officer for his afresh consequential adjudication in very terms. It is made clear that the assessee shall only be liable to plead and prove all the necessary facts at his own risk and responsibility before the

Assessing Officer in consequential proceedings. This fourth substantive grievance of the assessee is allowed for statistical purposes in above terms. Ordered accordingly.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open Court on 04.03.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 04th March, 2024

VBP/-

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

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.