

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.223/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Suresh Bhavarlal Soni, Deepak Jewellers, 1712, Tar Galli, Saraf Bazar, Dhule 424 001 Maharashtra PAN : ABLPS6763N	Vs.	ACIT, Dhule Circle, Dhule
Appellant		Respondent

Assessee by : Ms. Shikha Paswal  
Revenue by : Shri Arvind Desai

Date of hearing : 18.04.2024  
Date of pronouncement : 18.04.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of the CIT(A), Pune-11 dated 25.01.2024 for the assessment year 2017-18.

2. Brief facts of the case are that the appellant is an individual carrying on the business of purchase and sale of Gold under the name and style 'Deepak Jewellers'. Return of income for the A.Y. 2017-18 was filed on 25.10.2017 declaring income of Rs.47,39,800/-. Against the said return of income, the assessment

was completed by the Assessing Officer (AO) vide order dated 06.12.2019 passed u/s.143(3) of the Act accepting the returned income. While doing so, the AO applied higher rate of tax under the provisions of section 115BBE in respect of income offered to tax amounting to Rs.21,04,734/- during the course of survey operations conducted on 30.08.2016. The income so offered to tax by the appellant was also credited to the profit and loss account.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide impugned order confirmed the action of the AO placing reliance on the following judgments :

1. Fakir Mohmed Haji Hasan Vs. CIT 120 taxman 11 (Gujarat)
2. Kim Pharma Pvt. Ltd. Vs. CIT (2013 216 taxmann 153 (P&H)
3. M/s. SVS Oil Mills Vs.ACIT (2020) 113 taxmann.com 388 (Madras)

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

5. Heard the rival submissions and perused the relevant material on record. The solitary issue that arises for my consideration is whether the AO was justified in invoking the provisions of section 115BBE where the appellant had accepted the excess income

during the course of survey operations and offered the same to tax and credited to the profit and loss account. I find the Coordinate Bench of the Tribunal in *Rajasthan Store Industries Vs. ITO dt. 22.08.2023* had an occasion to adjudicate an identical issue in favour of the appellant, copy placed at page 394 to 398 of the paper book. The operative portion of the decision is reproduced below :

“5. ....  
 .... Whereas in the present case the excess income was credited to the P & L A/c and, therefore, it cannot be said that excess income is derived from income from other sources. For this proposition, I derive strength from the ratio of decision of Hon’ble Rajasthan High Court in the case of CIT vs. Bajargan Traders [2017] 86 taxmann.com 295 (Raj.) is squarely applicable to the facts of the present case and, therefore, I am of the opinion that the excess income declared during the course of survey proceedings cannot be treated as unexplained income of the assessee-appellant since credited to P & L A/c and cannot be assessed as income from other sources, but, under income from business. I, therefore, set aside the order of the Ld. CIT(A) and allow the appeal of the assessee.”

6. Following the same parity of reasoning, the grounds raised by the appellant are allowed.
7. In the result, the appeal of the appellant is allowed.

Order pronounced on this 18<sup>th</sup> day of April, 2024.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> April, 2024.  
*Satish*

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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