

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.596/PUN/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Abdullaziz Jaan Mohammad Ansari, Plot No. 23, Vadjai Road, Gafoor Nagar, Dhule-424001 PAN : AFZPA5959E	Vs.	Income Tax Officer, Ward – 1, Dhule
Appellant		Respondent

Assessee by : Shri Rohit Tapadia
Revenue by : Shri Manoj Tripathi

Date of hearing : 01.05.2024
Date of pronouncement : 02.05.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 30.01.2024 for the assessment year 2011-12.

2. Briefly, the facts of the case are that the appellant is an individual engaged in the business of trading in livestock under the name and style of "M/s. Aziz Trading". The Return of Income for

the assessment year 2011-12 was filed on 22.07.2011 offering the income to tax on presumptive basis u/s. 44AD by estimating income at 8% disclosing a total turnover of Rs.24,35,680/-. Subsequently, an information received from the AIR, wherein, the Venky's Group made sales of Rs.5,13,05,561/-to the appellant during the F.Y. 2010-11 relevant to the A.Y. 2011, therefore, AO formed an opinion that the income of escaped assessment of tax, accordingly, issued notice u/s. 148 of the Act on 28.03.2018. In response to the said notice, the appellant filed return of income on 30.04.2018 by declaring business turnover of Rs.5,29,64,715/- offered an amount of Rs.5,54,179/- only. Against the said return of income, the assessment was completed by the the Assessing Officer vide order dated 21.12.2018 passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 ('the Act') by assessing total income at 8% of turnover on undisclosed cash purchases.

3. Being aggrieved by the above, an appeal was filed before the NFAC, contending that the percentage of profit adopted by the AO is unreasonable excessive and not based on any evidence. During the course of proceedings before the CIT(A), the assessee had cited following comparables i.e. Aziz Trading Dhule, M S Traders, Naeem Ahmed Abdul Shakoor Quraishi, Indian Boiler Trading

Company, Mohammad Farrooque Abdul Aziz Ansari and Dhulia Golden Trading Co Dhule, wherein, the profit disclosed is only 1% of the turnover. However, the CIT(A) without dealing with the comparables relied upon by the appellant had partly allowed the appeal, by directing the AO to estimate the income at 5% of the turnover.

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

5. The ld. AR also filed additional ground of appeal which reads as under :

“The order passed u/s. 148 be declared as null and void as the notice u/s. 148 was served o the assessee after time limit prescribed in the IT Act.

The above is purely legal Ground & First time Raised before Hon. Income Tax Appellate Authority. The necessary facts for adjudication of this ground are already in the Assessment Order itself and therefore, does not require any further factual support.”

6. The ld. AR further submits that the CIT(A) without adverting to comparables relied upon by the assessee has disposed of the appeal.

7. On the other hand ld. DR supports the order of CIT(A).

8. We heard both the parties and perused the material on record. First we shall take up the additional ground of appeal which goes to the very root of the matter. The appellant had assailed the assessment order vide this additional ground of appeal on the ground that the assessment order is bad in law as the notice u/s. 148 of the Act was served upon the appellant beyond the period prescribed under the statute. We do not find any merit in the additional ground of appeal as the provisions of section 148 of the Act, only requires to issue notice u/s. 148 within the prescribed period of limitation and even the service of notice u/s. 148 can be made beyond the period of limitation, the assessment order is not vitiated. Thus, the additional ground of appeal stands dismissed.

9. As regards merits of the appeal, we have carefully gone through the order of CIT(A), wherein the ld. CIT(A) without adverting to the comparables, who are in the same line of business had disposed of the appeal by directing the AO to 5% of the turnover as profit. The approach adopted by the CIT(A) is subjective and cannot be appreciated in the eye of law, therefore, the order of CIT(A) is being set aside direct the CIT(A) to deal with the submissions of the assessee and dispose of the appeal in accordance with law.

10. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced on this 2nd day of May, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 2nd May, 2024.

Ravi

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.