



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI SATBEER SINGH GODARA,
JUDICIAL MEMBER AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.624/PUN/2024
निर्धारणवर्ष / Assessment Year : 2019-20

The Dy.Commissioner of Income Tax, Central Circle- 1, Aurangabad.	V s	Shri Tulshiram VithalraoKoyale, Prop. Pramod T.Koyale, Saraf Lane, Latur – 413512 PAN: AMUPK0755A
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Shubham Rathi – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT(DR)
Date of hearing	31/07/2024
Date of pronouncement	31/07/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by Revenue against the order of
ld.Commissioner of Income Tax(Appeal), Pune-12 passed under
section 250 of the Income tax Act, dated 29.01.2024 for the
A.Y.2019-20. The assessee has raised the following grounds of
appeal :

*"1. Whether on the facts and in the circumstances o! the case, the
Ld.CIT(A) has erred in law and in facts by deleting the tax calculated on
special rates as per provisions of section 69B r.w.s. 115BBE of the IT.*



Act on declaration made of Rs.2,98,56,142/- on account of excess stock found.

2. Whether on the facts and in the circumstances of the case and in law. the Ld.CIT (A) has erred in law and in facts by not appreciating the facts that the main reason for excess stock found was because of unrecorded purchases.

3. Whether on the facts and in the circumstances of the case and in law. the Ld. CIT (A) has erred in law and in facts by not appreciating the facts that the assessee has failed to explain the nature and source of income utilize for unrecorded purchases which resulted into excess stock found and failed to produce supporting purchase bill or other relevant documentary evidences.

4. The appellant craves leave to add. alter, modify. delete, and amend any of the grounds, as per the circumstances of the cases.”

2. We have heard both the parties and perused the records.

Findings & Analysis :

3. Assessee is a Trader, trading in Gold and Silver Ornaments. There was a survey u/sec.133A of the Act on 21.01.2019 i.e. before the closure of books of accounts for F.Y.2018-19. The survey team observed that there was excess stock of Rs.2,98,56,142/-, based on the tentative trading account prepared during the survey. The assessee during the survey submitted that excess stock is on account of URD Purchases which remained to entered in the books. Assessee also submitted that assessee is into only one business activity i.e. Trading of gold and silver ornaments.



3.1 After the survey, assessee filed Return of Income for A.Y.2019-20 on 24.08.2019 declaring total income at Rs.3,23,26,520/- u/sec.139(1) of the Act. Assessee's case was selected for scrutiny. The Assessing Officer(AO) accepted returned income and held assessed income at Rs.3,23,26,520/-. The AO held that excess stock needs to be taxed u/sec.69B r.w.s 115BBE of the Act. Aggrieved by the same, assessee filed appeal before the Id.CIT(A). Ld.CIT(A) gave a categorical finding in para 3.14 and 3.15 that the excess stock was assessee's business stock and it was out of assessee's business income. Revenue has not brought on record any evidence to rebut the findings of the Id.CIT(A). In this case, it is an admitted position that AO has accepted returned income. The AO has also accepted books of accounts and Audit Report. The assessee had show excess stock in the Trading Account. This fact has not been challenged by the AO.

4. The Hon'ble Rajasthan High Court in the case of PCIT Vs. Bajrang Traders in D.B. Income Tax Appeal No.258 of 2017 dated 12.09.2017 has upheld the order of ITAT on identical facts of



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excess stock found during the survey. Therefore, in these facts and circumstances of the case, we agree with the Id.CIT(A) that the stock found cannot be taxed as deemed income u/sec.69B of the Act. Therefore, provisions of section 115BBE are not applicable. Accordingly, grounds of appeal raised by the Revenue are dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 31st July, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31st July, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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