

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

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

आयकर अपील सं. / ITA No.423/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

Madan Gangadhar Bidarkar, 111/85, Jaylaxmi Electricals, Gandhi Maidan, Latur, Dist. Latur-413512 Maharashtra PAN : AHSPB1369E	Vs.	ACIT, Central Circle-1, Aurangabad.
Appellant		Respondent

Assessee by : Shri Prateek Jha
Revenue by : Shri Ramnath P. Murkude

Date of hearing : 09.07.2024
Date of pronouncement : 20.09.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-12, Pune ['the CIT(A)'] dated 08.02.2024 passed u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant is an individual and proprietor of M/s. Jailaxmi Electricals. He is engaged in the

business of Electrical items on Retail and Wholesale basis. The Return of Income for the A.Y.2018-19 was filed by the appellant on 16.10.2018 disclosing total income of Rs.83,74,490/-. Return was processed u/s.143(1) of the Act. A survey action u/s.133A of the Act was carried out in the business premises of the appellant on 04.10.2017 during which books of accounts and other documents were impounded. The case was selected for Scrutiny under the Manual Selection guidelines. Statutory notices u/s.143(2)/142(1) of the Act were issued to the appellant on 21.09.2019. In compliance, the appellant furnished his submissions. Statement of the appellant was recorded u/s.131 of the Act. Based on the submissions made by the appellant, the AO noticed that out of total declaration an amount of Rs.42,65,315/- was declared on account of excess stock. The appellant was called upon to explain as to why the excess stock found unrecorded in the books of account should not be treated as deemed income u/s.69B of the Act and accordingly taxed u/s.115BBE of the Act. The appellant tendered his explanation. Not convinced with the explanation so tendered, the AO vide order dated 27.09.2021 passed u/s.143(3) of the Act invoking the provisions of section 68B brought to tax the excess stock amount of Rs.42,65,315/-.

3. Like-wise, the AO also made the following additions :

- (a) Rs.9,97,696/- on account of excess cash found during the survey action invoking the provisions of section 69A of the Act.
- (b) Rs.21,00,000/- on account of unexplained amount (loans and advances) found during the survey action invoking the provisions of section 69 of the Act.
- (c) Rs.6,37,000/- on account of unexplained expenses invoking the provisions of section 69C of the Act.

4. Being aggrieved by the above additions, an appeal was filed before the CIT(A) who vide impugned order gave part relief to the appellant on the additions detailed in preceding para No.3. However, the CIT(A) had affirmed the view point of the Assessing Officer in respect of the addition made by the Assessing Officer on account of excess stock found during the survey action invoking the provisions of section 69B of the Act.

5. Being aggrieved, the appellant is in appeal contesting the addition made on account of excess stock found during the survey action u/s.69B r.w.s.115BBE of the Act.

6. We heard the rival submissions and perused the material on record. The solitary issue in the extant appeal relates to the applicability of provisions of section 115BBE of the Act in respect of income declared during the course of survey proceedings and offered to tax in the return of income. There is no dispute about the amount of addition to be made nor was there any dispute regarding the head of income under which the same was assessed to tax. The dispute is only with regard to the applicability of provisions of section 115BBE of the Act. Admittedly, the excess stock found during the course of survey was offered for taxation as additional income. Therefore, the amount representing excess stock is certainly undisclosed business income and cannot be termed as unexplained investment. Therefore, the presumption is to be drawn that the additional income was derived from the business. Thus, it cannot be said that the source for the additional income remain unexplained and, therefore, the provisions of section 115BBE have no application to the present case. The ratio of the

decision of the Hon'ble Rajasthan High Court in the case of *CIT vs. Bajargan Traders (2017) 86 taxmann.com 295 (Rajasthan)* is squarely applicable to the facts of the present case. The reliance placed by the Id. CIT(A) on the decision of the Hon'ble Madras High Court in the case of *M/s. SVS Oils Mills Vs. ACIT (2020) 113 taxmann.com 388 (Madras)* and have no application to the facts of the present case, inasmuch as, in the said case, no explanation as to the source of excess stock was offered, whereas, in the present case, it is undisputed fact that the additional income was derived from business. The other judicial precedents relied on by the Id. CIT(A) are distinguishable and not applicable to the facts of the present case. Therefore, the orders of the Assessing Officer as well as the Id. CIT(A) are reversed and direct the Assessing Officer not to tax the additional income under the provisions of section 115BBE of the Act. The Assessing Officer shall tax the additional income under the normal rate of income tax. Accordingly, the grounds of appeal filed by the assessee stand allowed.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 20th day of September, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th September, 2024.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT (Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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