

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

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

आयकर अपील सं. / ITA No.626/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

DCIT, Central Circle-1, Aurangabad.	Vs.	Shri Satya Saibaba Construction, Mane Chambers, Opp. S.T. Depot, Ausaa Road, Latur – 413511, Maharashtra PAN : AARFS1699A
Appellant		Respondent

Assessee by : Shri Kishor B. Phadke

Revenue by : Shri Arvind Desai

Date of hearing : 23.09.2024

Date of pronouncement : 23.09.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)-12, Pune [‘the CIT(A)’] dated 03.01.2024 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 respondent-assessee is a Partnership firm engaged in the business of execution of Govt. Civil Contracts under the name and style M/s. Shri Satya Saibaba Construction. The Return of Income for the A.Y. 2018-19 was filed on

22.10.2018 declaring total income of Rs.10,86,33,236/-. Against the said return of income, the assessment was completed by the Assessing Officer (AO) 27.09.2021 passed u/s.143(3) of the Act accepting the returned income. However, he taxed a sum of Rs.2,99,35,925/- shown as part of the returned income, being excess stock declared during the course of survey proceedings u/s.133A under the provisions of section 69B r.w.s.115BBE of the Act.

3. Aggrieved by the above assessment order, the respondent-assessee filed an appeal before the CIT(A), who vide impugned order held that the additional income of Rs.2,99,35,925/- offered during the course of survey proceedings u/s.133A cannot be taxed as deemed income u/s.69B as the same was clearly identifiable with the business activity of the assessee company and should be brought to tax under the head “Business Income”, not under the head ‘Income from Other Sources’. The CIT(A) further held that 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)* was applicable. The CIT(A) also followed various decisions passed by Coordinate benches of this Tribunal which are listed in para 3.17 of the impugned order, accordingly held that the provisions of section 115BBE cannot be applied. Thus, he allowed the appeal of the respondent-assessee.

4. Being aggrieved by the decision of the CIT(A), the Revenue is in appeal before the Tribunal in the present appeal challenging the correctness of the order. The ld. Sr. DR submitted that the CIT(A) had failed to appreciate the reasons for excess stock which was because of

unrecorded purchases and respondent-assessee's failure to explain the nature and source of income for the unrecorded purchases.

5. On the other hand, the Id. AR for the respondent-assessee relied on the order of the CIT(A) and submitted that the order of the CIT(A) is in consonance with the settled position of law, therefore, no interference by this Tribunal is called for.

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 order of the CIT(A) is based on proper appreciation of facts and law. Further from mere

perusal of the assessment order, it would reveal that the addition was not based made for unexplained expenditure u/s.69C of the Act. Therefore, the contention of the Department that the respondent-assessee had failed to explain the nature and source of income cannot be accepted, accordingly the grounds of appeal filed by the Revenue stand dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 23rd day of September, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd 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, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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