

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.980/PUN/2024

निर्धारण वर्ष / Assessment Years : 2019-20

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|---|-----|-----------------|
| Lakshmibai Chandrakant Vaijapure,<br>Vaijapure Niwas, Parshetty Galli,<br>Deglur Road, Udgir – 413 517<br>Maharashtra<br>PAN : AGAPV8855C | Vs. | PCIT, Nashik -1 |
| Appellant   |     | Respondent      |

आयकर अपील सं. / ITA No.982/PUN/2024

निर्धारण वर्ष / Assessment Years : 2019-20

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|--|-----|-----------------|
| Chandrakant Ganpati Vaijapure,<br>Vaijapure Niwas, Parshetty Galli,<br>Deglur Road, Udgir – 413 517<br>Maharashtra<br>PAN : AAOPV4787H | Vs. | PCIT, Nashik -1 |
| Appellant  |     | Respondent      |

Assessee by : None  
Revenue by : Shri Amol Khairnar  
Date of hearing : 30.09.2024  
Date of pronouncement : 30.09.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the two appeals filed by the different Assesseees but involving identical facts and issues, directed against the separate orders of the Id.PCIT, Nashik-1 dated 22.03.2024 passed u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the Assessment Year 2019-20.

2. Identical grounds have been taken by the assesseees in these appeals. Therefore, we proceed to dispose of these appeals by the consolidated order for the sake of convenience.

3. Brief facts of the case relating to appeal ITA No.980/PUN/2024 are stated herein :

The appellant is an individual engaged in the business of Trading in unprocessed foodgrains under the name and style "M/s. Megha Trading Company". The Return of Income for the A.Y. 2019-20 was filed on 28.11.2019 declaring total income of Rs.95,25,020/-. Based on the survey operations conducted u/s.133A of the Act in the business premises of the appellant on 26.03.2019, the appellant declared Rs.83,11,440/- on account of excess stock and Rs.6,89,200/- on account of excess cash and the same was offered to tax by crediting the same to the profit and loss account. The Assessing Officer (AO) vide order dated 23.09.2021 passed u/s.143(3) accepted the returned income.

Subsequently, on perusal of the assessment record, the Id. PCIT formed an opinion that the assessment order is erroneous and prejudicial to the interest of the Revenue, as according to the Id. PCIT, the AO had failed to tax the said income u/s.69, 69A invoking the provisions of section 115BBE of the Act. Accordingly, a show cause notice u/s.263 was issued to the appellant on 12.01.2024. In response, the appellant filed his written submissions. However, the Id. PCIT rejecting the submissions of the appellant, that the provisions of section 69, 69A r.w.s.115BBE have no application to the facts of the case, set-aside the assessment order and directed the AO to frame the assessment afresh after affording an opportunity of hearing to the appellant, in exercise of powers vested u/s.263 of the Act.

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

5. When the matter was called on, none appeared on behalf of the assessee despite due service of notice of hearing. We therefore proceed to dispose of the appeal after hearing the Id. Departmental Representative.

6. We heard the Id. Sr.DR and perused the material on record. The issue in the present appeal relates to the validity of the revision exercised by the Id. PCIT u/s 263 of the Act. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s.263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT*, 243 ITR 83 (SC) and in the case of *CIT vs. Max India Ltd.*, 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or not a plausible view. In a case where the Assessing Officer examined the claim, took one of the plausible view, the assessment order cannot be termed as an "erroneous". Adverting to the facts of the present, case, admittedly, the excess stock and excess cash found during the course of survey was offered to taxation as additional income and credited to the profit and loss account. Therefore, the amount representing excess stock/excess cash is certainly disclosed 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 to 69 or 69A and 115BBE of the Act have no application to the present case. It is nothing but 'business income' as held

by the Hon'ble Rajasthan High Court in the case of *CIT vs. Bajargan Traders (2017) 86 taxmann.com 295 (Rajasthan)*. We have been taking a consistent view that such income cannot be taxed as unexplained money/unexplained investment invoking the provisions of section 69 of the Act. In the circumstances, the assessment order cannot be said to be erroneous. The Id. PCIT ought not to have exercised the jurisdiction u/s.263 of the Act as the satisfaction of twin conditions, being the assessment order is erroneous and prejudicial to the interest of the Revenue does not stand satisfied in the present case. Therefore, the order of revision passed by the Id. PCIT is hereby quashed and the appeal filed by the appellant stands allowed.

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

**ITA No.982/PUN/2024 :**

8. We find the facts in ITA No.982/PUN/2024 are identical to the facts in ITA No.980/PUN/2024. Therefore, the finding given in ITA No.980/PUN/2024 will apply *mutatis mutandis* for this appeal as well.

9. To sum up, both the appeals filed by the respective assesses are allowed.

Order pronounced on this 30<sup>th</sup> day of September, 2024.

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

sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Pune / Dated : 30<sup>th</sup> September, 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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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