

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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1873/PUN/2024  
निर्धारण वर्ष / Assessment Year: 2018-19

Mr. Anil Govind Wable, 6106, Sarjepura, Ahmednagar, Ahmednagar- 414001. PAN : AABPW5018K	Vs.	ACIT, Central Circle-1(2), Pune.
Appellant		Respondent

Assessee by : Shri Ravindra S. Darekar &  
Shri Prasad S. Bhandari  
Revenue by : Shri Ramnath P. Murkunde  
Date of hearing : 16.12.2024  
Date of pronouncement : 30.12.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 11.07.2024 passed by Ld. CIT(A)-11, Pune ['CIT(A)'] for the assessment year 2018-19.

2. The appellant has raised the following grounds of appeal :-

"1. *In view of the facts and circumstances of the case and in Law the Respected CIT(A), Pune-11 erred in confirming the action of ld. AO in invoking the provisions of Sec. 115BBE for the*

*following disclosure made in Survey u/s 133A and duly incorporated in the ITR filed u/s 139(1) as business income.*

- i. Excess Cash found at Rs.4,70,000/-*
- ii. Excess stock found at Rs.97,03,666/-*
- iii. Cash payment at Rs.23,94,900/-*

*Hence, the above income declared during the Survey may please be taxed at normal rate of tax treating the same as business income.*

- 2. In view of the facts and circumstances of the case and in Law the Respected CIT(A), Pune-11 erred in confirming the action of ld. AO by not allowing the telescopic effect to the opening stock of the year under consideration which was declared & year under which assessed as Closing Stock in the AY 2017- 18, while considering the closing stock of the year under consideration. Hence, the telescopic effect of opening stock of Rs.63,06,500/- which was declared in the AY 2017-18 as Closing Stock may please be given in the year under consideration.*
- 3. In view of the facts and circumstances of the case and in Law the Respected CIT(A), Pune-11 erred in confirming the action of ld. AO without appreciating submission made by the assessee during the course of assessment proceedings. Hence, the income declared during the Survey may please be taxed at normal rate of tax treating the same as business income.*
- 4. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.*

3. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of civil contractor-ship. The assessee has e-filed his return of income on 27.09.2018 declaring total income of Rs.2,15,60,970/-. A survey action u/s 133A of the IT Act was carried out in the case of the assessee on 10.10.2017. In his statement recorded at the time of survey, the

assessee accepted to declare an additional income of Rs.1,30,74,800/-. Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued respectively. During the course of assessment proceedings, it was found by the Assessing Officer that the assessee has incorporated the disclosure of Rs.1,30,74,800/- made during the survey, in his return of income. The Assessing Officer completed the assessment and accepted the income returned by the assessee but applied special rate of tax u/s 115BBE of the IT Act, since the additional income declared under various heads during the course of survey was assessed u/s 69A, 69B and 69C of the IT Act.

4. Since the assessee remained absent, Ld. CIT(A) dismissed the appeal of the assessee, after discussing the merits of the case.

5. Ld. AR appearing from the side of the assessee submitted before us that the *ex-parte* order passed by Ld. CIT(A) is unjustified. It was further submitted by Ld. AR that the assessee is a senior citizen of more than 70 years of age and is suffering from various ailments since last many days, he is not well aware with technology, therefore, could not see the notices issued by Ld.

CIT(A) since the same were sent to e-mail ID of the erstwhile counsel of the assessee i.e. rutwick9123@gamil.com, who failed to inform about the hearing notices to the assessee. When the assessee came to know about the *ex-parte* order passed by Ld. CIT(A), he approached another counsel and requested to file appeal against the impugned *ex-parte* order. Ld. AR requested before the Bench that if one opportunity is provided to the assessee he will submit documents/evidence and submission in support of grounds of appeal. Accordingly, the prayer was made to provide one opportunity to appear before Ld. CIT(A).

6. Ld. DR appearing from the side of the Revenue supported the orders passed by the subordinate authorities and requested to confirm the same.

7. We have heard Ld. Counsels from both the sides and perused the material available on record. We find that Ld. CIT(A) has decided the appeal *ex-parte*, however, merits of the case were discussed by him in the appellate order. It is the contention of Ld. Counsel of the assessee that the assessee is a senior citizen and not well aware with technology and the e-mail belongs to the erstwhile

consultant who also could not see the notices of hearing issued by Ld. CIT(A). The sole prayer of Ld. AR of the assessee is to set-aside the *ex-parte* order passed by Ld. CIT(A) and to provide one opportunity to appear before Ld. CIT(A) so that he can substantiate his case. Under the above facts & circumstances of the case, we find force in the arguments of Ld. Counsel of the assessee that proper representation could not be made before Ld. CIT(A), which resulted in unfortunate *ex-parte* order. Therefore, considering the totality of the facts of the case & in the interest of justice, we deem it appropriate to set-aside the *ex-parte* order passed by Ld. CIT(A) and remand the matter back to him with a direction to decide the appeal afresh as per fact and law after providing reasonable opportunity of hearing to the assessee. The assessee is hereby also directed to respond to the notices issued by Ld. CIT(A) in this regard and produce requisite documents/evidences in support of grounds of appeal without taking any adjournment under any pretext, otherwise Ld. CIT(A) shall be at liberty to pass appropriate order as per law. Thus, the

grounds of appeal raised by the assessee in this appeal are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-  
**(R. K. PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> December, 2024.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT/CIT concerned.
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.