

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGARAO, JUDICIAL MEMBER

SMC MATTER

ITA no.129 to 132/Nag./2024
(Assessment Year : 2002-03 to 2005-06)

Bhagirath Murarka
Opp. City Post Office
Itwari, Nagpur 440 002
PAN – ACHPM5823G

..... Appellant

v/s

Income Tax Officer
Ward-3(4), Nagpur

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 07/01/2024

Date of Order – 27/01/2025

ORDER

These appeals by the assessee are emanating from the impugned orders of even date 12/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2002-03, 2003-04, 2004-05 and 2005-06 respectively.

2. The appeals before me are in the second round of appeals.
3. In its appeals, the assessee has raised common issue which relates to addition of ₹ 10,80,342 made in A.Y. 2002-03, addition of ₹ 15,97,790, made

in A.Y. 2003-04, ₹ 29,86,604, made in A.Y. 2004-05 and ₹ 15,05,000, made in A.Y. 2005-06 by the Assessing Officer on account of peak of cash credit in the bank account of M/s. Madhuri Fuel Industries, which were confirmed by the learned CIT(A).

4. Since all these four appeal pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. I am, accordingly, narrating the facts, as they appear in the appeal in ITA no.129/Nag./2024, for the assessment year 2002-03, the decision of which shall mutatis mutandis apply to other appeals as well.

ITA No.129/Nag./2024
Assessee's Appeal – A.Y. 2002-03

5. In this case, the assessee filed its return of income under section 139 of the Act declaring total income of ₹ 60,191. Statutory notices were issued by the Assessing Officer under section 148 of the Act in response to which the assessee furnished copy of return of income filed under section 139 of the Act. Thereafter, the Assessing Officer completed the assessment by determining total income of ₹ 48,58,050, by making addition of ₹ ₹ 10,80,342, on account of peak of cash credit in the bank account of M/s. Madhuri Fuel Industries. The assessee being aggrieved by the assessment order passed by the Assessing Officer, filed appeal before the learned CIT(A), who reduced the amount of addition made and assessed the total income at ₹

12,86,722. The assessee being once again aggrieved, filed appeal before the Tribunal and the Tribunal, in turn, restored the matter to the file of the Assessing Officer for denovo adjudication. The Assessing Officer, in compliance to the order of the Tribunal, passed assessment order treating the assessee as the real owner of M/s. Madhuri Fuel Industries and assessed the total income of ₹ 12,86,722, and taxed as per law in the hands of the assessee Shri Bhagirath Murarka. The assessee being once again aggrieved is in further appeal before the Tribunal.

6. When the case was called for hearing neither the assessee nor anyone of his authorised representative appeared before us to assist the Bench in disposing off the appeal filed by the assessee. Even there is no adjournment application on record. However, the Bench was of the opinion that the assessee's appeal can be disposed off ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

7. The short issue that I need to adjudicate is, whether or not the authorities below were justified in taxing in the hands of Shri Bhagirath Murarka (the assessee herein) or it should be taxed in the hands of the assessee's brother Shri Sushil Murka.

8. I find that the Assessing Officer in his assessment order dated 28/03/2014 and in the remand report dated 20/10/2020, has categorically and widely explained the modus operandi of the business being carrying on by Shri Bhagirath Murarka (the assessee herein) quoting the facts as well. I

have also gone through the first appellate order passed by the learned CIT(A) wherein the appeal filed by the assessee was dismissed upholding the assessment order passed by the Assessing Officer treating the assessee as a real owner of the business being carried out by the assessee. I have also gone through the documents available on record which are enough to hold that Shri Sushil D. Murarka, being the proprietor of M/s. Madhuri Fuel Industries, which cannot be denied. However, while going through the documentary evidence placed on record, it cannot be said that the transaction in M/s. Madhuri Fuel Industries were actually made by Shri Sushil D. Murarka, the brother of the assessee herein. Even the assessee himself has agreed that all the business transactions being executed in M/s. Madhuri Fuel Industries, are controlled by the assessee himself. I fully agree with the observations of the learned CIT(A) that the assessee has failed to produce before the learned CIT(A) as well as before the Assessing Officer any documentary evidence to prove that the assessee's brother Shri Sushil D. Murarka was under medical treatment during the relevant period and even Shri Sushil D. Murarka has brought on record regarding this fact. Therefore, keeping in view the overall facts and circumstances of the case, I am of the opinion that the assessee was doing coal business through others by making his brother appear in the documents, as if he is the owner of such business with a clear motive to suppress those transactions and income derive out of such business. Consequently, we decline to interfere with the impugned orders passed by the learned CIT(A) for all the years under consideration. Thus, the impugned orders passed by the learned CIT(A) are upheld for all the years under consideration by dismissing the appeals filed by the assessee.

9. In the result, appeals filed by the assessee for A.Y. 2002-03, 2003-04, 2004-05 and 2005-06 are dismissed.

Order pronounced in the open Court on 27/01/2025

NAGPUR, DATED: 27/01/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur