

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 5353/Mum/2024  
Assessment Year : 2019-20

Anil Madhukar Wavekar, 501, Suryadaya Society, Behind Patil Wadi, Kopari Colony, Thane Maharashtra PAN : AAMPW2730P	vs.	Asst. Commissioner of Income Tax, Central Circle-3, 6 <sup>th</sup> Floor, Ashar IT Park, Nehru Nagar, Wagle Industries Estate, Thane West, Thane, Maharashtra
(Appellant)		(Respondent)

Assessee by : Shri Sanjiv G. Brahme &  
Shri Jayant Bhatt

Revenue by : Shri Umesh Chandra Sinha,  
Sr. DR

Date of Hearing : 27-02-2025

Date of Pronouncement : 27-02-2025

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dt.12-08-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-Pune-11, [‘Ld.CIT(A)’] and it relates to AY. 2019-20. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition made by the AO.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of erecting Mandapand providing decoration services under the name and style of M/s. Shivleel Decorators. A survey

operation u/s. 133A of the Income Tax Act, 1961 (‘the Act’) was conducted on 12-02-2019. Subsequently, the assessee filed his return of income for the year under consideration declaring a total income of Rs.46,82,130/-. During the course of scrutiny proceedings, the AO noticed that a statement u/s 131 of the Act was recorded from the assessee during the course of survey operations, wherein the assessee was asked about the Profit & Loss Account found in his computer at the time of survey. The said P & L account was available for the year under consideration upto the date of survey operation and it disclosed a net profit of Rs.1,34,31,739/-. In reply given by him, the assessee agreed to offer the above said net profit as his income for the year ending 31-03-2019. However, it was noticed that the assessee did not offer the above said income in his return of income. Hence, the AO called for explanations from the assessee for not offering the above said amount in the return of income. However, the assessee did not furnish any reply. The AO noticed that the assessee had declared a net profit of Rs.39,73,291/- in the Profit & Loss Account filed along with the return of income. Accordingly, the AO assessed the difference of Rs.94,58,448/- (1,34,31,739 – 39,73,291) as income of the assessee.

3. Before the Ld.CIT(A), the assessee made detailed submissions against the addition made by the AO. The assessee also filed documents including VAT returns to show that the Profit & Loss Account found at the time of survey was incomplete and could not be placed reliance. However, the Ld.CIT(A) did not consider those documents and confirmed the addition made by the AO.

4. The Ld.AR submitted that the Profit & Loss Account found at the time of survey proceedings is incomplete, which is very much visible in the Profit & Loss Account. Inviting our attention to the copy of Profit & Loss Account placed at Pg. No. 7, the Ld.AR submitted that the income side disclosed ‘‘Suspense Receipt of 182.01 lakhs’’ and the expenditure

side disclosed "Suspense Payments of Rs. 45.27 lakhs". He submitted that the suspense receipts/suspense payments would mean that they were not finalized at that point of time. He submitted that the above said entries found in the profit and loss account would show that the said document is not a complete one and hence, it could not have been relied upon for making the impugned addition. The Ld.AR further submitted that the assessee had agreed for surrendering this income due to unfavourable situation prevailed at the time of survey operations. Accordingly, he had retracted the same by way of not surrendering the said income in the return of income filed by the assessee. The Ld.AR submitted that the assessee is engaged in the business of for erecting mandaps and the average profit declared by him was much lower. Accordingly, he submitted that the AO should have accepted the book results declared by the assessee.

5. The Ld.DR, on the contrary, supported the order passed by Ld CIT(A).

6. We heard the parties and perused the record. From the perusal of the Profit and Loss account found at the time of survey operations, we notice that the same contains entries like "Suspense receipts" and "suspense payments". Even though the assessee had agreed to surrender the income shown in the said profit and loss account, yet we agree with the Ld A.R, the said profit and loss account was incomplete and it could not have been relied upon for making addition. It may be so that the assessee had agreed to surrender the profit shown in the above said incomplete profit and loss account, but the law requires assessment of real income only and not imaginary income. We notice that the books of accounts of the assessee have not been examined by the tax authorities and further, according to the Ld.AR, the books are supported by VAT returns. Under these set of facts, we are of the view that the entire issues require fresh examination at the end of the AO.

Accordingly, we set aside the order passed by the Ld.CIT(A) and restore all the issues to the file of the AO for passing the assessment order afresh by duly considering the books of accounts of the assessee. We also direct the assessee to fully co-operate with the AO for expeditious completion of the assessment.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 27-02-2025

Sd/-  
[NARENDER KUMAR CHOUDHRY]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 27-02-2025

*TNMM*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai