

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.1939 to 1941/PUN/2014
निर्धारण वर्ष / Assessment Years : 2007-08 to 2009-10

Income Tax Officer,
Ward 5(2), Pune.
Present AO,
The Asst.Commissioner of Income Tax,
Circle - 11, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Late Shri Praveen Ramchandra Gorane
through Legal heir and wife
Dr. Kavita Gorane, L 07, Mantri
Avenue, 2 Panchawati Pashan,
Near NCL, Pune – 411 004.

..... प्रत्यर्थी /
Respondent

PAN : AHIPG1882D.

Assessee by : None

Revenue by : Shri Mukesh Jha.

सुनवाई की तारीख / Date of Hearing : 17.10.2017	घोषणा की तारीख / Date of Pronouncement: 25.10.2017
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These three appeals filed by Revenue are emanating out of consolidated order of Commissioner of Income-Tax (A)- III, Pune dt.21.08.2014 for A.Ys 2007-08 to 2009-10.

2. Before us, at the outset, Ld.D.R. submitted that though these three appeals of the Revenue are against the order of Commissioner of Income Tax (A)-III, Pune for different assessment years but since

the issues involved in all the assessment years are identical except for the assessment years and the amounts in each of the years, his arguments will also be common and therefore all the appeals can be heard and disposed of together. We therefore for the sake of convenience proceed to dispose of all the appeals of the Revenue by a consolidated order, but however, proceed with narrating the facts in ITA No.1939/PUN/2014 for assessment year 2007-08.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and Ophthalmic Surgeon stated to be carrying on business / profession under the name and style of "Poona Laser Centre". Assessee filed his return of income for A.Y. 2007-08 on 03.08.2009 declaring total income of Rs.13,47,880/-. The case was re-opened by issuing notice u/s 148 of the Act on 29.03.2012. Thereafter assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dt.25.03.2013 and the total income was determined at Rs.20,73,140/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide a consolidated order dt.21.08.2014 allowed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

"1. The order of the Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.

2. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) – III has erred in deleting the addition of Rs.7,25,260/- made by the Assessing Officer on account of estimation of net profit @ 45% of gross receipts admitted by the assessee during the survey.

3. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) – III has erred in not appreciating the fact that the assessee was a non-filer at the time of survey and the books of accounts were prepared after survey to suit the interest of the assessee.

4. For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.”

4. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed. The case file reveals that the notice for hearing was sent to the legal heir of the assessee (Dr. Kavita Praveen Gorane) on 11.09.2017 by the Revenue. Despite service of notice, none appeared. We therefore proceed to dispose of the appeal exparte-qua the assessee on the basis of material available on record and after hearing the Ld.D.R.

5. All the grounds being inter-connected are considered together.

6. AO noticed that a survey action u/s 133A of the Act was conducted on 09.02.2009 at the professional premises of the assessee and at that time it was found that assessee had neither filed the return for A.Y. 2007-08 nor had paid taxes. During the survey it was found that assessee had maintained rough cash book wherein the total receipts for F.Y. 2006-07 was Rs.62,88,038/- and had also received income of Rs.1,90,526/- from Poona Hospital. AO noted that on the aforesaid total receipt of Rs.64,78,564/- assessee had accepted net profit at 32% and the total income determined at that time was Rs.20,73,140/-. During the course of assessment proceedings on perusing the details filed by the assessee, AO noted that assessee had declared total income of Rs.13,47,880/- which was less than the amount declared during the course of survey proceedings. The assessee was asked to show cause as to why the profit declared during the survey proceedings not be considered as income of the assessee. Assessee to the aforesaid query inter-alia submitted that the percentage of profit declared by the assessee was

based on the operating cash cost and without considering the depreciation on the capital assets. The submission of the assessee was not found acceptable to the AO. AO was of the view that since assessee had himself admitted the profit of 32% during the course of survey which was also not unreasonably high, the profit for the year declared at 16% was not reasonable. He accordingly made an addition of Rs.7,25,260/- on account of less income shown vis-à-vis income declared by assessee at the time of survey. Similar addition was made in A.Ys. 2008-09 and 2009-10 also. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who after considering the submissions of the assessee decided the issue in favour of assessee by holding as under :

“5. I have considered the submission by the learned A.R. of the appellant. Admittedly the appellant is a professional and renowned eye surgeon of Pune. During the course of survey proceeding, in response of specific query regarding the composition of consumables and administrative expenses relating to the earning of professional receipts, the appellant admitted that the medical and administrative cost amounted to approximately 55%, of the receipts, there by leading to a profit margin 45%. At the same time it is a well known fact that a practicing ophthalmologist requires sophisticated equipment and machinery in order to practice his professional activities. A perusal of return of income and balance sheet from the file of Assessing Officer corroborates the fact that the appellant had gross block of assets amounting to 159.77 lakhs at the beginning of F.Y. 2008-09 relevant to assessment year 2009-10 out of which the opening balance on account of the equipment and machinery amounted to Rs.118.53 lakhs. The appellant has also invested heavily in machinery and equipment during the years in question. These facts have not been disputed by the Assessing Officer. Further the appellant has also borrowed heavily from banks in order to purchase the said machinery and equipment. The balance sheet as on 31.03.2009 showed secured loan Rs.99.26 lakhs against which interest of Rs.14,36,676/- has been claimed. This issue has not been disputed by the Assessing Officer. In fact, all the above facts were brought to the notice of the Assessing Officer through letter dated 16.12.2011 and it was submitted that if the depreciation and interest on loan amounting to Rs.37,96,265/- were taken into consideration, the net profit as per income and expenditure account Rs.18,55,210/- would in fact work out to Rs.56,51,475/-, which is more than 46% of the total receipts of Rs.1,22,10,380/-.

5.1 However it is seen from the record that the only ground on which the Assessing Officer has made the addition is that the appellant had admitted on oath during the course of survey, the fact that net profit would be around 45% of the gross receipts. This admission however

cannot be held against the appellant as he is certainly not expected to be conversant with the intricacies of accounting and taxation matters. The Assessing Officer has gone under the presumption that in any profit & loss account, net profit is always arrived at after debiting depreciation and interest expenditure. This reasoning cannot be taken as a valid ground for addition particularly in the context of the fact that expenditure relating to depreciation and Interest have not been disputed by the Assessing Officer. The appellant has furnished the following table for the past five years to show that every year the profit margin after adding that depreciation and interest has been more than 45% :

Asst. year (A)	Gross Receipts (B)	Net Profit (C)	Depreciation (D)	Interest (E)	Sub total (F) (C+D+E)	Percentage (G) (F/B)*100
2009-10	1,22,10,380	18,55,210	23,65,589	14,30,676	56,51,475	46.28
2010-11	79,97,789	75,44,33	18,30,309	14,22,320	40,07,062	50.16
2011-12	1,10,43,245	19,91,871	19,72,788	11,63,447	51,28,106	46.14
2012-13	1,10,55,753	19,62,602	18,39,184	20,71,749	55,73,335	50.41
2013-14	1,32,44,003	30,67,101	35,57,527	30,93,341	97,17,969	73.38

5.2 The above figures conclusively demonstrate that the appellant has been consistently disclosing the same profit margin of 45% and above taking into account interest and depreciation, which are inevitable in the case of a professional. Therefore considering the entire conspectus of the case and the fact that the appellant disclosed total receipts of Rs.1,22,14,847/- for the whole year as against the receipts of Rs.1,02,20,171/- arrived at by the survey party as on 09.02.2009 (date of survey), it is held that there is no justification for making an addition of the account of net profit purely based on the statement of the appellant. **Ground No.1 is thus held to be allowed.”**

Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us.

7. Before us, Ld.D.R. took us through the observations of AO and supported the order of AO.

8. We have heard the Ld.D.R. and perused the material on record. The issue in the present case is with respect to addition made on the basis of amount declared by the assessee during the course of survey. We find that Ld.CIT(A) while deciding the issue has noted that the perusal of Balance-Sheet of the assessee showed that during the year assessee had invested heavily in machinery and equipments and had also borrowed money from banks to purchase the machinery. It was also noted that on the loans borrowed, assessee had paid interest at 14.36 lakhs. Ld.CIT(A) has further noted that in the past 5 years the profit margin after adding profit was more than 45% which demonstrated that the assessee has consistently disclosing the same profit margin of 5% and above after taking into account the interest on depreciation. Ld.CIT(A) has further held that the addition has been made only on the basis of submission of the assessee which was not justified. Before us, Revenue has not placed any material on record to controvert the findings of Ld.CIT(A) nor has pointed out any fallacy in the findings of Ld.CIT(A). Further, in the present case the addition has been made only on the basis of statement of assessee recorded during the course of survey. It is a settled law that confession made by the assessee during survey proceedings is not conclusive and it is open to assessee to establish that the same was not true and correct by filing cogent evidence. Considering the totality of the aforesaid facts, we do not find any reason to interfere with the findings of Ld.CIT(A).

Thus, the grounds of Revenue are dismissed.

9. **In the result, the appeal of Revenue in ITA No.1939/PUN/2014 is dismissed.**

10. As far as the grounds raised in appeals in ITA Nos.1940/PUN/2014 and 1941/PUN/2014 for A.Ys. 2008-09 and 2009-10 are concerned, in view of the submission of Ld.D.R. that the facts of the case in all these years being identical to the facts and issue of the case in ITA No.1939/PUN/2014 for A.Y. 2007-08, we for the reasons stated herein while disposing of the appeal in ITA No.1939/PUN/2014 for A.Y. 2007-08 and for similar reasons, dismiss the grounds of appeal of Revenue. **Thus, the grounds of the Revenue are dismissed.**

11. **In the result, all the three appeals of the Revenue are dismissed.**

Order pronounced on 25th October, 2017.

Sd/- (SUSHMA CHOWLA) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
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पुणे Pune; दिनांक Dated : 25th October, 2017.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT (A)-III, Pune.
4. CIT-III, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// TRUE COPY //

वरिष्ठ निजी सचिव / Sr. Private Secretary
 आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune