

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

(Stay Application Nos. 11 to 13/RPR/2018)

(Arising out of ITA Nos. 71 to 73/RPR/2018)

निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Shashi Devi Gulati,
Prop. M/s. Gulati Udyog,
120, Light Industrial Area,
Bhilai-490026 (CG)
PAN : ADBPG2508B

..... Applicant

बनाम / V/s.

The Income Tax Officer 1(5),
Bhilai (CG).

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 71 to 73/RPR/2018

निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Shashi Devi Gulati,
Prop. M/s. Gulati Udyog,
120, Light Industrial Area,
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PAN : ADBPG2508B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer 1(5),
Bhilai (CG).

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi

Revenue by : Shri R.P. Namdeo

सुनवाई की तारीख / Date of Hearing : 17.01.2019
घोषणा की तारीख / Date of Pronouncement : 18.01.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These bunch of stay applications and the appeals have been filed by the assessee.

2. At the time of hearing, the Ld. AR of the assessee apprised the Bench that entire demand for which these stay applications/petitions have been filed has already been recovered by the Department.

3. The Ld. DR has accepted this fact and in effect, these stay applications now become infructuous in view of the fact, that the Revenue has recovered the entire demand from the assessee.

That the said stay applications has become infructuous, we proceed to hear the appeals of the assessee in ITA Nos. 71 to 73/RPR/2018 on merits.

4. The Ld. AR of the assessee prayed that ITA No.71/RPR/2018 may be taken as lead case. These cases were heard together and since facts similar, issues common, these appeals are disposed off vide this consolidate order.

In ITA No.71/RPR/2018, the assessee has raised following grounds:

“1. In the facts and circumstances of the case and in law, Ld. CIT(A) was not justified in confirming the addition of Rs.5,26,400/- made by the AO u/s.69 on account of deposits in the bank account holding it to be undisclosed income of appellant. The addition made by AO and confirmed by the Ld. CIT(A) is arbitrary and not justified.

2. The appellant reserves the right to amend, modify or add any of the ground/s of appeal.”

5. The brief facts in this case are that during the course of assessment proceedings, it was noticed by the Assessing Officer that Shri Pitamber Reddy one of the salaried employee of the assessee was maintaining one savings bank account bearing No.07341930001939 with HDFC Bank Supela Bhilai and a large amount of deposits worth Rs.5,26,400/- was found in the above account on various dates during the F.Y. 2008-09 relevant to A.Y.2009-10. During the course of investigation the statements of Shri Pitamber Reddy and Shri Kapil Gulati S/o of the assessee Smt. Shashi Gulati was recorded. In the statement recorded Shri Pitamber Reddy stated that he was an employee of Gulati Udyog which is a proprietorship firm of the assessee dealing in manufacturing of coal tar by products and sales thereof and the amounts deposited in the above mentioned bank accounts pertain to Gulati Udyog only. Further, in the statement of Shri Kapil Gulati when asked for regarding the above transactions he also deposed that the above

amounts pertain to Gulati Udyog only and it represents sale proceeds only which were not recorded in the books of Gulati Udyog. He admitted that the transactions were not recorded in the books of accounts of the assessee and agreed to offer the income on the above transactions. While filing return in response to notice u/s.148, the assessee furnished justification in its letter dated 27.06.2016 wherein it was admitted by the assessee that the above transactions pertain to unrecorded sale proceeds of Gulati Udyog and on this particular amount the net profit was worked out at 1.54% amounting to Rs.7724/- and thus net overall net profit was worked out at Rs.5,03,001/-. The Assessing Officer did not accept the submissions of the assessee and treated the entire credits/ deposits appearing in the above bank account amounting to Rs.5,26,400/- as undisclosed income of the assessee u/s.69 of the Act and added the same to the total income of the assessee.

6. The Ld. CIT(Appeals) upheld the addition of the Assessing Officer on following observations :

- i) Shri Pitamber Reddy, an employee of the proprietorship concern of the assessee confirmed that the account pertains to Gulati Udyog.
- ii) The assessee did not provide any explanation regarding the depositing of the impugned amount in the bank accounts of an employee.

Further, the Ld. CIT(Appeals) further relied on the decision of the Hon'ble Apex Court in the case of Zaveri Diamonds Vs. CIT reported in 25 taxmann.com 552 (SC) while confirming the action of the Assessing Officer.

7. The Ld. AR of the assessee at the time of hearing vehemently argued that there is no dispute, deposits in the bank account of Shri Pitamber Reddy, an employee of the assessee pertains to the assessee and it is also not disputed that Shri Kapil Gulati, son of the assessee has admitted in his statement that the transactions were not recorded in the books of account of the assessee and that deposits represents sale proceeds which were unrecorded in the books of account. The Ld. AR of the assessee submitted that once the receipt is accepted as unrecorded sales, the profit element embedded in the sales only is to be added and not the entire sale proceeds. In support of his submissions, the Ld. AR has placed reliance on the following decisions:

- i) Commissioner of Income Tax Vs. President Industries in IT Appeal No.53 of 1999 reported as 258 ITR 0654.(Guj.)
- ii) CIT Vs. Babulal K. Daga reported as 387 ITR 114 (Guj.)
- iii) CIT Vs. Hariram Bhambhani reported as 92 CCH 46 (Mum.)
- iv) Man Mohan Sadani Vs. CIT reported as 304 ITR 52 (MP)

That on the basis of these case laws, the Ld. AR argued that it is not the entire sales consideration which was to be brought to tax but only profit embedded in undisclosed sales is only to be added as income.

8. Further, on facts, the Ld. AR of the assessee submitted that all the deposits were made in cheque as well as in cash and details of transactions is placed at page Nos.12, 13, 19 and 29 of the paper book. The deposits were made at various places viz. Satara, Allahabad, Baranasi, Amarabati, Hubli-Karnataka, Agra, Amritsar etc. and they are evident from the bank statement annexed at page No. 12, 13, 14, 16, 17, 19, 22, 25 and 28. The Ld. AR of the assessee submitted that it is indication that these are the sale proceeds since in all these places it cannot be possible the assessee has earned small amounts and also that all the amounts deposited are in odd figures.

9. Per contra, the Ld. DR submitted that additions are made on factual parameters and the son of the assessee disclosed that these deposits are on account of unrecorded sales. Further, account holder, Shri Pitamber Reddy has also deposed before the Department that the account pertains to the assessee. With all these facts, the Ld. DR prayed that the addition should be sustained.

10. We have perused the case records and heard the rival contentions. We also analyzed the facts and circumstances in this case. The Revenue has find out deposits made in the bank account was from unrecorded sales and this is not disputed. With regard to this proposition, the judicial pronouncements placed before us for consideration of various High Courts, the ruling of law is absolutely clear that whenever it is accepted that the deposits are from unrecorded sales or from sales which are not recorded in the books of account then the entire deposits cannot be brought to tax. It is only the profit element involved in those unrecorded sales which can be brought to tax.

Taking guidance from the bindings judicial pronouncements placed herein above, we are of considered view that only the profit element involved in the undisclosed sales should be taxed. In view of the matter, we have perused the GP% placed before us which is as under:

<i>Assessment year</i>	<i>GP %</i>
2009-10	7.68%
2010-11	8.40%
2011-12	8.77%

The decision of the Hon'ble Supreme Court in the case of Zaveri Diamonds Vs. CIT (supra.) relied by the Ld. CIT(Appeals) is substantially different in facts from that of assessee's case. Since in the case of Zaveri Diamonds Vs. CIT (supra.) the issue was on accommodation entry and disallowance of commission income wherein in the case of the assessee it is with regard to unrecorded sales for which the judicial view is absolutely clear that only profit to be taxed in these cases.

Therefore, taking entire facts into consideration and the judicial pronouncements placed herein above before us, we hold @10% GP of undisclosed sales to be added to the income of the assessee.

11. In the result, appeal of the assessee in ITA No.71/RPR/2018 is partly allowed.

12. In other two appeals i.e. 72 & 73/RPR/2018, the facts and circumstances of the case are identical except the amounts. Since all other facts, arguments of the parties are same and similar, the same ruling as in ITA No.71/RPR/2018 shall apply. Therefore, for these cases also, @10% GP of undisclosed sales to be added to the income of the assessee.

13. In the result, appeals of the assessee for assessment year 2009-10 to 2011-12 are partly allowed.

Order pronounced on 18th day of January, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 18th January, 2019.
 SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-II, Raipur (CG)
4. The Pr. CIT-II, Raipur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
 रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
 आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	17.01.2019	Sr.PS/PS
2	Draft placed before author	18.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		

11	Date of dispatch of order		
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