

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. /ITA No.1553/PUN/2019

निर्धारण वर्ष / Assessment Year: 2016-17

ACIT, Jalna Circle, Jalna	Vs.	Akash Gurudas Talreja, Moti Foods Product, Bhajan Galli, Parbhani, Dist. Parbhani 431 401 PAN : AEGPT1413G
Appellant		Respondent

Assessee by: Shri Rahul Kaul &
Shri Anand Partani
Revenue by: Shri Ramnath P. Murkude
Date of hearing 21-02-2023
Date of pronouncement 27-02-2023

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the CIT(A)-I, Aurangabad on 11-07-2019 in relation to the assessment year 2016-17.

2. Two grounds have been raised which are interconnected. The first ground is against the deletion of addition of Rs.83,51,247/- made by the Assessing Officer (AO) on account of difference in gross profit of 7.23% as disclosed by the

assessee and 12.62% as worked out by the AO. The second issue is of restricting the addition of Rs.1.53 crore and odd made by the AO by extrapolating the figure of unaccounted sales from the date of survey till the date of close of the year, to Rs.18,00,990/-.

3. Succinctly, the facts of the case are that the assessee was subjected to survey u/s.133A of the Act on 14-10-2015. During the course of survey, it was observed that unaccounted turnover on page 1 for the period 25-04-2015 to 14-10-2015 was Rs.15.92 crore; on page 2 for the period 01-04-2015 to 24-04-2015 was Rs.2.15 crore; and on page 3 for the period 24-04-2015 to 31-03-2015 was Rs.15.58 crore. Statement of the assessee was recorded u/s.131 during the course of survey, in which he admitted unrecorded turnover for the year under consideration at Rs.15,58,96,042/-, in addition to some amount of unrecorded sales for the immediately preceding year. The assessee submitted and the survey team accepted the mean gross profit rate of such two years on average basis at 7.23%. This rate was applied by the assessee to compute additional income of Rs.1,12,95,791/- for the year, that was surrendered and also included in the total income in the return furnished after the date

of survey. However, the AO observed during the course of assessment proceedings that the rate of gross profit computed at 7.23% was incorrect inasmuch as the assessee's contention of reducing the amount of depreciation of Rs.15.62 lakh and some other expenses of Rs.42.79 lakh, got wrongly accepted by the survey team. Such expenses, in the opinion of the AO, ought not have been reduced. He, therefore, computed the gross profit margin at 12.62%. Applying the same to the amount of unaccounted turnover for the year at Rs.15.56 crore, he worked out the addition of Rs.83,51,247/-.

4. Considering the fact that the assessee had not properly accounted for sales in the period prior to the date of survey, the AO extended this exercise to the post survey period also and worked out undisclosed sales up to the date of year ending at Rs.15.56 crore. After reducing the amount of declared sale of Rs.3.36 crore for this period, he worked out unaccounted sales at Rs.12.20 crore. Such unaccounted sales were subjected to gross profit rate of 12.62% for working out the addition of Rs.1,53,99,043/-.

5. The Id. CIT(A) ordered for the deletion of the first addition of Rs.83,51,247/- by accepting the gross profit rate applied by the survey team. The second addition of Rs.1.53 crore was reduced to Rs.18,00,990/- on the basis of electricity consumption. This is how, the Revenue has approached the Tribunal.

6. We have heard the rival submissions and gone through the relevant material on record. The first issue is of deletion of addition of Rs.83.51 lakh on account of difference between the gross profit rate of 7.23% accepted by the survey team and 12.62% as worked out by the AO. There is no dispute on the amount of unaccounted sales, which, when calculated by the survey team, was accepted by the assessee along with certain amount of unaccounted sales for the immediately preceding assessment year. The issue currently in dispute is the application of the gross profit rate. The assessee furnished calculation of average gross profit rate, in response to question no.18 during the course of the survey. This was done by aggregating the amount of gross profit for both the years and then average gross profit rate applicable to both the years was calculated at 7.23%.

This gross profit rate was applied to the unaccounted sales of the immediately preceding assessment year as well as the year under consideration and the resultant income was surrendered and offered for taxation in respect of both the years. The assessment for the immediately preceding assessment year got concluded by considering such gross profit rate of 7.23%. However, it is only for the year under consideration, that the AO changed the gross profit rate on the ground that the amount of depreciation and other expenses were not required to be reduced for computing the amount of gross profit.

7. Technically, the AO's point of view of not reducing such expenses is correct because these pertain to Profit and loss account and hence cannot be considered for computing the amount of gross profit. However, the fact of the matter is that such gross profit rate was accepted by the survey team and *ex consequenti* the assessee offered income for both the years accordingly. No dispute was raised by the Revenue in respect of the income offered for the immediately preceding year by applying gross profit at 7.23%. Once the gross profit rate was accepted by the survey team and also the AO for the

immediately preceding assessment year, we find it little difficult to vary such rate for the year under consideration on exclusive basis. If a departure is registered from such average gross profit rate, it will frustrate the entire calculation, whose impact will also spill over to the preceding assessment year which, in fact, has attained finality. We, therefore, countenance the view point of the Id. first appellate authority in sticking to such gross profit rate and accordingly deleting the addition of Rs.83.51 lakh. This ground is, therefore, not allowed.

8. The second issue is about reduction in the addition from Rs.1.53 crore to Rs.18.00 lakh. The AO did some mathematical exercise and calculated the amount of unaccounted turnover for the period post survey till 31st March by considering the unaccounted sales for the period up to the date of survey. Entire edifice of the addition has been made by the AO only in the realm of extrapolation of the figures of unaccounted turnover before the date of survey to the period post survey. There is no material to indicate, even remotely, that the assessee indulged in unaccounted sales during the post survey period as well. In our

considered opinion, such an approach cannot be accorded imprimatur.

9. The Id. CIT(A) reduced the amount of addition to Rs.18.00 lakh by considering electricity consumption. The Id. AR admitted that no second appeal was preferred by the assessee. In that view of the matter, we desist from commenting on unassailed sustenance of the part addition. Be that as it may, the part deletion by the Id. CIT(A), in our considered opinion, is fully justified and does not require any interference. We, therefore, uphold the impugned order on this score.

10. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 27th February,
2023

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 27th February, 2023
Satish

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT-1, Aurangabad
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “A” / DR
‘A’, ITAT, Pune
5. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	21-02-2023	Sr.PS
2.	Draft placed before author	22-02-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which 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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