

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA Nos.1300 to 1304/PUN/2019
Assessment Years : 2007-08 to 2009-10 & 2011-12 to 2012-13

Lalit Sakalchand Gandhi,
E-1, Bhakti Pooja Nagar,
Belbaug, Kolhapur – 416012

PAN : ABCPG6244K

Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Central Circle, Kolhapur

Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Arvind Desai

Date of Hearing : 04-08-2022
Date of Pronouncement : 10-08-2022

ORDER

PER BENCH :

These five appeals by the assessee against the common order dated 13-05-2019 passed by the Commissioner of Income Tax (Appeals)-11, Pune [‘CIT(A)’] for assessment years 2007-08, 2008-09, 2009-10, 2011-12 and 2012-13, respectively.

2. Since, the issues raised in all these five appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties,

we proceed to hear these five appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No.1300/PUN/2019 for A.Y. 2007-08.

4. Ground Nos. 1 and 2 raised by the assessee challenging the action of CIT(A) in confirming the order of AO in levying penalty u/s. 271B of the Act by holding the capital gains arising from sale of land to be receipts from business.

5. Brief facts relating to the issue on hand are that the assessee is an individual, a partner and director in Shatrunjay Infrastructure and Shatrunjay Parks and Resorts Ltd. A search and seizure action was conducted at his premises on 25-04-2012 u/s. 132 of the Act. During the said search and seizure action certain documents and records were seized. The AO completed assessment to the best judgment u/s. 144 of the Act vide its order dated 27-03-2015.

6. As matter stood thus, the AO initiated penalty proceedings u/s. 271B of the Act by observing that the assessee failed to get its accounts audited u/s. 44AB of the Act. The CIT(A) upheld the order of AO in imposing penalty of Rs.1,00,000/- u/s. 271B of the Act by holding that the receipts from unexplained cash deposits, unexplained investments and sale of receipts from lands are from business. Having aggrieved, the assessee is before us.

7. Heard both the parties and perused the material available on record. We note that the AO initiated penalty proceedings u/s. 271B of the Act against the assessee for his failure to get its accounts audited. The ld. AR contends that there were no sales or purchase made by the assessee during the year under consideration and the additions made on account of unexplained cash deposits, unexplained investments, unexplained other investments and unexplained profit on sale of land to an extent of Rs.15,40,26,567/- is not turnover as the investments and sale of land was in the nature of capital gain but not in the category of business income. The AO reproduced the year wise investments/cash deposits/income as given by the assessee and also on the basis of seized documents in Para No. 5 of the assessment order. On perusal of the same the unexplained cash deposits at Sr. No. 1, unexplained investment in immovable property at Sr. No. 2, unexplained investment in property (depreciable) at Sr. No. 3, unexplained investment in property (non-depreciable) at Sr. No. 4, unexplained other investment at Sr. No. 5, F.D. interest at Sr. No. 6 and unexplained profit on sale of land at Sr. No. 7 to an extent of Rs.15,40,26,567/-. According to AO that the said sum of Rs.15,40,26,567/- is the income of the assessee and no return of income filed as well as got the books audited as required u/s. 139(1) and 44AB of the Act, respectively. The only contention raised by the ld. AR is that there are all in the nature of capital gain not in the business income. Section 44AB of the Act provides mandatory audit of books of accounts and threshold monetary limit for the year under consideration i.e. A.Y. 2007-08 is Rs.40 lacs. The said provision explains that every person carrying on business if the turnover or gross receipts in business exceeds Rs.40 lacs is mandatorily get the accounts audited. In the present case, the AO held the unexplained cash deposits, unexplained investments, interest on F.D. and

unexplained profit on sale of land is held to be business income of the assessee. The only contention of Id. AR is that the assessee is an individual and all the said transactions as held by the AO which was confirmed by the CIT(A) is not business income. We find force in the arguments of Id. AR, thus, the penalty imposed by the AO u/s. 271B of the Act as confirmed by the CIT(A) is not justified. Thus, the issue raised in this regard is allowed.

8. In the result, the appeal of assessee is allowed.

ITA Nos. 1301 to 1304/PUN/2019 (A.Ys. 2008-09, 2009-10, 2011-12 & 2012-13)

9. We find that the issue raised in the appeals and the facts in ITA Nos.1301 to 1304/PUN/2019 are identical to ITA No. 1300/PUN/2019. Since, the facts in ITA Nos.1301 to 1304/PUN/2019 are similar to ITA No.1300/PUN/2019, the findings given by us while deciding the grounds of appeal of assessee in ITA No. 1300/PUN/2019 would *mutatis mutandis* apply to ITA Nos.1301 to 1304/PUN/2019, as well. The appeals of assessee are allowed, accordingly.

10. In the result, all the appeals of assessee are allowed.

Order pronounced in the open court on 10th August, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Pune; Dated : 10th August, 2022.

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Pune
4. The Pr. CIT (Central), Pune
5. DR, ITAT, "A" Bench, Pune.
6. Guard File.

True Copy//

BY ORDER,

Sr. Private Secretary
ITAT, Pune