आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री डी. करुणाकरा राव , लेखा सदस्य, के समक्ष।
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.660/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Aliasgar Inayathusein Bohari
Kapad Bazar, Shirpur,
Tal. Shirpur,
Dhule-425 405
PAN : ABAPB5558K

.......अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3, Dhule.

......प्रत्यर्थी / Respondent

S.A. No. 20/PUN/2018
(Arising out of ITA No. 660/PUN/2017)
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Aliasgar Inayathusein Bohari
Prop. Of M/s. Saifee Machinery,
Shop No. 6, Opposite Panchayat,
Samiti Chopada, Taluka- Chopada
Dist- Jalgaon-425 405
PAN : ABAPB5558K

.... आवेदक/Applicant

बनाम / V/s.

The Income Tax Officer,
Ward-3, Dhule.

......प्रत्यर्थी / Respondent

Assessee by	:	Shri Ashis Mahendra Bhalgat
Revenue by	:	Shri Ajay Modi, JCIT

सुनवाई की तारीख / Date of Hearing : 20.03.2018		घोषणा की तारीख / Date of Pronouncement : 27.03.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal filed by assessee is directed against the order of Commissioner of Income Tax (Appeal)-1, Nashik dated 13.02.2017 for assessment year 2013-14.

2. The assessee has raised following grounds in appeal:

> "*1.The learned CIT(A) erred in confirming the addition of Rs.70,00,000/- made by the A.O. without appreciating the said addition was not justified in law.*
>
> *2. The learned CIT(A) erred in holding that the addition of Rs.70,00,000/- was justified on the ground that in the course of survey statement recorded u/s. 133A, the assessee had declared additional income of Rs.70,00,000/- in respect of stock shortage, cash found, unaccounted investments and cash payments u/s.40A(3) and hence, he cannot go back on his declaration once the income was declared in the survey statement.*
>
> *3. The learned CIT(A) failed to appreciate that that the said addition was made solely on the basis of the declaration made in the statement u/s.133A and the dept. had not pointed out any discrepancy in the books of accounts furnished by the assessee in the course of asst. proceedings to justify the addition of Rs.70,00,000/- on merits and hence, the addition was not warranted.*
>
> *4. The learned CIT(A) erred in not appreciating that at the time of survey action conducted on 21.11.2012, the books of accounts were incomplete, however, after the end of the year, the books of accounts were prepared and as per the finalized books, the stock and cash was reconciled and the A.O. had accepted the said books without pointing out any discrepancy in the same and therefore, there was no reason to make any addition solely on the basis of the declaration made in the survey statement.*
>
> *5. Without prejudice to the above grounds, the assessee submits that at the time of survey action, the inventory of stock valuing Rs.25,47,445/- was found as against the stock of Rs.58,37,270/- as per the incomplete books of accounts and hence, if at all, any addition is to be made, then only the G.P. @4.66% on the stock shortage should have been taxed and no further addition was justified on facts of the case.*

6. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

3. Briefly stated relevant facts of the case are that the assessee is an individual and is engaged in the business of all types of pipes, agricultural implements, machinery etc. The assessee filed return of income of Rs.26,46,907/-. In the assessment proceedings u/s.143(3) of the I.T Act, the Assessing Officer assessed income at Rs. 98,67,776/-. This is a case where there was survey action u/s.133A of the Act on 21.11.2012. During the proceedings, statement was recorded u/s.134 of the Act from assessee. The survey action resulted in discovery of certain incriminating documents and loose papers, and which led to disclose the income of Rs.70,00,000/-. Subsequently, the assessee retracted the same and therefore, did not disclose the same in the return of income. It is the case of assessee that no such disclosure is required as contents of the said impounded loose papers and other documents, books of accounts were incorporated while completing the books of accounts and adopted the book profit in filing return of income. However, as per the discussion given in Para-11 of the assessment order, the Assessing Officer proceeded to make addition of Rs. 70,00,000/- in the assessment made u/s. 143(3) of the Act.

4. During the First Appellate proceedings, the assessee could not improve his case. Eventually, the Commissioner of Income Tax (Appeal) dismissed the appeal of assessee. The contents of Para-3 and 4 and their sub-paragraphs are relevant.

5. Aggrieved with the said order of Commissioner of Income Tax (Appeal), the assessee filed present appeal before us with the grounds extracted above.

6. At the outset, Ld. Counsel brought our attention to the fact that Commissioner of Income Tax (Appeal) dismissed the appeal of assessee in his ex-parte order after giving nominal hearings on 22.11.2016, 16.12.2016, 09.01.2017 and 23.01.2017. As per discussion given in Para 3.5 of impugned order, the appeal of assessee was adjudicated eventually without ensuring the presence of the assessee or his Authorized Representative. On this issue, the Ld. Counsel for the assessee submitted that by making addition of Rs.70,00,000/-, the assessment made constitutes case of double addition to the extent of said Rs. 70,00,000/-. The assessee filed written submission on this issue explaining the manner how it becomes a case of double addition. Contents of Paras in the written submissions are relevant. In the said written submissions, the assessee explained with the said addition of Rs.70,00,000/-, an unusual GP of the assessee is subjected to taxation. The Ld. AR submitted for grant of one opportunity to the assessee before the Assessing Officer to explain the facts of the case.

7. On the other hand, the Ld. DR heavily relied on the order of Assessing Officer and Commissioner of Income Tax (Appeal). He also brought our attention to the incriminating materials impounded by Revenue during survey action.

8. On hearing both the parties, we find it is evident that the Commissioner of Income Tax (Appeal) is the product of ex-parte proceedings. During First Appellate proceedings, the case was decided without the presence of assessee or his Authorized Representative. Therefore, in principle, the request for grant an opportunity of being heard to the assessee, has merit. Accordingly, we are of the opinion that hearing

dates mentioned in the impugned order does not indicate that notices were actually served upon the assessee and assessee is well aware about the said dates of hearing. Notices were sent to assessee through speed post. There is no conclusive finding regarding service of notices to assessee in the order of Commissioner of Income Tax (Appeal). The contents of Para-2 of the order of Commissioner of Income Tax (Appeal) are self explanatory in this regard. Therefore, we are of the opinion that it is a fit case for remanding all the issues raised in the appeal to the file of Commissioner of Income Tax (Appeal). This time, Commissioner of Income Tax (Appeal) should grant reasonable opportunity of being heard to the assessee by not only sending the notices through speed post but also ensuring the service of notices upon assessee as per the rules on services of notices. The assessee is directed to comply with the notices without fail. Accordingly**, grounds raised by assessee are allowed for statistical purposes**.

S.A. No. 20/PUN/2018 (A.Y. 2013-14)

9. In the preceding paragraphs of this order, we have discussed the assessment made by Assessing Officer and assessed income of Rs.98,67,776/- after making addition of Rs.70,00,000/-. The Assessing Officer issued the demand notice u/s.156 of the Act asking to pay demand of Rs.30,18,266/-. The assessee filed Stay Application before us requesting to stay the demand. In this regard, considering the above discrepancies with regard to issue of proper notice to the assessee, both the parties submitted that Stay Application could be heard along with main appeal i.e. ITA No. 660/PUN/2017.

10. As per discussion given in the aforementioned paragraphs, we have decided to remit all the issues raised in the appeal on merits to the file of Commissioner of Income Tax (Appeal) for fresh adjudication. In view of our decision of setting aside the order of Commissioner of Income Tax (Appeal), the adjudication of stay application becomes an academic exercise. Thus, stay application moved by the applicant is dismissed.

11. To sum up, appeal of the assessee is allowed for statistical purposes and stay application moved by the applicant is dismissed.

Order pronounced on 27th day of March, 2018.

Sd/-	Sd/-
(**सुषमा चावला** / Sushma Chowla)	(**डी.करुणाकरा राव**/D. Karunakara Rao)
न्यायिक सदस्य /JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 27th March, 2018.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Nashik
4. The CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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