

IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH (SMC), RANCHI

[Before Hon'ble Shri J. Sudhakar Reddy]

I.T.A. No. 152/Ran/2016
Assessment Year : 2005-06

M/s. Ajay Kumar Khatore HUF.....Appellant
Prop. M/s. Barbil Flour Mill,
North Market Road,
Upper Bazar,
Ranchi – 834 001.
[Pan : AAEHA 1101L]

Income Tax Officer.....Respondent
Ward 1(1),
Ranchi

Appearances by:

Shri Devesh Poddar, Advocate appearing on behalf of the Assessee.
Shri P.K. Mondal, Jr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 22, 2018
Date of pronouncing the order : February 28 , 2018

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal filed by the assessee directed against the order of CIT (Appeals) Ranchi dated 03.03.2016 for the assessment year 2005-06.

2. The assessee is a HUF and is an agency business.
3. The issues that arise before me are as follows:
 - a. Justification of net gross profit estimation confirmed by the Ld. CIT(A).
 - b. Allowability of expenses of undisclosed purchases,

c. Levy of interest u/s 234A & 234B of the Act

4. After hearing rival contentions, I find that the assessee has declared net profit of 0.87% for A.Y. 2003-04, 0.88% for A.Y. 2004-05 and 0.90% for the current A.Y. 2005-06. On these facts, I am of the opinion that ends of justice would be made if the net profit is estimated at 1% of the total turnover disclosed by the assessee in the place of the net profit estimation confirmed by the Ld. CIT(A). In the result, this ground of the assessee is allowed in part.

5. The second issue is whether the assessee has any undisclosed purchases and if so, whether the addition made on account of seed capital utilised for making undisclosed purchases and profit earned on these transactions of unrecorded purchases and sales, is justified. The assessee in this case makes purchases from M/s. Hindustan Coca-Cola Beverages Pvt. Ltd., M/s. Hindustan Lever Ltd., M/s. Adani Wilmer Ltd., M/s. Indexport Ltd. All the seller companies are reputed companies. The undisputed fact is that the assessee has made payments for all the purchases from these companies, by way of cross cheques. The Assessing Officer obtained information u/s 133(6) from these companies and as they were certain unreconciled figures made additions on an assumption that this unreconciled figures are underlined purchases. The assessee submits that it has not been confronted with the information obtained by the A.O under section 133A from the third parties and hence he could not reconcile the figures. On examining of the issue, I find that the Assessing Officer has not pointed out as to which are the alleged purchase which are not recorded in the books of the assessee. The assessee has produced bills and vouchers as well as payment details through banking channels in

support of the transactions. The addition is made based on surmises and conjectures. Thus the addition made on account of undisclosed purchases is bad in law. Thus the profit estimated on such undisclosed purchases as well as the addition of seed capital is hereby deleted. Ground No. 3, 4 and 5 of assessee are allowed.

6. Ground no. 6 is on the issue of levy of interest under section 234A and 234B of the Act.

7. The issue is whether interest u/s 234A and 234B is to be levied only on the total income disclosed by the assessee in the return of income or on the total income determined by the A.O. in the assessment order i.e. assessed income. The Hon'ble Jharkhand High Court in T.A. No. 38 of 2010 order dated 25th July, 2012 in the case of Ajay Prakash Verma vs. ITO, Dhanbad reported in 2013(1) TMI 140 has held that interest u/s 234A and 234B can be levied only on the income declared by the assessee in the return of income. The Hon'ble Jharkhand High Court in I.A. No. 5725 of 2014 in Civil Review No. 66 of 2013 judgment dated 1st September, 2015 dismissed the civil review application filed by the department on this issue in this very case of Ajay Prakash Verma. Respectfully following the propositions of law laid down by the jurisdictional High Court, I direct the A.O. to levy interest u/s 234A and 234B only on the income returned by the assessee and not on the income assessed by the A.O.

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

Order Pronounced in the Open Court on 28th February, 2018.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 28/02/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Ajay Kumar Khatore HUF, Prop. M/s. Barbil Flour Mill, North Market Road, Upper Bazar, Ranchi – 834 001.
2. ITO, Ward 1(1), Ranchi.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,
Sr. P.S. / H.O.O.
ITAT, Ranchi