

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 175/Kol/2016
Assessment Year: 2012-13

Ashwinbhai G. Patel, HUF (PAN: AAFHA5214D)	Vs.	Income-tax Officer, Wd-34(2), Kolkata
Appellant		Respondent

Date of Hearing	13.12.2017
Date of Pronouncement	09.03.2018
For the Appellant	S/Shri S. S. Gupta & Arvind Agarwal, ARs
For the Revenue	Shri A. K. Bandyopadhyay, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the assessee is against the order of Ld. CIT(A)-10, Kolkata dated 07.12.2015 for AY 2012-13.

2. The assessee has raised as many as seven grounds of appeal but the only issue is in respect to the addition of Rs.26,74,000/- u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. Brief facts of the case are that the assessee is a HUF, which has filed its return of income declaring a total income of Rs.2,68,110/- and for rate purposes agricultural income was declared at Rs.34.69 lacs. The assessee HUF is a cultivator of Bidi tobacco leaves in the farm land measuring 40 bighas in Bharoda, Taluka: Umreth, District Anand, Gujarat. According to assessee, the yield of tobacco leaves in the instant year was 30000 kgs. According to assessee, it had sold raw unmanufactured Bidi tobacco in two consignments, i.e, by one consignment of 15520 kgs and another consignment of 10200 kgs to M/s. Mohanlal Gordhanbhai & Co. (in short MGC) @ Rs.160/- per kg for a total consideration of Rs.41,15,200/-. During the assessment proceedings, the AO in order to verify the veracity of the claim of the assessee had issued certain queries u/s. 133(6) of the Act to the Registrar, Anand University and the queries and the answers have been reproduced in the assessment

order from pages 3 and 4. The AO records that pursuant to the notice issued by him to the Registrar, Anand University, they inturn deputed a Research Scientist of Bidi Tobacco Research Station and an Assistant Research Scientist, Plant Breeding, Anand University to visit the village Bharoda, Taluk Umereth, Dist. Anand for conducting spot enquiry, wherein they corroborated the fact that the assessee had infact cultivated GT-5 and GT-7 variety of tobacco during the assessment year under consideration and that 30000 kgs of tobacco (curved leaves yield) can be produced in the 40 bighas of land. To the query of AO as to the market rate of tobacco leave for the FY 2011-12, the Research Scientist has stated in his report that the market rate depends on the quality of tobacco and the normal range is about Rs. 40/- to Rs.75/- per kg. of tobacco leaves (curved leave yield) ; and Rs.100/- to Rs.150/- for Bidi tobacco patti (tobacco leaf flakes). The AO after taking note of this information from the Research Scientist, Anand University also took note of the declaration made in Form 402 which is made u/s. 68 of the Gujarat Value Added Tax Act, 2003 wherein the consignment value of 15520 kgs. Of Bidi tobacco leaves was stated as Rs.9,31,200/- which, therefore, works out to Rs. 60/- per kg; and consignment value of 10200 kgs of Bidi tobacco leaves was recorded as Rs.5,10,000/- which comes to Rs. 50/- per kg. The AO after comparing it with the information received from the Registrar, Anand University wherein the normal range of market value of tobacco leaves (curved leave yield) was Rs.40/- to Rs.75/- per kg and the value noted in the consignment note is Rs.60/- and Rs.50/- per kg., the AO questioned the veracity of the assessee's claim of tobacco leaves being sold at Rs.160/- per kg. (when the consignment value declared was Rs. 50/- per kg and Rs.60/- per kg and the market value has noted by the Registrar, Anand University ranged between Rs. 40/- to Rs.75/- per kg.) The AO, therefore, asked the assessee to explain as to how the assessee is claiming the value of tobacco leaves it sold at Rs.160/- per kg. According to AO, along with the reply of the assessee to the aforesaid query, to his (AO's) surprise, the purchaser of tobacco leaves i.e. MGC also voluntarily replied by a letter informed him that they have purchased the goods from the assessee at normal prevailing price in the market on credit taking into consideration the quality of the product and in support of the price given to assessee, enclosed 3 (three) purchase invoices of another supplier Ashok Kumar Maganbhai Patel. The AO takes note of the fact that he has not sought any information from the purchasers of the goods in question and found something strange in the voluntary, suo motto action of the purchaser of goods. The AO notes that in its reply to his query the

assessee has reiterated its claim that it has sold the tobacco leaves at the rate of Rs.160/- per kg. However, the AO did not accept the sale value of the tobacco leaves at Rs.160/- by taking note of the Research Scientist's information that price ranges between Rs.40-75, as well as taking into account the consignment note of the assessee, which reflected Rs.50/- and Rs.60/- per kg. Thereafter, the AO computed the value of tobacco leaves sold at Rs.14,41,200/- and the balance amount of Rs.26,79,000/- according to AO remained unexplained from the total value of sales shown by the assessee at Rs.41,15,200/- shown to have been received from sale of Bidi tobacco leaves. Therefore, the AO after making adjustment relating to the agricultural expenses computed the net agricultural income at Rs.7,95,740/- and thereafter, concluded that the excess amount of Rs.26,74,000/- as unexplained cash credit u/s. 68 of the Act and added to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. The assessee HUF claimed that it has cultivated tobacco leaves in its 40 bighas land at village Bharoda, Taluk Umerthi, Dist. Anand, Gujarat which was found to be correct. The assessee's claim that it has produced 30000 kgs of tobacco (curved leaves yield) has also been found to be correct by the Research Scientist, Bidi Tobacco Research Station, Plant Breeding, AAV, Anand University after physically verifying the facts stated above. The controversy is only in respect to the price of the tobacco claimed to have been sold by the assessee to MGC. According to the assessee, it has sold 15520 kgs. and 10200 kgs at Rs.160/- per Kg. and has received a consideration of Rs.41,15,200/- . To support its claim the assessee has placed the bill at pages 63 and 64 of the paper book wherein it has stated that *raw tobacco* of 467 bags and 280 bags at the rate of Rs.160/- per kg. has been sold on 06.03.2002 and 29.03.2002 respectively. The entire controversy has arisen because of the contradiction in the consignment note wherein the price of the consignment per kg. comes to Rs.50/- to Rs. 60/- respectively. According to the assessee, the authorities below have erred in adopting value of sale of Bidi tobacco leaves (curved leaves) whereas the assessee has sold "*raw unmanufactured tobacco*". We note that this question of fact has not been addressed by the AO or the Ld. CIT(A). This is an essential question of fact as to what has been sold, which is crucial for finding out the value of the goods. On a perusal of the bills placed at pages 63 and 64 of the paper book depicts that its raw tobacco sold by the assessee

at Rs.160/- per kg. Whereas the Research Scientist has given the rate of tobacco (cured leaves yield) at Rs. 40/- to Rs.75/- per kg and Rs.100/- to Rs.150/- for Bidi tobacco patti (tobacco leave flakes). The confusion in this appeal is based on the consignment note wherein the value of the consignment when calculated per kg. comes to Rs. 60/- and Rs.50/- per kg which prompted the AO to adopt the rate given in the consignment note to value the goods to have been sold by the assessee and the excess amount shown by the assessee as receipt has been added as unexplained credit u/s. 68 of the Act. The Ld. CIT(A) has also confirmed the addition based on the figures given in the consignment note. We note that the assessee in fact had cultivated tobacco in its 40 bighas of land in Gujarat and that it has produced 30000 kgs of tobacco (curved leaves yield) from its 40 bighas of land. The only question is in respect to the value of the sold tobacco which according to the assessee fetched an amount of Rs. 160/- per kg and according to AO it is Rs.50/- and Rs./60/- per kg which is based on the consignment note. The main grievance of the assessee is that it has sold *raw unmanufactured tobacco* and not Bidi tobacco leaves (curved leaves) which needs to be ascertained by the AO which is essential for adjudicating this issue. The nomenclature or figures shown in the consignment note alone cannot decide the goods in this case as to what was transported or sold because the goods in question was agricultural product exempt from Sales Tax, so in the check post of inter-state transfer, the amount stated in the consignment note makes no difference as such. However, in case of an eventuality happening because of accident/damage to the goods transported, the value of goods noted in the consignment note may affect the insurance claim if any raised by the assessee. However, it is not understood as to how the driver of trucks will quantify the cost of the consignment at Rs.9,31,000/- and Rs.5,10,000/- and it is difficult to believe the explanation given by the assessee in this behalf that drivers just fill up the amount as per their wish, which inspires little confidence. However, taking note of the fact that the Research Scientist has given another value also which ranges from Rs. 100-150 per kg about *Bidi tobacco Patti (tobacco leaf flakes)* and the assessee's bill describes the goods transported as "*Raw tobacco*", (which the assessee in the ground of appeal claims to be "*Raw unmanufactured tobacco*"), the conundrum arising from this appeal can be solved only if the question of fact as to what was transported and sold by the assessee to MGC is ascertained. It has to be necessarily ascertained whether "*Bidi tobacco Patti*" (tobacco leaf flakes) which fetches Rs.100-150 as stated by Research Scientist is the same good as described by assessee in the

bill “Raw tobacco” or Raw “unmanufactured tobacco” as described by the assessee in grounds of appeal before us. For that AO should enquire to find out the truth and if necessary should call up on the buyer and examine him and in case if any adverse material is elicited against the assessee, then the buyer must be examined in the presence of assessee and he should be allowed to be cross examined. Therefore, in the interest of justice and fair play, we are inclined to set aside the order of the Ld. CIT(A) and remand the issue back to the file of the AO to enquire de novo and ascertain the goods sold by the assessee and once this question of fact as to the goods sold has been determined, then the veracity of the claim made by the assessee would be clear and in case it is found that assessee’s claim is correct, then no addition is required. However, if the veracity of the claim made by the assessee is found to be incorrect, then the AO should adjudicate the issue in accordance to law. Needless to say, the assessee shall be granted reasonable opportunity to present its case before the AO and is at liberty to bring evidence on record to substantiate its case. Moreover, we make it clear that the AO will decide the matter on its own merit and without being influenced by any observation made by us above. With the aforesaid observation, the matter is remanded back to the file of the AO for adjudicating afresh. Appeal of assessee is allowed for statistical purposes.

5. In the result, appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court on 09.03.2018

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 9th March, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Ashwinibhai G. Patel, HUF, C/o, G. P. Agrawal & Associates, 7A, Kiran Shankar Roy Road, Kolkata-700 001.
2. Respondent – ITO, Ward-34(2), Kolkata.
3. The CIT(A) Kolkata
4. CIT Kolkata
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary