

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. Nos.857 & 858/Ind/2016		
निर्धारणवर्ष/ Assessment Years: 2005-06 & 2006-07		
Shri Chandra Mohan Sachdeva, E-5/59, Arera Colony, Bhopal	vs.	Assistant Commissioner of Income-tax, 1(2), Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AELPS-9951F		

अपीलार्थी की ओर से/Appellant by	:	Shri P.D.Nagar, C. A.
प्रत्यर्थी की ओर से/Respondent by	:	Shri V.J.Boricha, Sr. DR

सुनवाई की तारीख/Date of hearing	:	09.05.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	11.05.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

These two appeals filed by the assessee pertaining to assessment years 2005-06 & 2006-07 are directed against the two separate orders of Ld. CIT(A)-2, Bhopal, both dated 20.05.2016. Since common grounds are involved in both the assessment years, these appeals were heard together and have been disposed of by this consolidated order.

2. Following grounds have been raised in appeal in I.T.A.No. 857/Ind/2016 for the assessment year 2005-06 :-

01. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding the order of AO that the purchase of eggs for Rs. 4,53,720/- and birds for Rs. 3,07,800/- during the period 2004 to July 2004 were bogus and represented unexplained expenses of the appellant and in confirming the addition of Rs. 8,61,520/- (

correctly Rs. 7,61,520/-) towards the same in the hands of the appellant.

02. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding the order of AO that there was the combined suppression of sale of eggs at Rs. 10,00,000/- by the appellant and M/s. Sahil Farm and that it represented the net profit of the appellant and M/s. Sahil Farm and in including 1/3rd share of the said income at Rs. 3,33,333/- in the hands of the appellant and in confirming the addition of Rs. 3,33,333/- towards the same in the hands of the appellant.

03. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding the order of AO that there was the combined income from the suppressed sale of droppings of birds and

gunny bags at Rs. 2,00,000/- by the appellant and M/s. Sahil Farm and that it represented the net profit of the appellant and M/s. Sahil Farm and including 1/3rd share of the said income at Rs. 66,666/- in the hands of the appellant and confirming the addition of Rs. 10,000/- towards the same in the hands of the appellant.

3. Following grounds have been raised in appeal in I.T.A.No. 858/Ind/2016 for the assessment year 2006-07 :-

01. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs. 12,00,000/- towards unsecured loan obtained from M/s. K.K. Company through cheque at Rs. 12,00,000/-

02. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding the order of AO that the appellant claimed the

deduction towards the bogus expenses at Rs. 4,26,593/- and in confirming the disallowance at Rs. 4,26,593/-.

03. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs. 3,04,800/- towards the allowances claimed by the appellant at Rs. 3,04,800/- out of salary payment.

04. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding the order of AO that the appellant made the sales outside the books of account at Rs. 3,00,000/- and in treating the same as the net profit of the appellant and in confirming the addition of Rs. 3,00,000/- towards the same in the hands of the appellant.

4. Briefly stated, the facts for the assessment year 2005-06 are that the case was picked up for scrutiny and the assessment u/s 143(3) of the Income-tax Act, 1961, (hereinafter referred to as the Act) was framed vide order dated 31.12.2007. The AO observed that in this case, survey u/s 133A was conducted at the business premises of the assessee on 20.09.2005. Various documents found and impounded during the course of survey revealed that the assessee was suppressing the production and sale of eggs and also the income from miscellaneous activities like sale of manure, gunny bags etc. The AO after considering the submissions of the assessee, made addition on account of unexplained purchase of eggs and birds at Rs. 8,61,520/- and made further addition in respect of undisclosed suppressed sale/profit u/s 68 of the Act at Rs. 3,33,333/- and made addition on account of sale of birds dropping u/s 68 of the Act at Rs. 66,666/-. Aggrieved by this, the assessee preferred the appeal before the Ld. CIT(A), who partly allowed the appeal. Against this, the assessee is in the present appeal.

5. Similarly, in the assessment year 2006-07 facts are same. During the course of scrutiny, it was found that the assessee had taken unsecured loan at Rs. 12,00,000/- from K & K Company, 22,

Industrial Area, Ludhiyana Punjab. During the course of assessment proceedings, enquiry u/s 133(6) was conducted and the difference amount of Rs. 4,26,593/- was added back to the total income of the assessee as bogus purchase. On perusal of salary sheet and also the profit and loss account, it was found that the assessee has debited house rent allowance amounting to Rs. 1,52,400/- and conveyance reimbursement amounting to Rs. 1,52,400/-. Accordingly, the amount of Rs. 1,52,400 + Rs. 1,52,400/- = Rs. 3,04,800/- on account of house rent allowance and conveyance reimbursement was disallowed and added back to the total income of the assessee. The assessee had shown total sale of eggs and birds at Rs. 1,53,56,974/- in respect of M/s. Chick Poultry. The assessee also filed the quantity of sale of birds and egg. The AO estimated the total addition on account of suppression of sale at Rs. 3,00,000/- which represented the net profit of these concerns as all the cost of sale in respect of these suppressed sale had already been accounted for in the books of account. Rs. 3 lakhs represented the undisclosed sale/profit of the assessee to be taxed u/s 68 of the Act. He added the same amount to the total income of the assessee as income from undisclosed sources u/s 68 of the Act.

Aggrieved by this, the assessee preferred the appeal before the Ld. CIT(A), who partly allowed the appeal. Against this, the assessee is in the present appeal before us.

6. Apropos ground nos. 1 to 3 for the assessment year 2005-06 and also ground nos. 1 to 4 for the assessment year 2006-07, the Ld. Counsel for the assessee has reiterated the submissions as made in the written synopsis and he submitted that all the details were furnished before the Ld. CIT(A). However, the Ld. CIT(A) has not considered those details in right perspective. The Ld. Counsel for the assessee further submitted that the opportunity was not granted to the assessee to explain his stand. He submitted that under these facts, the impugned orders may be set aside and grounds of appeal may be restored to the CIT(A) for decision afresh.

7. On the contrary, the Ld. Departmental Representative supported the orders of the lower authorities.

8. We have considered the facts, rival submissions and perused the material available on record. The assessee has reiterated the submissions for both the assessment years i.e. 2005-06 and 2006-07 as made in the written synopsis. The written submissions are reproduced as under :-

“SYNOPSISFACTS & SUBMISSIONS:

The appellant and his wife Smt. Suman Sachdeva carried on the business of poultry farm under the name and style as M/s. Chic Poultries & M/s. Sahil Farm respectively at Ratibad, Bhopal. Survey proceedings u/s. 133A of the Act were conducted on 21.09.2005 at business premises whereas the appellant did not surrender any income. Stock statements and other loose papers containing details of purchases and sales for following periods were impounded :-

a) From 03.08.2004 and to 17.02.2005 relevant to A.Y.

2005-06

b) From 01.09.2005 to 20.09.2005 relevant to A.Y. 2006-07.

Details of income returned & income assessed for both the years as confirmed by learned CIT (A) are as under :-

Particulars	A.Y. 2005-06	A.Y. 2006-07
Income returned	Rs. 2,15,031/-	Rs.(-) 4,71,670/-
Additions made by AO		
a) Inflated purchases u/s 69C	Rs. 7,61,520/-	Rs. 4,26,593/-
b) Sales of eggs outside books (1/3 rd)	Rs. 3,33,333/-	Rs. 3,00,000/-
c) Sales of droppings of birds & gunny bags (1/3 rd)	Rs. 66,666/-	Rs. NIL
d) House rent & conveyance allowance paid to staff	Rs. NIL	Rs. 3,04,800/-
e) Unsecured loan u/s 68	Rs. NIL	Rs. 12,00,000/-
TOTAL Income assessed	Rs. 14,76,590/-	Rs. 17,59,223/-

A) :Inflated purchases of birds and eggs:

Regular books of accounts were maintained by the appellant and no defects were noticed in the books except that the vouchers for some of the purchases of birds and eggs were not available. The appellant maintained quantitative details of purchases and generation of birds and eggs in daily stock sheets which were found during survey proceedings. The AO made additions towards bogus purchases in both the years on different footings as under :-

A-I) A.Y. 2005-06: Rs.7,61,520/-

Details of opening stock purchases/generation, sales and closing stock during the period from 01.04.2004 to 02.08.2004 of layers, growers, chics and eggs as furnished by the appellant :-

Particulars				Layers	Birds & chicks		In numbers	
							Eggs (consolidated)	
					Nos.	Value	Nos.	Value
Opening balance as on 1 April 04				14021	21602		15644	
Add: Purchase/generation								
From 1 st April 04 to 31 July								
Generation				-	-	-	7696401	-
Purchases by cheque				25808	44170	-		-
Purchases by cash - chic				-	8100	Rs.30780	45600	Rs.45
- Sahil farms				-	-	-	1362000	
Sales From 01.04.04 to 02.08.04 :								
Chic poultries 8385							3298684	
Sahil farms <u>9394</u>				2769	15010		6227275	
Less: Mortality during above				1195	1014		-	
Closing Balance as on 2				53214	93713		4086	

Purchases of birds worth Rs. 3,07,800/- and of eggs at Rs.

4,53,720/- in cash were considered as bogus or inflated because daily sheets were not available for the period from 01.04.2004 to 02.08.2004 and purchase bills of the suppliers were not produced though supported by the vouchers (P.8, 9 & 11 to 13 of P.B).

Said purchases were also treated as inflected because the appellant did not purchase eggs and birds from poultry farmers thereafter in cash as per daily production/sale sheets for subsequent period i.e. from 03-08-2004 to 17-02-2005.

The appellate authority confirmed the addition on the ground that no evidence was filed from these small suppliers to establish the genuineness of purchases prior to 03.08.2004.

Explanation of the appellant regarding cash purchases upto 02.08.2004 :

- i) With an object to increase the production of eggs, the appellant purchased laying birds or birds ready to lay eggs in short time from poultry farms being brought from Jhabua/Khargone to Bhopal Rs. 3,07,8001-. Considering the fact that normal time to get eggs from chics is 20 weeks from the date of purchase.*
- ii) As these vendors did not have any bank a/c at Bhopal hence payments were made to them in cash against delivery of birds .*
- iii) The appellant had the infrastructure capacity to house maximum One lakh laying birds, hence it was considered expedient not to purchase the birds further.*

iv) Number of eggs found reconciled with the physical stock on the date of survey. If the purchase of 4,56,000 eggs for Rs. 4,53,720/- are treated as inflated or bogus, it was impossible to effect sale of eggs disclosed in the books by the appellant and his wife during the period 01-04-2004 to 03- 08-2004.

The appellant purchased birds and eggs, and debited its cost in the books of accounts hence source of the expenditure of Rs. 7,61,520/- was proved. By considering the purchases inflated addition has been made u/s 69C of the IT Act as unexplained expenditure which is not justified and deserves to be quashed.

A-II) A.Y. 2006-07 : Rs. 4,26,593/-

Notices u/s 133(6) of the Act were issued to suppliers to verify purchases recorded in books. Either there was no response in some of the cases or there was some differences (which required reconciliation) such purchases were treated as bogus.

On appeal, learned CIT(A) dealt with the issue vide para-7.3 of the appellate order based on copies of the accounts of the appellant in the books of various suppliers, their bills and confirmation letters from them produced as additional evidence to prove that every purchase was properly supported and evidenced by quantitative records. Remand report was called by the learned CIT(A) but the ACIT did not verify the contentions and vide report dated 11.08.2011 requested the learned CIT (A) to decide the issue on merits.

The learned CIT(A) confirmed the addition of Rs. 16,725/- because confirmation of the suppliers was not filed and

only bills were filed whereas remaining differences in the accounts though explained and confirmation certificates were filed confirming all transactions yet such addition was sustained vide para-7.4 of the appellate order.

In fact, alleged differences were fully explained hence no addition was called for. Addition sustained at Rs. 4,26,593/- towards bogus purchases deserves to be quashed.

B) Supression of Sales of eggs :

B-1)A.Y. 2005-06 - Rs. 3,33,333/-

Daily sales reports for the period 05-08-2004 to 09-08-2004 were found during survey. The AO observed that :- (a) In the daily production sale sheets sale in the name of Hazi and Anjumare were not reflected in the books of either M/s.. Chic Poultry or M/s. Sahil Farm. (b) Sales in the months of April and May '2004 are less than 50 % as compared to the sales in other months.

He, therefore, concluded sales were suppressed to the extent of Rs. 10,00,000/- and made addition of 1/3rd i.e. Rs. 3,33,333/- in the hands of the appellant and 2/3rd in the case of wife i.e. Rs.6,66,666/-.

It was explained that the delivery of eggs was taken by one person and the payments were made by other person, who happened to be relative. Following additional evidences were furnished before CIT(A) u/r 46A of the IT rules, :- (a) Confirmation letters along with proof of i.e. Ration Cards of Hazi & Anjum bearing the names of the family members. (b) voter ID cards of Aftab and Harish/Girish and (c) driving licence of Iqbal (Shakir Ur Rehman).

It was a fact that the eggs delivered to Anjum, Hazi, Aftab and

Harish were recorded in the names of Hyder, Rizwan , Iqbal and Girish respectively. Shri Hyder and Rizwan are sons of Anjum and Hazi respectively whereas Iqbal is brother of Aftab alias Riaz Ur Rehman alias Shakir Ur Rehman and Girish is brother of Harish. The copies of a/cs of Hyder, Rizwan,Iqbal and Girish are annexed . Thus, there was no any discrepancy at all and entire sales pointed out by the AO were recorded in the books either by the appellant or his wife as per copies of a/c's annexed.

To verify aforesaid contentions, remand report was called by the learned CIT(A) but the ACIT did not verify the facts and vide remand reports dated 15.07.2011 and 22.07.2011 requested the learned CIT (A) to decide the issue on merits.

Learned CIT(A) in para 8.4 of the appellate order did not consider aforesaid evidences and observed that the contention was not substantiated. He further observed that "No one argued the appeal and reliance was placed only upon written submissions". Considering comparative lesser turnover in April/May 2004 and confirmed the addition by holding that provisions of section 145(3) were properly invoked and addition of Rs.3.33 lacs was upheld.

Thus, there was no justification to reject the books under sec.145 of the IT Act and to estimate alleged suppressed sales of Rs. 10,00,000/- and to make 1/3rd addition in the hands of the appellant at Rs. 3,33,333/-.

B-II) A.Y. 2006-07 - Rs. 3,00,000/-

The AO compared following daily production and sale reports impounded (LPF -8) for the period 10-02-2005 to 20-08-2005 with books :-

(i) P. No. 17 (11-04-2005); (ii) P. No. 18 (12-04-2005); (iii) P. No. 19 (16-04-2005); (iv) P. No. 20 (20-04-2005); (v) P. No. 22 (23-

04-2005) of LPF-8

He observed that the sales shown by the appellant in the regular books do not tally. The copies of cash book of these dates are annexed from which it is evident that that the sale receipts as reflected in the seized papers do appear in the cash book and that the figures of expenses also appear in the cash book.

The observations that the sale shown by the appellant were suppressed to the extent of Rs.3,00,000/- based on alleged discrepancies in the sale quantity and rate of the eggs/birds are contrary to facts. There being no unrecorded sales at all, addition made at Rs. 3,00,000/- towards the suppressed sales u/s 68 of the Act deserves to be quashed.

Learned CIT(A) in para 9.4 of the appellate order did not consider aforesaid evidences and observed that the contention was not substantiated. He further observed that "No one argued the appeal and reliance was placed only upon written submissions. He further referred to observations related to A.Y. 2005-06 regarding comparative lesser turnover in April/May 2004 and confirmed the addition by holding that provisions of section 145(3) were properly invoked and the AO was justified to make addition of Rs. 3 lacs.

C) : Suppressed sales of dropping of birds and gunny bags - A.Y. 2005-06 - Rs. 10,000/-

The AO observed that the appellant did not disclose any income for sale of gunny bags and bird droppings and estimated such sale at Rs. 2,00,000/- in aggregate. The CIT(Appeals) reduced the addition to Rs. 30,000/- and confirmed the addition to the extent of Rs.10,000/- in the case of appellant.

The appellant did not purchase the curtains to save the birds

from the rains, heat and cold but utilized the old gunny bags and saved the expenditure for purchase of curtains, being incurred by other poultries. Similarly, there is no market for sale of birds droppings as evident from the fact that sale of gunny bags or birds droppings was not found recorded in daily sheets found during survey.

D) Payment of house rent and conveyance allowance A.Y.

2006-07 Rs. 3,04,800/-

Complete details of the expenses, books of account and vouchers were produced before the Id. assessing officer for examination. All the expenses are fully vouched and verifiable and complete details of expenses were filed. The appellant produced the salary sheet at the time of assessment proceedings, which reflected the gross salary of all the labours. The workers being uneducated, did not know that salary included other perquisites also hence while recording the statement, they were not aware of the impact of their statement. Some of the workers (5) denied for such allowances, and as per assessment order excess salary paid for the whole year was Rs.74,565/- only but the AO disallowed entire amount of house rent allowance of Rs. 1,52,400/- and conveyance allowance of Rs. 1,52,400/- paid to labours as part of salary resulting the addition of Rs. 3,04,800/-.

The appellant had filed the fresh statements of four labours (i.e. Annilal ,Lalbabu, Deepchand and Kewal) before CIT(A), who confirmed about the gross salary including conveyance and house rent allowance but the learned CIT(A) confirmed the addition in whole vide para 8.4 of the appellate order for A.Y. 2006-07.

It is submitted that the labours were under fear and their

statements were not recorded in free atmosphere. Such statement do not carry any evidentiary value & addition made by the assessing officer be quashed.

E) Addition u/s 68 of the Act - A.Y. 2006-07 - Rs. 12,00,000/-

The appellant had accepted the unsecured loan of Rs. 12,00,000/- from M/s. K. & Company, Ludhiana and to prove identity, genuineness of transaction and creditworthiness of the said party following documents were submitted before AO :-

- a) Copy of bank statement*
- b) Confirmation letter from M/s. K & Co. (PAN AABHS6441J)*
- c) Copy of bank account of the appellant in HDFC bank,*
- d) Copy of a/c of M/s. K & Co. in the books of the appellant duly confirmed by said party.*
- e) Copy of a/c of the appellant in the books of M/s. K & Co.*
- f) Copy of audited balance sheet of K & Co. wherein amount of Rs. 12,00,000/- did appear as advance given to M/s. Chic Poultry.*
- g) Acknowledgment of return of income filed by K & Co .*

The amount of loan was treated as unexplained u/s. 68 of the IT Act in Bank statement of M/s.. K & Co. with HDFC bank, because there was a credit of Rs. 3,00,000/- through the transfer from an a/c No. 2592020001009 and cash was deposited by the lender in its bank account before advancing the loan.

According to AO. identity of creditor was established but the genuineness of said transaction was doubtful and creditworthiness of the said party was not established. He relied

upon the judgment of MP High Court in the case of CIT vs Rathi Finance Limited ___(MP). In that case, the creditor was not exist and its identity was not proved hence it is distinguishable from the facts of the appellant.

It is the settled law that the assessee cannot be asked to explain the source of source of loan accepted through banking channel as well once identity of the lender is proved beyond doubt addition u/s 68 of the Act cannot made as held in following judgments :-

- a) CIT Vs Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC).*
- b) CIT vs. Metachem Industries (2000) 245 ITR 160 (MP)*
- c) Shree Barkha Synthetics Ltd Vs. CIT (2006) 283 ITR 377 (Rajsthan)*
- d) Rajat Capital Market Pvt. Ltd Vs. ACIT (2014) 24 ITJ 219 (Indore)*

The appellant discharged the burden casted upon him and he was not required to prove source of source of loan received from M/s. K & Co. as held in the case of CIT Vs. Dwarkadish Investments P. Ltd. (2011) 330 ITR 298 (Delhi HC) as under :-

Held that" Though in section 68 of the Income tax Act, 1961, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Moreover, it is settled law that the assessee need not to prove the "source of source". Other judgments relied upon on similar issue are as under :-

S.No	Reference	Citation	Relevant Para
1	<i>CIT vs. Kinetic Capital Finance</i>	354 ITR 296 (Del)	Para 7
2	<i>Aravali Trading Co. vs. ITO</i>	220 CTR 622 (Raj)	Para 20
3	<i>Labh Chand Bohra v. ITO</i>	219 CTR 571 (Raj)	Para 8
4	<i>CIT vs. Glocom Impex P Ltd</i>	299 ITR 571 (Del)	Para 5 & 6
5	<i>CIT vs. Dwarkadish Investment</i>	330 ITR 298 (Del)	Para 12
6	<i>CIT vs People General Hospital Ltd</i>	356 ITR 65 [MP]	
7	<i>CIT v.Oasis Hospitalities (P) Ltd.</i>	333 ITR 119 (Del)	
8	<i>Pr. CIT vs. Mahakaushal Sugar & Power Industries Ltd</i>	30 ITJ 316 (MP)	

9. After considering the submissions of the parties and the material available on record, more particularly, when the Ld. CIT(A) has himself recorded in his impugned orders for both the assessment years that no one remained present to argue the cases, we deem it proper that the assessee may be granted an opportunity of hearing to explain his case. We, therefore, accordingly set-aside the orders of the Ld. CIT(A) and restore the issues to the file of CIT(A) in both the assessment years for decision afresh.

10. In the result, the appeals in I.T.A.Nos. 857 & 858/Ind/2016 are allowed for statistical purposes.

The order is pronounced in the open court on 11.5.2018.

Sd/-
(मनीष बोरड)
लेखा सदस्य
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 11/05/2018

CPU/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore