

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH, PANAJI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No. 227/Pan./2017
(Assessment Year: 2011-12)

Income Tax Officer, Ward-1(2), F. K. Commercial Complex, Dr. B. R. Ambedkar Road, Opposite: Civil Hospital, Belagavi-590 001	Vs.	Shri Girish Prakash Vernekar No. 264, Mahalasa Krupa, Shastri Nagar, Vadagaon, Belagavi
PAN/GIR No. ADNPP 5618 F		
(Revenue)	:	(Assessee)

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CO No. 26/Pan./2017
(Arising out of ITA No.227/Pan./2017)
(Assessment Year: 2011-12)

Shri Girish Prakash Vernekar No. 264, Mahalasa Krupa, Shastri Nagar, Vadagaon, Belagavi	Vs.	Income Tax Officer, Ward-1(2), F. K. Commercial Complex, Dr. B. R. Ambedkar Road, Opposite: Civil Hospital, Belagavi-590 001
PAN/GIR No.		
(Cross Objector)	:	(Revenue)

Appellant by	:	Shri A. S. Patil
Respondent by	:	Shri Y. V. Raviraj

Date of Hearing	:	13.11.2018
Date of Pronouncement	:	19.12.2018

ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue and cross objection by the assessee against the order of the learned Commissioner of Income Tax (Appeals)– Belagavi vide order dated 28.06.2017, pertains to the assessment year 2011-12.

2. The grounds of appeal raised by the Revenue are as under:–

Additional Income declared towards value of excess stock of Gold of Rs.25,17,500/-

(1) The Id. CIT(A) has failed to appreciate that the assessee has made voluntary declaration of Rs 25,17,700/- towards excess stock not at the time of Survey but in

a statement recorded in office on oath u/s 131 on 27/09/2010, which was followed by another confirmation vide letter dtd. 27/09/2010 filed in the office on 29/09/2010.

(2) The Id. CIT(A) has failed to appreciate that retraction without supporting evidences was not valid.

(3) The Id. CIT(A) has failed to appreciate that assessee failed to prove that the excess gold found at the time of Survey was the same gold which was purchased from Bangalore Refinery Pvt. Ltd.

Addition on Account of low gross profit of Rs 60,74,117/-

(5) The Id. CIT(A) failed to appreciate that the Books of Accounts have not been maintained by assessee properly and has been manipulated to suppress the profit.

(6) The Id. CIT(A) has erred in not appreciating the fact that the books of A/c have been rejected by the AO citing defects in the Books of Accounts and hence gross profit under ., gold trading account and silver trading account have been estimated based on the decision of Hon'ble ITAT, Panaji Bench, Panaji vide ITA No. 07/PNJ/2012 dated 20/04/2012.

3. (7) For these and other grounds that may be urged at the time of hearing, the order of the learned CIT(Appeals) may be set aside and that the order of the Assessing Officer be restored.

3. The grounds raised by the assessee in the cross objection reads as under:

1] Departmental appeal is against law and facts of the case. Hence, Departmental appeal is required to be quashed.

2] Learned Commissioner [Appeals] is fully justified in deleting additions of Rs.25,17,700/- income declared during Survey IN PARA 6 OF PAGE 6 of the order clearly held that facts clearly establish that disclosure made in Survey had been properly explained and appellant had rightly retracted due to clinching evidence. Hence, the decision of the Commissioner [Appeals] be restored.

3] Learned Commissioner [Appeals] is fully justified in deleting GP addition of Rs.60,74,117/- on the ground that in reassessment order general additions are unwarranted hence GP addition of Rs.60,74,117/- is rightly deleted and the decision of the Commissioner [Appeals] be restored.

4] Learned Commissioner [Appeals] is not justified in directing Income-Tax Officer to make addition @ 7.40% on URD Cash Purchases of Rs.23,32,623/-. The of Rs.1,72,614/- on URD Cash Purchases is not justified as Commissioner [Appeals] held in deciding Grounds of Appeal Number 3 that general additions are unwarranted in reassessment. Hence, additions of Rs. 1,72,614/- sustained requires to be deleted.

Apropos addition towards excess value of stock on survey:

4. Brief facts of the case are as under:

In the assessment order u/s. 143(3) r.w.sec.147 the Assessing Officer (A.O. for short) stated that the assessee declared income of Rs.4,19,646/- only and had not disclosed the additional income of Rs.25,17,500/- voluntarily declared consequent on the survey proceedings u/s 133 on account of excess stock Gold bullion weighing 1325 grams. Since the income of Rs.25,17,500/- chargeable to tax has escaped assessment, the re-assessment proceedings were completed making an additions of Rs.99,44,924/-to the income returned. The following additions made on various issues are as under:

SI.No.	Details of addition made	Amount in Rs.
	Total Income returned	5,45,950
1	Additional income declared towards value of excess stock found during Survey u/s 133A	25,17,500
2	Disallowance of URD purchases	11,27,006
3	Addition on account of low gross profit	60,74,117
4	Disallowances of expenses towards personal use	1,00,000
	TOTAL ASSESSED INCOME Rs.	1,03,64,570

5. Upon the assessee's appeal, the ld. CIT(A) considered the assessee's submissions and also obtained remand report from the A.O. The ld. CIT(A) found that in the remand proceedings, the A.O. has accepted the explanation given by the assessee. Accordingly, he directed for addition of the deletion. The order of the ld. CIT(A) in this regard may be gainfully referred as under:

Remand report answered three questions raised by the CIT(A), very clearly states that (a) Evidence furnished by the assessee is genuine and correct in relation to purchase of gold on 22/09/2010 from Bangalore Refinery Pvt Ltd. (b) Assessee had paid Rs.28,88,433/- on 22/09/2010 by RTGS which was reflected in Bank Statement (c) That particular invoice of gold purchased on 22/09/2010 was not entered prior to survey in to the stock book.

However, AO in remand report brought out a new theory that the gold found during the survey may not be the gold purchased as per this invoice without any supporting evidence. Enquiry by AO clearly revealed a fact that one invoice of Gold purchased by RTGS had not accounted as stock goes to strengthen AR's argument and must be given due consideration as it was through accounted channel of the assessee through banking system.

These facts clearly establish that disclosure made during survey had been properly explained and appellant had rightly retracted due to clinching evidence in his favour establishing that gold purchased earlier through RTGS was not entered in stock book prior to survey. Hence, addition of Rs.25,17,500/- made by AO is deleted.

6. Against the above order, the Revenue is in appeal before us.
7. We have heard both the counsel and perused the records. We find that the Id. CIT(A) has deleted the addition on the basis of the remand report wherein the assessee's explanation for the addition of stock found has been accepted. Hence, the retraction by the assessee has been duly corroborated by proper evidence. In any case, the statement obtained on survey *de hors* any corroborate material cannot lead to addition as held by the Hon'ble Apex Court in the case of *CIT V. S. Khader Khan Son* [2012] 25 taxmann.com 413 (SC). Accordingly, we do not find any infirmity in the order of the Id. CIT(A).

Apropos addition on account of low gross profit:

8. Brief facts of the case are as under:

AO made the addition of Rs.60,18,223/- on account of low gross profit. The percentage of gross profit shown the assessee is 1.70 % to 0.47% on sale of Gold and 3.77% to 0.18% on sale of Silver for the assessment years 2006-07 to 2011-12. According to AO on the basis verification of earlier year sales made by the assessee, the gross profit shown was very low on sale of Gold and Silver. The assessee's argument was that there is slight fall in GP due to competition and market condition. The AO had not satisfied and not accepted the assessee's explanation and added Rs.60,18,228/- on account of low gross profit.

9. Upon the assessee's appeal, the Id. CIT(A) deleted the addition by considering that no gross profit addition has ever been made and the A.O. has not brought on record proper reasoning for making the addition. The order of the Id. CIT(A) in this regard reads as under:

This is a re-assessment order and general addition without proper evidence is not a good practice. AO did not brought out any new evidence to support for higher gross profit. Gross profits for different kinds of trades are different. In earlier years GP shown by appellant is accepted by the Department. In relation to subsequent re-assessment made by AO for the assessment years 2009-10 to 2013-14, AO accepted GP shown by the appellant in relation to cash purchases allegedly to have been made from M/s Rajesh Exports for working out un accounted income. AO had not brought out any evidence or compared with any other similar nature of business to show that GP shown by appellant is low. Hence, I feel Gross Profit addition made by AO is unwarranted, specifically, in re-opening proceedings without any material evidence or basis for the same. Hence, Gross Profit addition made by AO of Rs.60,74,117/- is deleted.

10. Apart from the above, we are of the considered opinion firstly the variation in gross profit is not significant. As there is no law that the GP rate should follow mathematical precision every year. Moreover, even if there is some variation, it cannot lead to any adhoc addition unless the A.O. has made the proper investigation and found any material to the contrary. Hence, we uphold the order of the Id. CIT(A) in this regard.

Apropos issue of addition on account of unregistered dealer (URD) and purchases:

11. On this issue, the A.O. noted that the assessee had purchases from unregistered dealers amounting to Rs.1,12,70,066/-. On enquiry in this regard, the assessee submitted that on similar issue the ITAT had earlier deleted the additions. However, the A.O. was not convinced. He held as under:

However, for the asst. year 2011-12, the assessee was given an opportunity to produce the persons from whom URD purchases were made but the assessee did not discharge the onus of producing the parties for cross- examination. As stated above, some of the parties responded the summons, some did not respond and

some of the summons could not be served on the parties. This being the case the genuineness and correctness of URD purchases cannot be ascertained. As a result, the correctness of the stock also cannot be ascertained. Moreover, in the said order of the Hon'ble Income tax Appellate Tribunal, Panaji Bench, Panaji has confirmed the disallowance made in the assessment order for the asst. year 2008-09 to the extent of Rs.75,000/- which works out to 7.40%. However, considering the fact that the URD purchases are paid by cash of the amounts less than Rs.20,000/- totaling to Rs.23,32,623/-, I feel it appropriate to disallow the URD purchases to the extent of 10% of the total URD purchases of Rs.1,12,70,066/- both cash as well as credit as inflation of purchases . The disallowance of such URD purchases works out to Rs.11,27,006/-.

12. Against the above order, the assessee appealed before the ld. CIT(A).
13. The ld. CIT(A) restricted the disallowance to 7.40% of the purchases considering the same to be a reasonable disallowance.
14. Against the above order, the assessee has filed cross objection before us.
15. We have heard both the counsel and perused the records. We find that the addition in this regard has summarily been made on the basis that the assessee has not produced the parties for cross examinations and that some of the parties did not responded to summons. We find that no defect whatsoever has been found in the purchase documents submitted by the assessee. It is settled law that when sales are not doubted, no disallowance on account of bogus purchases is sustainable. Hence, in this case we find that since no defect whatsoever has been found in the purchase documentation and there is no doubt in the veracity of the payment made and there is no doubt expressed regarding sales. The disallowance of 7.40% on this purchase is not sustainable as being based on surmise and conjecture. Hence, we direct for the deletion of the disallowance in this regard.

16. In the result, this appeal by the Revenue is dismissed and the cross objection by the assessee is allowed.

Order pronounced by listing the result on the Notice Board of the Bench under Rule 34(4) of the Appellate Tribunal Rules, 1963.

Sd/

Sd/-

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RAM LAL NEGI
JUDICIAL MEMBER

SHAMIM YAHYA
ACCOUNTANT MEMBER

DATED: 19.12.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Panji City concerned;*
- (5) *The DR, ITAT, Panji;*
- (6) *Guard file.*

Roshani, Sr. PS

By Order

(Sr. P.S./P.S.)
ITAT