

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 1631/Kol/2018
Assessment Year: 2009-10

Sarbamangala Trading Co.....Appellant
Vill. P.O. – Seharabazar
Dist. Purba Bardhaman
PIN – 713 101
[PAN : AAKFS 2765 A]

Income Tax Officer, Ward-2(3), Kolkata.....Respondent

Appearances by:

Shri Sanjoy Bhattacharya, FCA, appeared on behalf of the assessee.

Shri Amitava Bhattacharya, Addl. CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : December 26th, 2018

Date of pronouncing the order : January 16th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) - Burdwan, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 23/05/2018, for the Assessment Year 2009-10.

2. The assessee is a partnership firm and is in the business of rice milling. He filed his return of income for the Assessment Year 2009-10 on 19/09/2009 disclosing total income of Rs.1,12,782/-. A survey operation u/s 131 of the Act, was conducted on the assessee on 19/03/2009. Thereafter the assessment order was passed u/s 143(3) of the Act, on 22/11/2011, determining total income of Rs.3,32,010/-. The assessee carried the matter in appeal without success.

3. Further aggrieved the assessee is before us on the following revised grounds of appeal:-

“(1) That the Ld. Commissioner of Income-tax (Appeals) was wrong in confirming the action of the Assessing Officer in making an addition of Rs.4,74,930 as alleged Investment in purchase of Paddy from alleged Undisclosed sources of income.

(2) That the Ld. Commissioner of Income-tax was wrong in confirming the action of the Assessing Officer in making an addition of Rs.3,58,717 as alleged undisclosed Sale of Rice.

(3) That the Ld. Commissioner of Income-tax (Appeals) was wrong in confirming the action of the Assessing Officer in making an addition of Rs.15,051 as alleged undisclosed Sale of Rice bran.

(4) That without prejudice to the contentions raised in Grounds Nos.2 and 3 above, the Ld. Commissioner of Income-tax was wrong in not appreciating the fact that the Assessing Officer had been unjustified in making additions of alleged undisclosed Sales of Rs. 3,58,717 and Rs.15,051 instead of taking into account only the estimated profit that could be earned from the alleged undisclosed Sales.

(5) That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal before or at the hearing of the appeal."

4. The Id. Counsel for the assessee submits that on the date of survey, the stock registers were under the control of the survey authorities and the assessee could not pass the entries of that day which pertain to purchases of paddy and sale of rice and this resulted in their being excess stock of paddy and deficit stock of rice. He submitted a certificate from the District Controller Food Supplies, Government of West Bengal, wherein the procedure for paddy purchases was stated and submitted that, without pre-authenticated paddy purchase memos issued by the Inspector of Food & Supplies Department, no purchases of paddy can be made by the rice-mill. He produced copies of the bills of paddy purchases duly authenticated by the Inspector of Food & Supplies, Sheharabazar, and submitted that the Assessing Officer was wrong in not considering these purchase memos. He further submits that all these entries were made in the stock registers and other books of account after the same were returned by the survey authorities and have been taken into account. He submitted that the comment of the revenue authorities that the entries have been made after the initial by the survey authorities and hence are an afterthought, is not correct. He pointed out that concurrent entries could not be made as the registers were not in the control of the assessee but were under the control of the Officers during the survey. He submitted that when the entries were already made in the registers, an addition made would amount to double addition to the closing stock as per books. He also disputed the consequential addition made on account of sale of rice bran.

4.1. The Id. D/R, on the other hand submitted that the quantity of purchases are authenticated but the values are not certified by the Inspector Food & Supplies

Department. He relied on the order of the Id. CIT(A) as well as the Assessing Officer and submitted that volume of transactions are never known to the Inspector. He submitted that no explanation was given by the assessee for the excess stock and hence the order of the revenue authorities have to be upheld. On the issue of the assessee making entries in the registry and taking these bills into consideration and hence by making an addition it would allegedly result in double addition, he submitted that the issue is source of purchases and hence not a case of double addition.

5. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-

5.1. The Assessing Officer, in my opinion was wrong in stating that the purchase Memo Nos. 317 & 322, dt. 19/03/2009, were allegedly fabricated documents. These purchase memos are authenticated by the Inspector Food & Supplies, Seharabazar, who is a government employee. Once these purchase memos are taken into consideration, there would be no shortage of stock of 294.03 Qt. of rice, since the deficit quantity of 292 Qt. had represented the net effect on 19/09/2009. It is also not correct on behalf of the authority to say that the assessee has not offered any explanation for the shortage of rice. As this is a controlled commodity and as the purchases are regulated and authenticated by the Governmental Authorities, and as the assessee has taken these purchases and sales into account while arriving at the final stock at the year end, no separate addition is warranted. Hence, I delete the additions made both on account of excess stock of paddy and allow this appeal of the assessee.

6. In the result, appeal of the assessee is allowed.

Kolkata, the 16th day of January, 2019.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 16.01.2019
{SC SPS}

Copy of the order forwarded to:

1. Sarbamangala Trading Co

Vill. P.O. - Seharabazar
Dist. Purba Bardhaman
PIN - 713 101

2. Income Tax Officer, Ward-2(3), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches