

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.2128/Kol/2016
Assessment Year :2010-11

Rami Devi Ramdas Rice Mill Pvt. Ltd. Ghoshhut, Katwa, Burdwan-713130 [PAN No.AADCR 2767 F]	V/s.	Income Tax Officer, Ward-2(4), Aayakar Bhawan, Court Compound, Burdwan-713101
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Miraj D Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Saurabh Kumar, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	15-01-2019
घोषणा की तारीख/Date of Pronouncement	15-03-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2010-11 arises against the Commissioner of Income Tax (Appeals)-Burdwan's order dated 30.08.2016 passed in case No.50 CIT(A)/Ast/ITO/W-2(4)/Bwn/2013-14, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's first substantive ground seeks to challenge the CIT(A)'s appellate order upholding the Assessing Officer's action disallowing proportionate interest amount of ₹2,79,956/- in relation to loan given of ₹38.70 lac. The CIT(A)'s discussion to this effect reads as under:-

“3. Discussions and Findings:

This appeal, ground-wise is disposed as under:

Grounds 1 and 2:

These two grounds agitate the same addition and are disposed as one. The appellant had claimed an interest of Rs.13,31,425/- in the audited balance sheet schedule-2 under the head of interest on cash credit loan of Rs.1,84,05,0511/-. This interest had been paid against the money borrowed by the appellant from its CC account in Bangya Gramin Vikash Bank. But, at the same time, two directors of the appellant company had withdrawn Rs.37,30,000/- and Rs. 1,40,000/- totaling Rs.38,70,000/- under the head loans and advances without paying any interest. The AO disallowed the proportionate interest as being diverted for non-business purposes.

The appellant, during appeal proceedings, stated that the AO had not properly checked the facts and that the moneys borrowed had indeed been used for business purposes. The matter, accordingly was remanded back to the ITO for providing of opportunity to the appellant to prove his contention.

During remand proceedings also the appellant merely stated that the moneys had been withdrawn for the smooth functioning of the business. No evidence was produced on this count.

In his rejoinder, the appellant has reiterated his stand while relying upon various judicial authorities. He has however produced nothing to show, as a matter of fact, that the said withdrawals had indeed been made for the purposes of the business of the appellant. From the material on record also, this contention of the appellant is not proved. The onus lies squarely on the appellant to establish that such funds had been put to business use. Since this has not been done, it is difficult to agree with the appellant's contentions based solely on his averments. The citations relied upon by him also do not help him once the facts themselves have not been established. This ground is therefore dismissed.”

3. We have given our thoughtful consideration to rival contentions. It emerges from the assessee's evidence on record that its interest free funds amounted to ₹46.80 lac under share capital and share application heads. Hon'ble Bombay high court's decision in *CIT vs. Reliance Utilities & Power Ltd.* (2009) 313 ITR 340 (Bom) holds that the necessary presumption that arises in such a case is that of utilization of interest free funds only. We accordingly direct the Assessing Officer to delete the impugned interest disallowance of ₹2,79,956/-.

4. Next comes assessee's second substantive ground challenging sec. 40(a)(ia) r.w.s. sec. 194J of the Act on account of non-deduction of TDS on

accounting charges amounting to ₹36,000/-. We find that the assessee had deducted the impugned expenditure as accounting charges than it to an accountant inviting TDS deduction. We delete the impugned disallowance on this count alone.

5. Next comes assessee's challenge of addition of ₹19,83,800/- made by both the lower authorities as excess stock as per statement given to bank for approving higher credit limit. There is no dispute that the assessee's duly verified books of account nowhere contain the difference in question. We notice in this backdrop of facts that this tribunal's co-ordinate bench's order in *ITO vs. Shri Rabindra Nath Kumar* in **ITA No.387/Kol/2012** decided on 31.01.2014 has rejected Revenue's identical ground seeking to revive addition on difference in figures given to bank and actual books of account as follows:-

*"4. We find from the facts of the case that the assessee has filed audited accounts with the Sales Tax Authorities also. With the introduction of VAT system, any dealer, who purchases goods from registered dealer and paid VAT on the said purchases, gets credit as input credit from the gross VAT payable by the dealer. The details of purchase made by the assessee 2005-06 was submitted before Sales Tax Authorities and on the basis of the same, assessee got benefit of input credit and this total input credit benefit was at Rs.8,04,095/-. As per the Shri Rabindra Nath Kumar, AY: 2006-07 assessment order dated 16.09.2008 the total turnover determined by Sales Tax Authorities of the assessee is at Rs.49,44,802/-. According to assessee and as per records as well as from the orders of the authorities below, it is clear that opening stock as on 01.04.2005, purchases during FY 2005-06 and sales during FY 2005-06 tallies with the figures mentioned in P&L Account and Balance Sheet filed with the Income tax return. It is clear from the above that the assessee disclosed the value of Rs.23,66,234/- as stock before the bank but no quantity was mentioned to the bank.. Even the stock statement submitted before the Bank was not verified by the bank and it is unverified statement. No quantity was mentioned by the bank and assessee has not shown any higher quantity of stock with the bank. However, it has estimated higher value of stock to the bank what was available in its books. Once this is the position, merely on the basis of difference in value of stock cannot be considered as difference in stock in term of quantity also. In case, there is no difference in quantity in terms of stock, no addition can be sustained. The CIT(A) has rightly deleted the addition and we confirm the same. Appeal of revenue is **dismissed.**"*

Learned departmental representative fails to dispute the fact that assessee's sole indicating the current stock have nowhere been rejected. We adopt the above detailed discussion mutatis mutandis to delete the impugned addition of ₹19,83,800/- for the reason that the assessee had given only estimated figures of stock figures without any detailed break up or factual verification from bank side.

6. Next come two addition(s) of excess purchased figure(s) of ₹17,54,000/- and out of books sale amounting to ₹63,08,910/-. Case file suggests that assessee's closing stock as per its books as on the date of survey dated 31.03.2010 was 12468 qts. whereas it came to 5414.32 qts. in survey findings. It is thus a case of shortage of stock found during the course of survey. So is its next grievance regarding addition amount of ₹63,08,910/- indicating out of books sale. Learned departmental representative fails to rebut the fact that the lower authorities have not granted credit of cost of either alleged excess stock purchased nor that of the stock sold out books. We therefore quote hon'ble jurisdictional high court's latest decision in *PCIT vs. Subarna Rice Mill* (2018) 96 taxmann.com 286 (Cal) to conclude that it is only the profit element in both these two heads which is required to be added. Case file suggests that the assessee's gross profit rate in the impugned assessment year as per its auditor's certificate is 5%. We therefore direct the Assessing Officer to frame necessary computation at the said gross profit rate of 5% only. The assessee's instant two substantive grounds are treated as partly allowed in above terms.

7. Coming to assessee's next substantive grounds of excess sock addition(s) of ₹1,27,600/-, ₹39,000/-, ₹3,543/- and other similar pleadings, We hold that it is entitled for telescoping benefit regarding the sum(s) in question vis-a-vis its computation to be finalized in assessment proceedings as per 5% gross profit rate in preceding grounds. The Revenue is fair enough in not disputing the assessee's instant substantive grounds in principle. We

therefore restore assessee's all remaining grounds to the Assessing Officer to be decided afresh after granting necessary telescoping benefit as per final computation.

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court 15/03/2019

Sd/-

(लेखा सदस्य)

(Dr.A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 15/03/2019

कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Rami Devi Ramdas Rice Mill Pvt. Ltd., Ghoshhut, Katwa, Burdwan-713130
2. प्रत्यर्थी/Respondent-ITO Ward-2(4), Aayakar Bhavan, Court Compound Burdwan-713101
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।