

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

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.779/Kol/2017
Assessment Years: 2012-13

Dibyendu Jana Bhuban Kalua, Kelomal, Tamluk, Purba Medinipur, Pin-721627 [PAN No.AGDPJ 5316 M]	बनाम / V/s.	Income Tax Officer Ward- 27(3), Basudevpur, Khanjanchak, Haldia, Purba Medinipur
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate & Shri Atin Das, Advocate & Shri Sugata Das, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri C.J. Singh, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	20-02-2019
घोषणा की तारीख/Date of Pronouncement	08-05-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-7, Kolkata's order dated 14.02.2017 passed in case No.81/CIT(A)-7/Kol/Wd.27(3)/15-16, involving proceedings 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file(s) perused.

2. The assessee raises the following substantive grounds in the instant appeal:-

- “1. For that on the facts and in the circumstances of the case, the Learned. CIT(A) should have quashed the assessment proceedings as the order of the Ld. AO was barred by limitation.
- 2.(a) For that on the facts and in the circumstances of the case, the Learned. CIT(A) was not justified in confirming the action of the AO in making the addition of Rs.26,88,038/- as unexplained investment in stock.
- (b) For that the Ld. CIT(A) ought to have considered and held that the estimation of GP @ 10% of the turnover for arriving at the estimated stock value on the date of survey was unreasonable.
- (c) For that the Ld. CIT(A) was not justified in affirming the action of the AO in taking the value of opening stock at Rs.6,03,280/- in reconstructed trading account as on the date of survey.
3. (a) For that on the facts and in the circumstances of the case, Learned. CIT(A) erred in affirming the rejection of book result u/s. 145(3) by the AO.
- (b) For that on the facts and in the circumstances of the case, the Ld CIT(A) was not justified in confirming the estimation of profit at Rs.3,78,062/- at 4.5% though the average net profit rate for earlier three years was 3.22%.”

3. Mr. Agarwal states at the bar that this taxpayer no more wish to press for all the above extracted grounds except ground 2.(a). We therefore decline all the remaining grounds raised in the instant appeal as not pressed.

4. Coming to sole surviving issue of correctness of both the lower authorities' action making unexplained investment in stock addition of ₹26,88,038/-. learned counsel's only argument during the course of hearing is that both the lower authorities have wrongly made the impugned addition rather than onadding only the profit element regarding the unexplained investment in stock. The Revenue strongly support both the lower authorities' action making the impugned addition during the course of hearing.

5. We have given our thoughtful consideration to rival contentions. We find that the instant sole issue surviving issue as to whether it is the entire undisclosed investment in stock or only the gross profit element deserves to be added in assessee is no more *res integra* this tribunal's co-ordinate bench's decision in *M/s Subarna Rice Mill vs. ITO* in **ITA No.1781/Kol/2014** decided on 30.06.2015 held that it has profit element rather than the entire investment which deserves to be added as unexplained. The Revenue has filed its appeal in ITAT No. 196 of 2015 GA No.4047 of 2015

before the hon'ble jurisdictional high court. Their lordship declines the same vide following detailed discussion:-

“The Court: The legal issue that the Revenue has raised in this appeal is whether the Appellate Tribunal could have disregarded the value of the unaccounted purchases made by the assessee and required additional tax to be imposed by taking into account notional sales when no corresponding sales had taken place during the relevant assessment year.

In course of survey operations conducted on March 24, 2010 at the rice mill of the assessee, it was discovered that there were large quantities of undisclosed stocks the assessing officer did not weigh the additional stocks but went by the number of bags since the bags, presumably, were of uniform or standard weight.

The assessing officer discovered the undisclosed quantum of paddy to be to the extent of 37647 quintal. The excess stock of rice was to the extent of 581 quintal and the excess stock of brand was to the extent of 45 quintal. It also appears that the undisclosed, excess stocks were corroborated by the entries in certain registers maintained at the relevant point of time at the rice mill and certain confessional statements were made by or on behalf of the assessee. On the basis of the additional stocks found, the assessing officer assessed the total taxable income to be to the extent of Rs.3.92 crore and a tax demand in excess of Rs.1.61 crore was made on the assessee.

The assessee's appeal before the Commissioner (Appeals) failed and by an order of August, 25, 2014, the assessment order of March, 28, 2013 was upheld. The Commissioner looked into the facts, the statements made by or on behalf of the assessee and the books of the assessee that had been looked into at the time of survey which the assessee subsequently claimed had been lost or destroyed and, in respect whereof, no complaint had been lodged by the assessee. On facts, the Commissioner (Appeals) found no grounds to interfere with the quantum of excess stocks discovered by the assessing officer in course of the survey. The Commissioner also agreed with the assessing officer as to the quantum of income which had escaped assessment.

There are two aspects to the order impugned dated June, 23, 2015 passed by the Appellate Tribunal: the factual findings of the Commissioner (Appeals) as appear to have been interfered with by the Appellate Tribunal; and, the direction given for taking sales of rice and bran into account before arriving at the additional income which could be said to have escaped assessment.

Before the Commissioner (Appeals), the assessee had relied on a document signed by an official of the Food Corporation of India that evidenced the stock figures at the relevant point of time. The Commissioner (Appeals) dealt with such aspect of the matter in great detail and by referring to the admitted statements of the representatives of the assessee, which were not sought to be controverted at any point of time on behalf of the assessee concluded that it was the physical verification of the stocks undertaken by the Assessing Officer in course of the survey operation that was to be given primacy. Indeed, the Commissioner (Appeals) found that there was no evidence that the FI official who had issued the certificate had undertaken any physical verification of the stock at the rice mill of the assessee and the document appeared to have been filled up by the assessee and merely signed by the FCI official.

Such part of the order of the Commissioner (Appeals) was unexceptionable and could not have been interfered with by the Appellate Tribunal. Indeed, no reasons have been furnished by the Appellate Tribunal in disregarding the physical verification of the stocks carried out by the Assessing Officer. Further, the area of the godown as indicated in the FCI certificate was of no consequence since the Assessing Officer found stocks piled outside the godown at the time of the survey.

Accordingly, to the extent that the Appellate Tribunal accepted the quantum of additional stocks on the basis of the certificate issued by the concerned FCI official, such order is unacceptable and is set aside. The order of the Commissioner (Appeals) in such regard is restored. The additional quantum as discovered during the course of the survey operation will fasten to the assessee.

However, the other aspect of the matter was dealt with by the Appellate Tribunal on a point of principle and such matter does not call for any interference.

According to the Appellate Tribunal the value of the entire quantity of additional stocks that were discovered in course of the survey operation could not be regarded as the additional income of the assessee and amenable to tax. There was a specific ground taken before the Appellate Tribunal, which was a legal question, as to whether the undisclosed purchase could be taken as the additional income without reference to the possible sale of the paddy when converted.

*The assessee refers to a judgment of the Gujarat High Court reported at 388 ITR 377. The principle enunciated in such judgment is that when undisclosed purchases of such nature are discovered, it is only the profit embedded in the transactions which can be added to the total income. The Gujarat High Court relied on some of its previous judgments to hold that **“not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee.”***

In the circumstances and particularly since the factual findings rendered by the Commissioner (Appeals) as to the quantum of additional stocks have now been restored, the order impugned on the methodology for the ascertainment of the income which escaped assessment would pass muster. The Appellate Tribunal merely directed the gross profit that the additional purchase was capable of generating to be regarded as the additional income for tax to be assessed on such basis. Such view of the Appellate Tribunal does not call for any interference.

Accordingly, ITAT No. 196 of 2015 and GA No.4047 of 2015 are disposed of by modifying the judgment and order of the Appellate Tribunal dated June 30, 2015 as indicated.”

6. We adopt above their lordship above extracted discussion *mutatis mutandis* to conclude that both the lower authorities have erred in adding the entire sum of unexplained investment in stock addition than only the profit element. The Assessing

Officer is accordingly directed to re-compute the impugned addition as per assessee's profit rate shown / accepted already in its books therefore.

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

Order pronounced in open court on 08/05/2019

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 08/05/2019 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Dibyendu Jana, Bhuban Kalua, Kelomal, Tamluk, Purba Mednipur, Pin-721627
2. प्रत्यर्थी/Respondent-ITO, Ward-27(3), Basudevpur, Khanjanachak, Haldia Dist. Purba Medinipur
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।