

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.2980/Del./2019  
Assessment Year 2014-15

Ramesh Chand Prop. M/s Bhaktawar Mal Bhawani Sahay, Nai Mandi, Narnaul, Haryana. <b>AANPC5095N</b>	vs.	Income Tax Officer, Ward 2, Narnaul, Haryana.
(Appellant)		(Respondent)

For Assessee :	Shri Siddharth Mittal, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. DR

Date of Hearing :	17.07.2019
Date of Pronouncement :	01.08.2019

**ORDER**

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-Rohtak dated 15.02.2019 for AY 2014-15.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. On ground no. 1, assessee challenged the addition of Rs. 25,66,790/- u/s 69B of the Act on account of difference in stock statement given to the Bank.

4. Briefly the facts of this issue are that assessee filed return of income on 29.11.2014 declaring total income at Rs. 5,71,950/-. The AO noted that there is an increase in the turnover as well as GP ratio as compared to the preceding assessment year. The AO called for information from Manager Punjab National Bank u/s 133(6) of the Act to furnish details regarding the stock/assets hypothecated by the assessee for obtaining loans/CC limit and to supply the bank statement submitted to the Bank. The stock statement revealed that on 28.02.2014 stock was declared at Rs. 2,23,86,350/- which is duly verified by the Bank. However, as per balance sheet as on 31.03.2014 the stock statement was at Rs. 1,88,17,001/-. The AO after calling explanation of the assessee and considering the GP rate made the addition of Rs. 25,66,790/- on account of unexplained investment in stock.

5. The assessee challenged the addition before Ld. CIT(A) and it was submitted that assessee was having bank facility from PNB, Narnaul and for getting higher credit, it is a common practice to furnish the stock statement to the bank by estimate and not the actual stock. The assessee did the same and furnished stock statement as on 28.02.2014 on estimate basis to the Bank. Figures furnished to the Bank were on estimate basis and not on actual basis. Further, the Bank officials had also not verified the physical stock at the premises of the assessee nor value the stock as on 28.02.2014. The stock was not under lock and key of the Bank. The assessee was dealing in Government control items like fertilizers and chemicals and some are subjected to physical verification by the Agriculture Department. The stock statement submitted to the Bank on 31.03.2014 shows closing stock at Rs. 1,88,17,001/- which figure tally with the stock statement as per the books of account of the assessee. The stock value as per the statement furnished to the Bank as on 31.03.2014 tallies with the values of stock as per audited

account of the assessee. As on 28.02.2014 the books of accounts were not completed and the assessee was required by the Bank to furnish the stock statement to continue his bank facility and, as such, stock statement on estimate was furnished on 28.02.2014. It was submitted that books of account of assessee are duly audited by Chartered Accountant as required u/s 44AB of the Act and these books have been accepted by AO. The AO has not rejected the books of accounts. The GP rate is better as compared to preceding assessment year. The value of the stock furnished to the Bank as on 31.03.2014 tallies with the audited books of accounts of the assessee. It was submitted that the decision relied upon by the AO are not applicable to the facts of the case because facts are totally different. The AO was having only the photocopy of the stock statement furnished to the Bank. The AO had not brought any material on record to show that assessee possessed stocks as reflected in the said statement as against the stocks depicted in the balance sheet. AO has not pointed out any mistake in the maintenance of the

books of accounts. The assessee relied upon decision of the Punjab & Haryana High Court in the case of CIT vs. Sidhu Rice & General Mills, 281 ITR 428 in which it was held as under:

*“that except for the photo copy of the stock statement furnished to the bank, the Assessing Officer had not brought any material on record to show that the assessee possessed stocks as reflected in the said statement as against the stocks depicted in the balance sheet. It was also found that the books of account were regularly maintained by the assessee and had been accepted by the department. It was in these circumstances that this court came to the conclusion that the findings recorded by the Tribunal were based on record and no addition could be made in such a case.”*

6. The assessee also submitted that the Hon’ble Punjab & Haryana High Court in the case of CIT vs. Shri Bharat Bhushan Suri (HUF) has also followed the above judgment and allowed the appeal of assessee. Similarly, the Hon’ble Madras High Court in the case of CIT vs. N. Swamy, 241 ITR 363 has observed as under:

*“4. We find it a little difficult to agree with those observations. The assessee’s income is to be assessed by the Income tax Officer on the basis of*

the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, **even if it be a bank. The mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee.** The burden of showing that the assessee had undisclosed income is on the Revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income.

5. That the burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income, are propositions which are well settled by the Supreme Court in the case of *Parimisetti Seetharamamma vs. CIT [1965] 57 ITR 532* which reiterates these propositions.”

7. The assessee also submitted that on similar facts for AY 2013-14 Ld. CIT(A) has allowed the appeal of assessee, vide order dated 25.04.2017 (PB-12). The assessee, therefore, pleaded that addition may be deleted.

8. Ld. CIT(A) observed that information from Manager PNB was obtained u/s 133(6) of the Act which shows that stock on

28.02.2014 was declared at Rs. 2,23,86,350/- and it was verified by the bank. The reply of the bank dated 28.11.2016 is reproduced in the impugned order. The Ld. CIT(A), therefore, noted that bank officials had duly checked and verified the stock. Therefore, contention of assessee was rejected that stock statement was submitted merely on estimate basis. The Ld. CIT(A), therefore, dismissed the appeal of assessee.

9. Ld. Counsel for assessee reiterated the submissions made before authorities below. He has referred to PB-8 which is profit and loss account ending 31.03.2014 in which value of closing stock have been shown at Rs. 1,88,17,001/-. PB-11 is bank certificate dated 30.01.2019 in which bank has certified that as per value of the stock and audited balance sheet as on 31.03.2014 held on the record of the bank is Rs. 1,88,17,001/-. He has submitted that audited accounts have not been disputed by the AO. PB-12 is order of Ld. CIT(A) dated 25.04.2017 in which on this identical issue Ld. CIT(A)

deleted the similar addition for AY 2013-14 following the judgment of jurisdictional Punjab & Haryana High Court in the case of CIT vs. Sidhu Rice & General Mills (supra). Ld. Counsel for assessee relied upon judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Khan & Sirohi Steel Rolling Mills, 200 CTR 595 in which it was held as under:

*“Tribunal was justified in accepting the explanation of the assessee that in view of the prevailing practice, the value of stock hypothecated to bank was inflated to avail of more overdraft facilities and deleting the addition on account of difference between stock shown to bank and the stock shown in the books of the assessee.”*

He has also relied upon the judgment of Jammu & Kashmir High Court in the case of Ashok Kumar vs. Income Tax Officer, 201 CTR 178 in which it was held as under:

*“Addition could not be made on the basis of difference between closing stock declared in the trading account and the stock shown in the statement submitted by the assessee to the bank as the stock position shown to the bank was on estimate basis and inflated value was shown to avail more credit from bank.”*

He has, therefore, submitted that addition is wholly unjustified.

10. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that certificate of the bank (PB-11) is additional document which was not filed before the authorities below.

11. I have considered the rival submissions. It is not in dispute that assessee maintained books of accounts which are duly audited. The AO has not pointed out any specific defect in maintenance of the books of account by the assessee. The books of accounts by the assessee have not been rejected by the AO. It is also admitted fact that the turnover and GP ratio is better in assessment year under appeal as compared to preceding assessment year. The AO made the addition because the stock statement submitted to the bank on 28.02.2014 shows excess stock in this statement. The authorities below have heavily relied upon the information provided by the Punjab National Bank vide letter dated

28.11.2016, copy of which is reproduced in the impugned order. In this reply the bank has stated that due to renovation of the branch the file containing stock statement of assessment year under appeal is not traceable at present. However, as per banking practice whenever the party submitted stock statement same is checked/verified by the bank officials. It would, therefore, show that the stock statement submitted by the assessee to the bank was not produced before the AO. The bank has merely explained their general practice for verifying the stock statement. However, what happened in the case of the assessee has not been clarified by the bank. Thus, the authorities below merely relied upon the general practice of the bank instead of verifying the actual fact of the case of the assessee. The assessee submitted that as on the closing of the financial year the closing stock was of Rs. 1,88,17,001/- which is also reported to the bank on the same date which is also certified by the bank (PB-11). It would, therefore, show that the stock statement tally with the stock statement submitted to the

bank at the end of the financial year on 31.03.2014. The assessee, therefore, rightly contended that the stock statement submitted on 28.02.2014 prior to close of the financial year was on estimate basis and not on actual basis. The assessee also rightly contended that since assessee deals in controlled items like fertilizer and chemicals, therefore, it is subject to physical verification by Agriculture Department. No enquiries have been done by the AO from the concerned Agriculture Department with regard to discrepancy in the stock. It may also be noted here that in the preceding AY 2013-14 the similar addition was deleted by the Ld. CIT(A) following the judgment of the Hon'ble Punjab & Haryana High Court in the case of Sidhu Rice & General Mills (supra). Therefore, Ld. CIT(A) should not have taken a contrary view in assessment year under appeal. The decisions relied upon by Ld. Counsel for assessee squarely applied to the facts and circumstances of the case. The issue is, therefore, covered by these decisions in favour of the assessee. It is well settled law that Revenue authorities are bound to follow the rule of consistency. In view

of the above, I am of the view that the addition is wholly unjustified. I, accordingly, set aside the orders of authorities below and delete the entire addition.

12. Ground no. 1 of appeal of assessee is allowed.

13. On ground no. 2, assessee challenged the addition of Rs. 55,000/- on account of low household withdrawal. During the year, under consideration assessee had withdrawn a sum of Rs. 1,85,000/- towards household expenses. The family of the assessee consists of himself and wife only. Both the sons are earning separately and residing in Pune and Chandigarh. The family resides in own house for which no rent is to be paid. The family owns ancestral agricultural land of about 10 acres which belongs to HUF and income from agriculture was also use for household expenses. It was, therefore, submitted that the household shown by assessee at Rs. 1,85,000/- in addition to agricultural income is more than sufficient considering size of the family of the assessee. The AO, however, estimated the household expenses of assessee to Rs.

20,000/- p.m. considering status of the assessee and estimated household expenses at Rs. 2,40,000/-. The difference of Rs. 55,000/- was added to the income of assessee.

14. The assessee challenged the addition before Ld. CIT(A) and it was submitted that addition is made without any basis and on estimate basis. The Ld. CIT(A), however, confirmed the addition considering social status of the assessee.

15. Ld. Counsel for assessee reiterated the submissions made before authorities below.

16. On the other hand, Ld. DR relied upon the orders of the authorities below.

17. I have considered the rival submissions and do not find any justification to sustain the addition. It is not in dispute that family of the assessee consists of self and his wife only. The assessee resides in his own house and has sufficient ancestral agricultural land. The assessee has agricultural

income also. The AO has not brought any evidence on record to justify the estimate of household expenses in a sum of Rs. 20,000/- per month. The AO did not doubt the explanation given by the assessee that household expenses withdrawn by the assessee and agricultural income are sufficient to maintain the family. It may also be noted here that in preceding AY 2013-14 Ld. CIT(A) considered the same issue in the appellate order dated 25.04.2017 and on identical facts deleted the addition on account of enhancing the household expenses. The Ld. CIT(A) noted in the appellate order that during assessment year under appeal i.e. 2013-14 assessee had withdrawn a sum of Rs. 1,12,010/-. The further addition made by the AO was deleted as against household expenses of AY 2013-14, there is a substantial increase in household expenses withdrawn by assessee in assessment year under appeal. The Ld. CIT(A), therefore, should not have taken a contrary view in assessment year under appeal. The addition is made merely on estimate basis. Therefore, same is liable to be deleted.

18. In view of the above, I set aside the orders of the authorities below and delete the addition. Ground no. 2 of appeal of assessee is allowed.

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

Order pronounced in the open Court.

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated 01.08.2019

\*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

Date of dictation	19.07.2019
Date on which the typed draft is placed before the dictating Member	29.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	01.08.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	01.08.2019
Date on which the fair order comes back to the Sr. PS/PS	01.08.2019
Date on which the final order is uploaded on the website of ITAT	01.08.2019
Date on which the file goes to the Bench Clerk	01.08.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	