



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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.287/CTK/2015

Assessment Year : 2010-2011

Smt. Parbati Das, W/O. Jugal Kishore Das, Tinimuhani, Kendrapara	Vs.	ITO, Ward-2, Paradeep
PAN/GIR No.ABRPD 2025 J		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 19/12/ 2019
Date of Pronouncement : 24/12/ 2019

ORDER

This is an appeal filed by the assessee against the order of the CIT(A), Cuttack dated 27.3.2015 for the assessment year 2010-2011.

2. Ground No.A is general in nature and hence, requires no separate adjudication.

3. Ground No.B reads as under:

“For that the Id CIT(A) has erred in resorting to the weighted average method when the appellant has shown gross receipts from retail trading on the basis of turnover, which is not disputed by the AO or the CIT(A) and has

shown net profit @ 10% which is much higher than the minimum of 5% as has been provided under the statute.”

4. Ld counsel for the assessee submitted that the Id CIT(A) has erred in resorting to weightage average method when the assessee has shown gross receipts from retail trading as turnover and on the basis of such turnover, the authorities below have estimated @ 10% of the turnover, which is higher than the minimum of 5% as has been provided under the provisions of the Act. Ld counsel submitted that the assessee has shown income as per provisions of section 44AF of the Income tax Act (in short ‘the Act’) in which she is required to maintain the books of account which is the only requirement to show net profit @ 5% and thus, there was no scope of considering the closing stock, opening stock and withdrawal from the bank etc. Therefore, further addition on account of closing stock was not called for. Ld counsel for the assessee submitted that the assessee does not want to dispute the estimation of profit @ 10% as has been done by the Id CIT(A). Further, addition on account of closing stock cannot be made in the hands of the assessee without considering the opening stock and without any show cause notice to the assessee by the AO.

5. Replying to above, Id DR strongly relied on the order of the AO as well as Id CIT(A) and submitted that during the course of

survey, stock of Rs.5,02,307/- and silvery jewellery was found with the assessee. Therefore, this addition has been made and confirmed.

6. On careful consideration of the rival submissions, first of all, I may point out that section 44AF of the Act is a special provision for computing the profits and gains of retail business, which provides that in case of an assessee engaged in retail trading in any goods or merchandise, a sum equal to five per cent of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income shall be deemed to be the profits and gains of such business chargeable to tax under the head " profits and gains of business or profession". This provision applies only to the assessee whose turnover is less than Rs.40 lakhs during the previous year.

7. In the present case, the assessee filed her return of income showing total income of Rs.3,45,312/- as income from business and professions without any further addition. However, the AO made an addition of Rs.5,02,307/- by observing that during the course of survey u/s.133A of the Act, a stock of silver ornament was found in the business premises of M/s. Parbati Jewellers, a

proprietor firm of the assessee. From the relevant assessment as well as first appellate order, I find that the authorities below have not show caused the assessee before making the addition on this count. Further, undisputedly, for the relevant assessment year, the appellant has disclosed total gross receipts of Rs.28,98,,562/- and shown net profit @ 10% to arrive at business income of Rs.2,89,856/-, which is higher than the rate of 5% prescribed by the legislature for computing the profits and gains of retail business, who have turnover less than Rs.40 lakhs during the relevant financial period. Therefore, I noted that the assessee herself has shown higher percentage of net profit of the turnover. Since there is no dispute regarding estimation of net profit, therefore, no further addition is required on this point. Further, from the assessment as well first appellate order, I am unable to see any valid reason or show cause to the assessee by the authorities below before making any addition on account of closing stock found during the survey. It is well established principle of business of accounting that if the assessee's income of the assessee has been shown or estimated u/s.44AF of the Act, then the assessee is not required to maintain any books of account and no further addition or disallowance is called for regarding his trading expenditure or any other account. Therefore, the addition

made on the basis of closing stock found during the survey cannot be held as sustainable. I may point out that even if the authorities below want to tinker the point of closing stock found during the survey, then they are also required to consider the opening stock of the assessee at the beginning of the financial year i.e. on 1.4.2009 otherwise, addition on account of closing stock cannot be made in the hands of the assessee especially when the assessee herself is showing higher percentage of net profit on the turnover undertaken during the relevant financial period. Accordingly, Ground No.B is allowed.

8. Ground No.C reads as under:

" For that the Id CIT(A) has erred in confirming the addition on account of unexplained investment to the tune of Rs.17,76,662/- on the flimsy ground that the appellant could not produce any evidence before the CIT(A) to justified the source of such income, when the appellant in the written submission had in fact deliberated in detail regarding the source of the same."

9. Ld counsel for the assessee submitted that the Assessing Officer has made addition of Rs.17,76,662/- on account of unexplained investment without any justified reason and sustainable basis. Ld counsel vehemently pointed out that the appellant has invested the impugned amount out of her own source of funds which were generated over a period of 15 years.

Ld counsel drawing my attention towards written submission of the assessee submitted that the assessee is consistently filing the return of income from assessment year 1996-97, wherein, the assessee has shown income of more than Rs.26 lakhs during 15 years.

10. Ld counsel further submitted that no addition is required to be made to the income earned by the assessee herself from jewellery business. She also received cash, jewellery and other valuable from her parents being only child without any siblings. Therefore, the amount invested by the assessee during the period has to be held as properly explained. Ld counsel submitted that the assessee is only child of her parents and her mother Late Annapurna Mohanty died during the relevant period i.e. on 19.11.2009 and her parents used to reside with the assessee during their old age as they did not have any other child to support them. Ld counsel further submitted that the father of the assessee died on 21.1.2014. He submitted that copies of death certificate and legal heir certificates as Annexure-2 were filed before the lower authorities. He submitted that all the money that were accumulated by the parents of the assessee, in natural course, came into the hands of the assessee, which forms a substantial source for investment. Ld counsel further submitted

that on 27.7.2005, the assessee had sold a property at Badahat, Kendrapara to one Manoj Kuma Sahoo for an amount of Rs.2,78,000/-, out of which amount, a part has been flowing in the credit of the assessee. Thus, this is also another resource for enabling the assessee for making the impugned investments. Copy of sale deed is also on record as Annexure-3. Ld counsel further submitted that the AO has referred to an amount of Rs.3,26,832/- paid to Bajaj Allianz. As perusal of the relevant bank statement reveals that this amount was received of the assessee for her bank account on 27.4.2009 and on the same day that exact amount was paid to another party through ICICI Bank. Therefore, this amount cannot be treated as unexplained investment of the assessee. He, accordingly, prayed that the addition made by the AO and confirmed by the CIT(A) may kindly be dismissed.

11. Ld counsel for the assessee had enough resources of her own amount received from her parents and amount received on the sale of property during the assessment year 2006-07. Therefore, the AO was not justified in making addition on account of unexplained investment and the Id CIT(A) was not correct in upholding the same.

12. Replying to above, Id DR supported the orders of lower authorities and submitted that the assessee has not properly explained the source of investment. Therefore, the addition on account of unexplained investment may kindly be confirmed.

13. On careful consideration of the rival submissions, first of all, I find it appropriate to note down some uncontroverted and undisputed facts, which are as under:

i) The assessee is filing return of income since 1996-97 till present assessment year 2010-2011 and has shown returned income of Rs.26,28,943/-.

ii) The assessee is only child of her parents and due to old age they used to stay with the assessee till their last time of life.

iii) The mother of the assessee Late Annapurna Mohanty died on 19.11.2009 during the financial period 2009-10 relevant to assessment year 2010-2011 and her father also died on 21.1.2014.

iv) Legal heir certificate shows that the assessee is the only legal heir of her parents and obviously in the natural course of practice all movable and immovable property has to be divulged in the hands of the assessee.

v) From copy of sale deed available at assessee's paper book Annexure-3, it is gathered that the assessee has sold the property to Manoj Kuma Sahoo for a consideration of

Rs.2,78,000/- which is part of amount of savings in the credit of the assessee, which cannot be ignored while making allegation of unexplained investment.

vi) From the copy of bank statement of the assessee at Annexure-4, I observe that the amount of Rs.3,26,832/- has been transferred to ICICI Bank and against which investment with Bajaj Allianz of Rs.3,26,832/- has been made and this amount has been picked up by the AO for making addition of Rs.17,76,662/- as unexplained investment u/s.69 of the Act, which is not justified approach of the AO.

14. Keeping in view the multifarious explanation of the assessee regarding the source of investment of remaining amount of Rs. 14,49,830 (Rs.17,76,662 – Rs.3,26,832), I am of the considered view that the assessee is filing income showing income from business and profession of silver jewellery more than Rs.26 lakhs during last 15 years and consideration for sale of property of Rs.2,78,000/- during the financial year 2006-07 and these are glaring source of funds accumulated to the assessee could have been used for the purpose of making investment. In addition to above, I cannot ignore the uncontroverted the fact that the assessee is legal heir of parents and got all the movable and immovable property after their demise, which could have been used for making investment. On being asked by the Bench, Id D.R. could not controvert the fact that neither during the previous assessment year and succeeding assessment years, the assessee had made investment except present assessment year 2010-2011 as she had sufficient and ample source of funds from her own

saving accumulated from the income earned by her during last 15 years and consideration received against sale of property during the previous year relevant to assessment year and cash, jewellery and other valuable received from her parents. Therefore, in the totality of the facts and circumstances of the case, I am of the view that allegation of unexplained cannot be made in the hands of the assessee u/s.69 of the Act.

15. In view of foregoing discussion, I reach to a logical conclusion that the AO has made addition by invoking the provisions of section 69 of the Act without any specific provisions of the Act and the assessee has substantially established that she had sufficient source of funds in the form of her accumulated saving for the last 15 years, against sale of property and jewellery and other valuables received from her parents on their death. Therefore, I am unable to agree with the contention of the lower authorities for making the addition and confirming the same. Consequently, I direct the AO to delete the addition of Rs.17,76,662/- and allow this ground of appeal of the assessee.

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

Order pronounced on 24 /12/2019.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 24 /12/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Smt. Parbati Das, W/O.
Jugal Kishore Das, Tinimuhani, Kendrapara
2. The Respondent. ITO, Ward-2, Paradeep
3. The CIT(A)-, Cuttack
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack