

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
ITA.No.4534/Del./2016
Assessment Year 2013-2014

The Income Tax Officer, Ward-1, Narnaul Distt. Mahendergarh, Haryana.	vs.	Shri Darshan Lal, Prop. M/s. Darshan Lal & Sons, Nai Mandi, Narnaul. PAN AABHD5168D
(Appellant)		(Respondent)

For Revenue :	Shri Jagdish Singh Dahiya, Sr. D.R.
For Assessee :	Shri Gautam Jain, Advocate

Date of Hearing :	15.06.2020
Date of Pronouncement :	16.06.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A), Rohtak, Dated 22.06.2016, for the A.Y. 2013-2014.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Ground No.1 of the Revenue is as under :
1. *“CIT(A) has erred in law in deleting the addition amounting to Rs.4,44,11,358/- made by AO on account of difference in total sales made during the year and total cash deposits u/s 68 as the assessee has failed to explain the source of cash deposits in the bank account amounting to Rs.4,45,53,931/-.The plea taken by the appellant that purchases in the individual capacity were also routed through the HUF and accepted by CIT(A) is not substantiated.”*
4. The Ld. CIT(A) noted that the A.O. has made the above addition on account of alleged difference in the total sales made during the year and total cash deposits in the bank. The A.O. has added the entire amount of Rs.4,45,53,931/- under section 68 of the I.T. Act. The purchases made by the assessee on behalf of M/s Dawrka Enterprises, a proprietary concern of the Karta of assessee HUF, were also routed through the bank account of the

assessee. This fact can be verified from the observation of the A.O. in the case of the individual wherein the A.O. had issued a letter dated 05.02.2016. As per the said letter, out of total purchase of Rs.5,42,47,469/-, only a sum of Rs.30 lakhs were paid through the bank account of the individual. It goes to prove that purchases made on behalf of individual were also routed through the bank account of the assessee HUF. The Ld. CIT(A) further relied upon Judgment of the Hon'ble High Court of Madhya Pradesh in the case of CIT vs., Bal Chand Ajit Kumar 263 ITR 610 (M.P.) in which it was held that "*Unrecorded sales found at the time of survey, net profit rate has to be applied.*" It is further noted in the impugned order that in the case of the assessee there is no difference in purchase and sales and the alleged difference in bank deposits and withdrawals is on account of purchases made on behalf of Individual business of the assessee. The Ld. CIT(A) examined the submissions of the assessee and material on record and found that purchases in the individual capacity were also routed through HUF. The Ld. CIT(A), however, formed his opinion that

transactions having actually taken place, the difference should not have been added. In the opinion of the Ld. CIT(A), in such case, the admitted net profit rate of 0.32% should have been applied. Therefore, applying such net profit rate against the sales, the addition is restricted to Rs.1,42,573/-.

5. The Ld. D.R. relied upon the Order of the A.O. and submitted that there was a difference in the bank deposits because A.O. found excess deposits of the impugned amount. The assessee failed to explain the same, therefore, addition has been correctly made.

6. On the other hand, Learned Counsel for the Assessee referred to page-14 of the PB to show that in the case of HUF assessee, the total sales were of Rs.15,80,94,025/- and purchases were of Rs.15,80,66,019/- as per the Trading A/c ending on 31.03.2013. He has referred to PB-2 which is computation of income. He has submitted that A.O. has accepted the Trading A/c of the assessee and computed the income by

taking the net income as per the accounts of the assessee. Therefore, there was no difference at all. Therefore, even the net profit rate should not have been applied in such circumstances. Learned Counsel for the Assessee also referred to observations of the A.O. on Ground No.2 with regard to suppression of the purchases and submitted that since the A.O. himself has accepted the difference in the sales and purchases, therefore, there is no question of adding the entire amount of the sales and as such the application of net profit rate was sufficient and as such no further interference is required in the matter.

7. We have considered the rival submissions. The A.O. noted details of the sales and purchases as per the audit report in the assessment order. The details of the sales are as per the Trading A/c of the assessee. The A.O. found some excess deposit of the impugned amount in the account of the assessee. The assessee explained before A.O. vide reply Dated 23.02.2016 that difference is due to the fact that assessee has made payments for certain parties to the sugar mills/agents of sugar mills who were known to

the assessee and the amount received from those persons were deposited in the bank account of the assessee. since the said purchases and sales were belonging to the assessee, only the profit/commission was earned by the assessee, therefore, same could not be added in the hands of the assessee. The A.O. in para-2 of the assessment order has also mentioned the same details of the purchases as per the Trading A/c of the assessee and again compared with the bank statement and ultimately on the difference with regard to purchases, applied the G.P. rate of 0.80% for making the addition of Rs.3,54,400/-. Thus, the crux of the matter had been that the A.O. accepted the sales and purchases disclosed by the assessee in the Trading A/c. The A.O. has also accepted profit declared by the assessee. The A.O. with regard to the unexplained purchases applied the G.P. rate for the purpose of making the addition, but, with regard to sales without comparing with the bank statement made the addition of the entire amount in question. Thus, there is a difference in the opinion of the A.O. with regard to the same matter in issue as regards

sales and purchases. The Ld. CIT(A) on examination of the record, accepted the explanation of assessee that purchases and sales made by assessee of other connected parties since routed through the bank account of the assessee, therefore, could not be treated as sales and purchases of the assessee. In such circumstances, even if there was some excess sales declared by the assessee, the entire sales could not have been treated as unaccounted income of the assessee. As against the undisclosed or unaccounted sales, only profit rate should have been applied to make the addition. We are fortified in our view by Judgment of Hon'ble Gujarat High Court in the case of CIT vs., President Industries 258 ITR 654 (Guj.) and Judgment of the Hon'ble Madhya Pradesh High Court in the case of CIT vs., Bal Chand Ajit Kumar 263 ITR 610 (M.P.). Further no material is produced before us to rebut the finding of fact recorded by the Ld. CIT(A) that the transaction in the individual capacity were also routed through assessee HUF and are recorded in the books of account and sales and purchases have not been disputed by the A.O. Therefore, no interference is called for in the

matter. In view of the above discussion, we do not find any merit in Ground No.1 of the appeal of the Revenue and the same is accordingly dismissed.

8. Ground No.2 of the Revenue is as under :

“2. CIT(A) has erred in deleting addition of Rs.3,54,000/- made on account of applying G.P. Rate on the alleged difference of Rs.4,43,00,084/- in the purchases as the assessee has failed to explain the source of cash deposits in his bank account amounting to Rs.4,45,53,93/- during the assessment proceedings and no such proof was filed.”

9. The Ld. CIT(A) similarly noted that A.O. has made the addition of Rs.3,54,400/- by applying the GP rate. The alleged difference of Rs.4,43,00,084/- was on account of purchases made on behalf of M/s Dwarka Enterprises, a proprietary concern of the appellant being run in individual capacity. Thus, there was no purchases outside the books of accounts. Therefore, the Ld. CIT(A) deleted the addition.

No purchases are made outside the books of account.

10. The Ld. D.R. relied upon the Order of the A.O.

11. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below.

12. After considering the rival submissions, we are of the view that no interference is called for in the matter. Since the purchases recorded in the books of account have not been disputed by the A.O, therefore, there is no question of making such addition against the assessee. The explanation of assessee that other purchases were also routed through the account of the assessee, have not been disputed by the Revenue. Therefore, no interference is called for in the matter. Accordingly, Ground No.2 of the appeal of the Revenue is dismissed.

13. Ground No.3 of the Revenue is as under :

“3. CIT(A) has erred in deleting addition of Rs.55,500/- made on account of ad-hoc disallowance on the ground that the disallowance

has been made without any finding of concealment is not acceptable as the assessee never took this plea during the assessment proceedings and no such proof was filed.”

14. The A.O. on perusal of the P & L A/c noted that assessee has claimed shop expenses, labour charges, printing and stationary, and travelling expenses totaling to Rs.2,77,504/-. The assessee produced most of the vouchers, but, did not produce complete vouchers. The A.O, therefore, made addition of Rs.55,500/- being 1/5th of the total expenditure claimed by the assessee. The Ld. CIT(A) found that it is an adhoc addition in nature which cannot be made against the assessee. The Ld. CIT(A) relied upon Judgment of Hon'ble Delhi High Court in the case of National Industrial Corporation Ltd., 258 ITR 575 in which it was held that no adhoc disallowance could be made. The Ld. CIT(A) accordingly deleted the addition.

15. After considering the rival submissions, we are of the view that no interference is called for in the matter. The A.O. has not pointed out as to which of the vouchers of the expenditure have not been produced by the assessee. No details of the amount has also been mentioned. Therefore, disallowing 1/5th of the expenditure claimed of the assessee would amounts to adhoc addition which cannot be sustained in law. In view of the above, we do not find any merit in this ground of appeal of Revenue. We, therefore, dismiss Ground No.3 of the appeal of the Revenue.

16. Learned Counsel for the Assessee during the course of arguments submitted that assessee has raised an issue of non-service of notice under section 143(2) of the I.T. Act in order to support the findings of the Ld. CIT(A). During the course of arguments, Learned Counsel for the Assessee however submitted that he would not be pressing the same plea. Learned Counsel for the Assessee also clarified that assessee has not filed any cross-appeal or cross-objection in the matter. In view of the above, we dismiss the departmental appeal.

17. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 16th June, 2020

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.