

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH "E" COURT AT KOLKATA**

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

ITA No.292/Pat/2018 Assessment Year :2011-12
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Sajjan Bajaj S/o Lt. Narsingh Das Bajaj, Prop: Dilip Traders, Skhichand Katra, Sujaganj, Bhagalpur- 812001 [PAN No. AGKPB 7332 E]	बनाम V/s.	Income Tax Officer, Ward-1(3), Bhagalpur
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से /By Appellant	Shri K.N. Praasad, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Ajay Kumar, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	15-09-09-2020
घोषणा की तारीख/Date of Pronouncement	15-09-2020

आदेश /ORDER

PER BENCH (Oral):-

This assessee's appeal for assessment year 2011-12 arises against the Commissioner of Income Tax (Appeals)-Bhagalpur's order dated 10.01.2014 passed involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance seeking to delete alleged excess stock addition of Rs.16.75 lakhs; learned counsel is very fair at the outset that his only case is that the same should have been restricted to

the profit element than adding the entire sum in question. He quotes hon'ble Calcutta high court's decision in ITAT No. 196 of 2015 **GA No.4047** of 2015. Their lordship detailed discussion reads as follows:-

“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 mater 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 FCI 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 at 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.”

Mr. Ajay Kumar has drawn strong support from the lower authorities action adding the entire alleged excess stock deducted during the course survey. Faced with this situation & guided by foregoing case law, we observe that both the lower authorities ought not to have added the entire alleged excess stock. Mr.Pasad at this state at the bar that the assessee is very much ready and willing to get 2.50 lakhs amount assessed as profit *qua* the impugned sum. We therefore direct the Assessing Officer to assess the foregoing sum of Rs.2.50 lakh instead of Rs.16.20 lakh in consequential proceedings as per law.

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

Order pronounced in open court at the close of hearing on Tuesday 15th September, 2020

Sd/-
(लेखा सदस्य)
(A.L. Saini)
(Accountant Member)

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

*Dkp Sr.P.S.

दिनांक:-15/09/2020 कोलकाता/।

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

1. अपीलार्थी/Appellant-Sajjan Bajaj S/o Lt. Narsingh Das Bajaj, Prop. Dilip Traders, Sakhichand Katra, Sujaganj, Bhagalpur-812001
2. प्रत्यर्थी/Respondent-ITO, Ward-1(3), Bhagalpur
3. संबंधित आयकर आयुक्त पाटना/ Concerned CIT Patna
4. आयकर आयुक्त- अपील पाटना / CIT (A) Patna
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण पाटना, / DR, ITAT, Patna
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO आयकर अपीलीय अधिकरण,
पाटना ।