

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO.1053/Chd/2019

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Vikas Rice and General Mills, Cheeka, Kaithal C/o Sh O.P. Arora 646/14, Professor Colony, Kaithal	बनाम	The ITO Ward-4, Kaithal
स्थायी लेखा सं./PAN NO: AAEFV1242K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri S.K. Mukhi, Advocate

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 09/09/2021

उद्घोषणा की तारीख/Date of Pronouncement : 20/09/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 13/05/2019 of the Ld. CIT(A), Karnal.

2. Following grounds have been raised in this appeal:

1. That the orders of Ld. CIT(A) is illegal, erroneous and perverse and thus needs to be quashed.

2. That the Ld. CIT(A) is not justified in concurring with the findings of A.O., regarding framing of assessment u/s 148 r.w.s 144 of Income Tax Act, 1961 without appreciating the fact that the and erroneous service of notice by affixation and without appreciating the fact that the very notice u/s 148 was illegal, arbitrary and perverse and against well settled law and thus deserve to be set aside in the interest of justice.

3. That without prejudice to above, the Ld. CIT(A) is not justified in upholding the addition made by the Ld. A.O., of Rs. 4,41,065/- u/s 36(1)(iii) of the Income Tax Act, 1961 on sundry debtors which finding of the CIT(A) are illegal, arbitrary and

perverse and against well settled law and thus deserve to be set aside in the interest of justice.

4. *That without prejudice to above, the Ld. CIT(A) is not justified in upholding the addition made by the Ld. A.O., of Rs. 2,82,442/- on account of bardana loss which finding of the CIT(A) are illegal, arbitrary and perverse and against well settled law and thus deserve to be set aside in the interest of justice.*

5. *That without prejudice to above, the appellant also disputes the quantum of addition as highly excessive.*

6. *That the appellant craves leave to add, amend or delete any of the grounds of appeal on or before the disposal of the present appeal.*

3. The main grievance of the assessee vide Ground No. 3 relates to the sustenance of addition of Rs. 4,41,065/- made by the A.O. under section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

4. Facts of the case in brief are that the assessment in this case was completed on 22/11/2011 at an income of Rs. 1,15,000/-. Thereafter proceedings were initiated by the A.O. under section 147 r.w.s 148 of the Act. The A.O. during the course of assessment proceedings noticed that the assessee had paid interest of Rs. 18,87,825/- to the sundry creditors, on the other hand no interest was charged from the sundry debtors amounting to Rs. 1,55,28,019/-. She worked out the proportionate interest to Rs. 4,41,065/- and considered the same as not permissible in terms of Section 36(1)(iii) of the Act. She made the addition of the said amount. She also observed that the assessee claimed bardana loss of Rs. 2,82,444/- without furnishing any documentary evidence, it was also added to the income of the assessee. The A.O. passed the assessment order *ex parte* under section 144 of the Act on 16/03/2015 by making the aforesaid additions.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and as regards to the addition made on account of interest u/s 36(1)(iii) of the Act, submitted as under:

"In the assessment proceeding before respected JCIT, Kurukshetra, this fact was barely and lengthly discussed and explained with all documents, copy of a/cs vice-versa of debtors, who were rice purchasers of the trade in the year of big-loss it is not possible in any circumstance to collect interest when the payments of rice are at risk.

To charge the interest as they are only traders who sells and purchases rice in the routine. This is custom of the trade to secure the business payments for the existence of the debtors vice-versa with confirmation of the both side are on the records of assessment, duly affirmed by it. JCIT Kurukshetra as A.O of the case. Copy of accounts on the file and sales bills of the rice to the traders are on the file. Please summons the records of the assessee of the said year. When the payment of Goods is unsecure due to big losses in the trade, Question of charge and collection of the interest does not arise. This fact is not applicable in our case but this fact is common to all cases of the same trade i.e. in all cases.

Hence this is also illegal on the part of the revenue to make addition u/s 36 (i)(iii). When there venue is not bring any facts evidence on the records for charge of interest from sundry debtors.

Your kind intension has been invited to so many Hon'ble High courts and Supreme courts rulings are in the favour of the assessee. Hence this addition must be deleted for the end of justice."

5.1 However, the Ld. CIT did not find merit in the aforesaid submissions of the assessee and sustained the addition by observing in para 5.2 of the impugned order as under:

*I have examined the facts of the case and the report of the Assessing Officer dated 06.09.2018. It is clear that the assessee has been unable to explain coherently the reason for non-charging of interest from debtors. Merely by stating that 'big losses in trade' was the reason for non-charging of interest is not a satisfactory explanation. There has to be a cognitive reason for the same. In my view, the disallowance has been rightly made and I confirm the same. This ground of appeal is **dismissed**.*

6. Now the assessee is in appeal.

7. The Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and it was further submitted that in such type of cases no

interest was charged on the trading debtors. It was also submitted that the purchaser of the rice from the assessee were having the loss in this year so it was not possible to charge interest when the payments were at risk and that there was no such agreement between the purchasers and the assessee to charge any interest. Therefore the addition sustained by the Ld. CIT(A) was not justified.

8. In his rival submissions the Ld. DR strongly supported the orders of the authorities below.

9. We have considered the submissions of both the parties and perused the material available on the record. In the present case, nothing is brought on record to substantiate that there was any agreement between the assessee and the debtors for charging of interest on the trade debits which were on account of purchases of the Rice made from the assessee. In the present case, the assessee furnished the copies of the accounts from the debtors in the said accounts also no interest was charged and moreover the A.O. had not established any nexus between the interest bearing funds with the interest free advances. On the contrary the debtors were on account of purchases made from the assessee, therefore, the A.O. was not justified in invoking the provision of Section 36(1)(iii) of the Act and making the impugned addition which was wrongly sustained by the Ld. CIT(A). In the absence of any nexus proved between the interest bearing funds and the debtors the impugned addition deserves to be deleted, accordingly the same is deleted.

10. The next grievance of the assessee vide ground No. 4 relates to the sustenance of addition of Rs. 2,82,442/- made by the A.O. on account of loss in bardana.

11. The facts related to this issue in brief are that the A.O. made the addition of Rs. 2,82,442/- which was shown by the assessee as bardana loss.

12. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

"The addition of Bardana losses of Rs 2,82,442/- is totally illegal assessed as a income as the bardana is packing material of the good of sales at the commodity price as rice Rs. 40/60 per kg and purchase price/coast comes high Rs. 80 per bag. Loss in the packing material in Bardana is compulsory and trade practice is also unavoidable. All the facts are thoroughly discussed in the assessment proceeding and all documentary proof/on the assessment file records.

In all other cases packing material of Bardana is always as losable item that is established fact on the records of all cases.

Both the addition are illegal and likely to be quash for the ends of justice as no notice was served upon the assessee and all the fact with documentary evidence books of accounts purchase bill sale placed on the file in the assessment proceeding.

Can a judgment of the tribunal become the basis of audit objection and re-opening of case u/s 147/148 ? This is also completely illegal on the part of revenue when the fact of our case is different.

So your honor would be kind enough to quash these illegal addition on the basis of filmizy grounds oblige."

12.1 The Ld. CIT(A) on the aforesaid submission of the assessee asked the Remand Report of the A.O. In response the A.O. submitted the Remand Report which read as under:

In the context, it is submitted that during the course of assessment proceedings addition on account of Bardana loss and 2,82,442/- was made to the total income of the assessee. as the assessee could not explain/justify the said loss Further, as per the purchase bills/sale bills regarding Bardana as produced by the assessee during appellate proceedings it is seen that the assessee has purchased the Bardana on higher price and sold the same on the lesser price within same period for the reason best to know to him as per the detail given below:-

Bardana Purchased		Bardana sold	
Date & Bill No.	Rate(Rs.)	Date & Bill No.	Rate(Rs.)
22.10.2008/025985	27.40/-	10.10.2008/163	6.08/-
5.11.2008/1036	10.19/-	17.10.2008/	10.60/-
6.11.2008/1038	10.19/-	8.11.2008/161	6.00/-
26.11.2008/1128	25.74/-	21.11.2008/173	6.00/-

From the above it can be inferred that as to how a prudence business man will buy the things on the higher price and sold the same on the lesser price within the same period. Further, before the undersigned despite allowing the

assessee an opportunity for explaining the said loss, he totally failed to submit any explanation to justify his loss on account of Bardana. Moreover, books of accounts as required have not been produced despite the service of letter through affixture.

From the above comments and the appellant's replies, it is clear that the latter has not been able to rebut the A.O.'s logical reasoning on this account. The appellant has given vague explanations on this issue which are not substantiated by evidence.

Therefore, the addition deserves to be sustained and I confirm the same.

12.2 The Ld. CIT(A) after considering the submissions of the assessee and the Remand Report of the A.O. sustained the addition by observing that the A.O. made the logical reasoning.

13. Now the assessee is in appeal.

14. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee purchased the bardana which was used and reused to store the rice & paddy, due to frequent use there were bear and tear, as such the sale price was less than the purchase price and that no such disallowance was made in earlier years. Therefore the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified.

15. In his rival submissions the Ld. DR supported the orders of the authorities below.

16. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the A.O. framed the assessment *ex parte* and the assessee furnished the documentary evidence in the form of purchase and sale bills of bardana before the Ld. CIT(A). In such type of business the bardana is used to store goods like paddy,

rice and rice bran etc. and again reused, the value of baradana deteriorate with passage of time and there is also bear and tear, therefore, the purchase price and the sale price of bardana cannot be the same. Moreover nothing is brought on record that he assessee inflated the purchases or suppressed the sales, therefore, the addition made by the A.O. and sustained by the Ld. CIT(A) on account of loss in bardana was not justified, accordingly the same is deleted.

17. In the result, appeal of the Assessee is allowed.

(Order pronounced in the open Court on 20/09/2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 20/09/2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar