

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUH RAHMAN, AM

आयकर अपील सं/ I.T.A. No. 1237/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Rajhans Paper Company C/o Shirish H. Shah & Co. ½, Mangrol Mansion 6, Rustom Sidhwa Marg, Fort, Mumbai- 400001.	बनाम/ Vs.	ITO, Ward-23(3)(2) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFFR8622J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Rahul Sarda
Revenue by:	Shri T. Shankar (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 10/02/2022

घोषणा की तारीख /Date of Pronouncement: 04/04/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 16.12.2013 passed by the Commissioner of Income Tax (Appeals) -25, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds: -

“(A) Principles of natural justice violated

1. *The Ld. CIT(A)-25, Mumbai erred on facts and in law in not giving a reasonable and sufficient opportunity of being heard before passing the order conforming the order of the Income Tax Officer-14(3)(2), Mumbai(AO).*



ITA No. 1237/Mum/2014

A.Y. 2009-10

2. *The Learned (CIT(A) erred in stating that the appellant has not disputed the figure of unaccounted out of the books excess stock at Rs.25,95,321/-, as against the figure of Rs.18,14,908/- as computed as per appellant's earlier letter dated 15.04.2009.*

(B) Addition u/s 69-Rs.25,95,321/-

3. *The Ld. CIT(A) erred on facts and in law in upholding the order of the AO making an addition of Rs.25,95,321/- as unexplained investment under section 69 without appreciating that the appellant had filed all the details in connection thereto with the AO during assessment proceedings, which was not considered by the AO.*

4. *The Ld. CIT(A) erred on facts and in law in taxing the disclosure of stock out of the books u/s 69 instead of Income from Business.*

5. *The Ld CIT(A) erred on facts and in law in upholding the remuneration payable to partners as worked out by the AO.*

6. *The appellant prays your honour that the income returned by the appellant be accepted.*

(C) General

7. *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal."*

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring total income to the tune of Rs.11,54,860/-. The return was processed u/s 143(1) of the Act. The case was selected for



ITA No. 1237/Mum/2014
A.Y. 2009-10

scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. Thereafter, the assessment of the assessee was completed on 28.12.2011 u/s 143(3) of the Act making certain additions on account of disclosure made during survey and the total income of the assessee was assessed to the tune of Rs.26,61,230/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE Nos. 1 to 3

4. At the time of argument, these issues have not been pressed by the Ld. Representative of the assessee, therefore, these issues are being decided in favour of the revenue against the assessee being not pressed.

ISSUE No. 4

5. We observed from the record that during the search conducted u/s 133A of the Act and Department has found physical stock as on 07.02.2009 more than the stock declared in the books of accounts. Further, we observed that the excess stock found during survey consists of Paper and Board, the same items in which assessee also makes trading business. It clearly shows that the excess stock found is nothing but business stock. We noticed that the AO treated the above excess stock as additional income chargeable to tax under the head income from other sources. In our considered view, the excess stock found during search is nothing but business stock carried on by assessee which is not declared in the books. Since there is a direct nexus with the type of stock found during survey and the business carried on by the assessee, these excess stock in only be treated as chargeable to tax



ITA No. 1237/Mum/2014
A.Y. 2009-10

under the head income from business not under the head income from other sources. Accordingly, ground no. 4 raised by assessee is allowed.

6. We observed from the record that the assessee has treated the excess stock found during survey as part of business stock and accordingly re-computed and claimed the remuneration to partners as per the Section 40(b) of the Act and claimed to the extent of Rs.8,57,404/- whereas the originally assessee claimed remuneration to the partner to the extent of Rs.1,98,639/-. Since, we already adjudicated ground no. 4 in favour of the assessee that the excess stock found during survey is chargeable to tax under the head business income, therefore, the profit determined by the assessee under the head business income is proper and it is fact on record that the assessee is eligible to claim remuneration to the partners as per provisions of section 40(b) of the Act, therefore, the AO cannot deny the benefit available to the assessee as per Section 40(b) of the Act, therefore, we are inclined to allow the ground no. 5 raised by assessee.

7. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 04/04/2022

Sd/-

(S. RIFAUUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 04/04/2022

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 1237/Mum/2014
A.Y. 2009-10

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**