

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| <b>ITA No. 510/Bang/2022</b>     |
| <b>Assessment Year : 2017-18</b> |

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| M/s. R.R. Gold Palace<br>Pvt. Ltd.,<br>#88, Between 6 <sup>th</sup> and 7 <sup>th</sup><br>Cross,<br>Sampige Road,<br>Malleswaram,<br>Bengaluru – 560 003.<br><b>PAN: AAFCR6929K</b> | <b>Vs.</b> | The Deputy<br>Commissioner of<br>Income Tax,<br>Central Circle – 1[1],<br>Bengaluru. |
| <b>APPELLANT</b>   |            | <b>RESPONDENT</b>  |

|             |   |                                       |
|-------------|---|---------------------------------------|
| Assessee by | : | Ms. Sunaina Bhatia, Advocate          |
| Revenue by  | : | Shri Sankar Ganesh K, JCIT<br>DR ITAT |

|                       |   |            |
|-----------------------|---|------------|
| Date of Hearing       | : | 01-08-2022 |
| Date of Pronouncement | : | 25-08-2022 |

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 06/05/2022 passed by Ld.CIT(A)-11, Bangalore for A.Y. 2017-18 on following grounds of appeal:

*“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT[A] is not justified in disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.*

3. Without prejudice to the above, the learned CIT[A] is not justified upholding the addition of a sum of Rs.1,79,06,230/- as the income of the appellant earned from sale of the stock outside the books of account relying upon the erroneous computation of the alleged deficit stock found at the time of survey on 10/11/2016 under the facts and in the circumstances of the appellant's case.

3.1 The CIT[A] ought to have appreciated that there was no deficit stock found at the time of survey on 10/11/2016 since the physical stock inventorised at the time of survey did not take into consideration the extent of stock seized by the Department in course of search conducted earlier of 39,070 gms, the stock of old gold kept in the safe by the managing director of 50,019.63 gms and the stock of customer gold of 6.500 gms and hence, there is no case to hold that there was deficit stock found at the time of survey to make the impugned addition as profit on sales made outside the books of accounts under the facts and in the circumstances of the appellant's case.

3.2 Without prejudice to the above, the learned CIT[A] ought to have appreciated that the value of the alleged deficit stock computed at Rs.28,92,78,184/- was highly excessive and the same requires to be reduced substantially.

4. Without further prejudice to the above, the learned CIT[A] ought to have appreciated that the income on the sales made outside the books of accounts ought to have been computed by applying the net profit rate of 0.62% and not the gross profit rate of 6.19% and hence, the addition made is excessive and deserves to be reduced substantially.

5. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

6. For the above and other grounds that may be urged at the time of hearing of the appeal. your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. At the outset, the Ld.AR submitted that sufficient time was not granted by the Ld.CIT(A) to represent the present case and furnish relevant submissions on the issues alleged and the Ld.CIT(A) disposed of the appeal within a period of 1 ½ month from the date of fixing the appeal for the first time. The Ld.CIT(A) disposed of the present appeal by observing as under:

*“3.1 The grounds of appeal 1 and 6 are general in nature. The ground of appeal 5 is consequential in nature. As such these grounds of appeal do not require any specific adjudication.*

*4.0. The grounds of appeal 2 to 4 relate to the common issue of the action of the AO in making an addition of Rs 1,79,06,230/-. In brief, a survey was conducted in the case of the appellant and it was found that the physical stock of gold was less by 96,393.937gm when compared to the stock appearing in the books of account. The issue was duly confronted by the AO to the appellant during assessment proceedings. After considering the replies of the appellant the AO held that the gold had been sold by the appellant outside the books of account and so he applied a gross profit rate of 6.19% to determine the undisclosed income of the appellant at Rs 1,79,06,320/-.*

*4.1 As discussed supra, the appellant has not furnished any reply. The arguments taken by the appellant in the statement of facts have already been considered by the AO while passing the assessment order and each such argument has been rejected by him by giving detailed reasoning. The appellant has not brought out as to how the reasoning of the AO is incorrect. Since there is nothing to controvert the findings of the AO, the action of the AO is upheld and the grounds of appeal 2 to 4, as raised by the appellant, are dismissed.”*

3. We note that sufficient opportunity has not been granted to the assessee in accordance with law and that assessee was gathering materials in support of the issues alleged. He submitted that an adjournment application was filed to that effect on 17/03/2022 and 18/04/2022 expressing the inability to appear.

4. We note that the Ld.CIT(A) has passed the impugned order without following the due procedure under law and principles of natural justice.

Accordingly, we remit the issues back to the Ld.CIT(A) to consider the issues in accordance with law.

5. The Ld.CIT(A) is directed to grant proper opportunity of being heard to assessee in accordance with law and to pass a detailed order on merits after considering the submissions filed by assessee. The Ld.CIT(A) is also directed to verify the submissions and take a conscious decision on the issues alleged.

Accordingly, the grounds raised by assessee stands partly allowed for statistical purposes.

**In the result, the appeal filed by assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 25<sup>th</sup> August, 2022.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 25<sup>th</sup> August, 2022.

/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore