

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
ITA No.248/VNS/2019
Assessment Year: 2016-17**

Income Tax Officer, Ward-2(3), Varanasi	vs.	Shri Krishana Kumar Upadhyay, N-8/239-C, Surya Bhawan, Nevada, Sunderpur, Varanasi-221005 PAN-AAOPU6505G
(Appellant)		(Respondent)

Appellant by:	Sh. Arvind Shukla, Advocate
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	12.01.2023
Date of pronouncement:	17.01.2023

ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated 03rd September, 2019 of CIT(A) for the assessment year 2016-17. The Revenue has raised the following grounds:-

"1. Whether on the facts and circumstances of the case and in law the Ld Commissioner of Income Tax(Appeal), Varanasi is justified in deleting the addition of Rs2,23,91,526/- by admitting additional evidence during the appellate proceedings, ignoring the fact that the assessee failed to furnish these evidences during the assessment proceedings despite being given multiple opportunities by the AO and failed to explain the circumstances under which he could not produce these evidences before the AO as required under Rule 46A(1).

2. Whether on the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax(Appeal), Varanasi is justified in deleting the addition of Rs2,23,91,526/- by combining the two additions of Rs2,24,57,832/- and Rs83,56,300/- as sale proceeds and applying a GP rate of 24%, ignoring

the fact that the assessee had failed to produce any evidences regarding purchases and expenses before the AO during the assessment proceedings.

3. Whether on the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax(Appeal), Varanasi is justified in deleting the addition of Rs2,23,91,526/- on the ground that AO had accepted the amount as turnover in the penalty order u/s271B, ignoring the fact that the assessing officer had himself treated the deposits in the RMB pharmacy account as suppressed sales and added the whole amount of sale proceeds because of the inability of the assessee to produce any evidences regarding purchase and expenses.

4. Whether on the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax(Appeal), Varanasi erred in accepting the cash deposits of Rs. 83,96,300/- in the saving bank account in Central Bank of India as sale proceeds of the assessee, ignoring the fact that the assessee could not produce any evidence to show that these were his sale proceeds. The AO has justifiably added this amount as the unaccounted money of the assessee.

5. The appellant craves right to add, alter or amend any grounds of appeal at the time of hearing."

2. The assessee is an individual and engaged in the business of trading in Medicine. The assessee filed his return of income on 04.10.2016 declaring total income of Rs. 6,42,360/-. The case was selected for limited scrutiny for examining the cash deposited in the bank account. During the scrutiny assessment, the AO noted that the assessee has shown the business turnover of Rs. 28,68,484/- whereas there are credit entries of more than crores of rupees in the bank account of the assessee. There was a total deposit during the year of Rs. 2,53,26,316/- whereas the profit and loss account submitted by the assessee shows the sales of Rs. 28,68,484/-. The AO sought an explanation from the assessee but no explanation was furnished by the assessee in respect of the deposits made in the current account. Accordingly, the AO held that out of the total deposit of Rs. 2,53,26,316/-, a sum of Rs. 2,24,57,820/- is excess in comparison to the sales of the assessee and consequently in the absence of any explanation from the assessee, the same was added to the income of the assessee

as suppressed sale. The AO also received AIR information regarding deposit of Rs. 83,96,300/- cash in his saving bank account maintained with Central Bank of India. The assessee did not furnish any explanation or documentary evidence regarding the source of the said cash deposit in the bank account and consequently the AO has made the said addition of the amount of Rs. 83,96,300/- as income from unexplained source under section 69A of the Act.

3. On appeal, the CIT(A) has restricted the addition made by the AO towards the credit in the current account of Rs. 2,24,57,832/- to the GP rate at 24% which was declared by the assessee on the disclosed turnover. Therefore, the CIT(A) has granted a substantial relief on this account. Similarly, the CIT(A) treated the cash deposit in the savings bank account of the assessee as turnover of the assessee and the addition was restricted to the GP at 24%.

4. Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal. The learned Sr. DR has submitted that there was no explanation by the assessee during the assessment proceedings regarding the source of deposits in the current account as well as saving bank account of the assessee. The assessee first time explained the source before the CIT(A) and claimed the same as out of the undisclosed turnover. The assessee also furnished the relevant details with profit and loss account and offered the said income as business income on the undisclosed turnover. Thus, the learned Sr. DR has submitted that the CIT(A) has considered the additional evidence in the shape of revised balance-sheet, trading and profit and loss account, copies of bills for purchase of Medicines as well as bank account of the assessee without the same were verified and examined by the AO. He has submitted that there is a violation of Rule 46A and the matter may be remanded to the record of the Assessing Officer for proper examination of the record produced by the assessee before the CIT(A).

5. On the other hand, the learned AR of the assessee has submitted that there is no violation of Rule 46A of the Income Tax Rules as the CIT(A) has called for a remand report from the AO and the AO has submitted the remand report dated 13.8.2019. Therefore, the impugned order was passed by the CIT(A) after considering the remand report of the AO cannot be held as in violation of Rule 46A of the Income Tax Rules. However, the learned AR fairly submitted that if the Bench finds that this record is required to be examined and verified by the AO then the same may be remanded to the record of the AO.

6. Having considered the rival submissions as well as relevant material on record we find that during the course of assessment proceedings, the assessee did not furnish any record or explanation regarding the source of deposits made in the current account as well as saving account maintained by the assessee. The AO consequently made two additions of Rs. 2,24,57,832/- on account of suppressed sale / undisclosed turnover and a sum of Rs. 83,96,300/- on account of unexplained cash deposit in the saving bank account of the assessee. The CIT(A) restricted the addition by treating the entire deposits as undisclosed turnover of the assessee and consequently the GP rate at 24% was applied on the total estimated turnover of Rs. 03,30,00,000/-.

7. It is pertinent to note that during the course of appellate proceedings before the CIT(A), the assessee furnished various documents including, revised balance, trading and profit and loss as recorded by the CIT(A) in para 4 as under:-

“4. During the course of appellate proceedings, it was submitted that appellant deals in trading of medicines and as regards source of deposits in bank accounts it was tried to be explained that the same was explainable as most of the entries were in the nature of self deposits, contra entries, cheque returns, personal accommodation entries etc. It was submitted that the A.O. has treated the entire deposits as unexplained deposits in the bank accounts without giving proper opportunities. It was further submitted that the appellant has made purchase of medicines through cheque as well as cash

amounting to Rs. 1,97,04,575/- and Rs. 37,19,000/- respectively. However, the complete business transaction of sale and purchase of medicines were not shown in the return of income and accompanying documents and the sale has been shown only marginally at Rs. 28,68,484/- and purchases at Rs. 11,13,689/-. It was submitted as per para-3 of written submission received in this office on 08.08.2019 that that total turnover was Rs. 2,98,86,309/- on which G.P. rate of 12.77% and N.P. rate of 12.32% was offered during the course of appellate proceedings. A revised balance sheet, trading and P/L account, copies of various bills for purchase of medicines alongwith copies of bank accounts was also filed. Since these details and submission were not made before the A.O., the same were forwarded to him for his comments. In the remand report submitted through F.NO. ITO 2(3)/Vns/Comments/2018-19/362 dated 13.08.2019, the A.O. merely submitted that the assessee was offered many opportunity of being heard come the details of purchase and sale and books of accounts were not produced during the course of assessment proceedings and it was claimed that these documents are an afterthought and it was submitted that the additional facts and grounds should not be entertained. In response to this report, the appellant reiterated its earlier submission.”

8. Thus, the assessee first time produced these evidences in support of the source of deposits in the current account and saving bank account. Though, the CIT(A) called for a remand report from the AO however, the AO in his report dated 13.8.2019 has objected to the admission of the additional evidence / documents, facts and grounds and consequently pleaded that the same should not be entertained. The CIT(A) without asking the AO to submit a remand report based on the verification and examination of the said evidence has passed the impugned order. Therefore, in the facts and circumstances of the case and in the interest of justice, we are of the considered opinion that the evidence produced by the assessee first time before the CIT(A) is required to be verified and examined at the level of AO. Hence, the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the AO for adjudication of the same afresh after proper verification and examination of the evidence and details produced by the assessee before the CIT(A).

9. In the result, the appeal of the Department is allowed for statistical purpose.

Order pronounced on 17.01.2023 at Allahabad, U.P. in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 17/01/2023
Varanasi/Allahabad
Sh

Copy forwarded to:

1. Appellant- Income Tax Officer, Ward-2(3), Varanasi
2. Respondent-Shri Krishana Kumar Upadhyay
3. CIT(A), Varanasi
4. CIT
5. DR

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

By order
Sr. P.S.