

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री अरूण खोडपिया, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Arun Khodpia, Accountant Member

आयकर अपील सं./I.T.A. No.938/Chny/2022
निर्धारण वर्ष/Assessment Year: 2019-2020

&

C.O. No. 15/Chny/2022 [in ITA No. 938/Chny/2022]

The Deputy Commissioner of
Income Tax, Central Circle 1,
No. 63, Race Course Road,
Coimbatore 641 018.

Vs. M/s. SRS Trading Company,
23/4, Venkatachalam Street,
Erode 638 001.

[PAN:ADIFS8621A]

(अपीलार्थी/Appellant)

(Respondent/Cross Objector)

Department by : Shri D. Hema Bhupal, JCIT

Assessee by : Shri S. Sridhar, Advocate (Erode)

सुनवाई की तारीख/ Date of hearing : 20.06.2023

घोषणा की तारीख /Date of Pronouncement : 23.06.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the
Id. Commissioner of Income Tax (Appeals) 19, Chennai, dated
26.07.2022 relevant to the assessment year 2019-20. The grounds raised
by the Revenue are as under:

- 1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*
- 2. The learned CIT(A) erred in holding that the action of the assessing officer in estimating the suppression of sales @ 200% by extrapolation based on the evidence available for 3 months is not acceptable.*

- 2.1 *The CIT(A) erred in failing to appreciate that the assessee has been continuously practicing the same modus operandi throughout the year. In fact the evidence for suppression of sale for FY 2016-17 and FY 2017-18 for the entire year had been found in the impounded diary. For the financial year 2019-20, evidence for suppression of sale amounting to Rs. 5,58,05,810/- has been found in the computer for the period from 01/04/2019 to 04/02/2020 (Date of survey is 06/02/2020). These facts make it clear that the evidence for suppression of sales for the period from July 2018 to March 2019 had either been hidden or destroyed by the assessee. Hence the AO has logically extrapolated and estimated the undisclosed income for the AY 2019-20. Reliance is placed on the decision of Apex Court in the case of CST V. H.M. Esufali H.M. Abdulali [1973] 90 ITR 271 wherein the Sales tax officer estimated the sales outside books for the entire year based on the evidence available for 19 days. The Supreme Court held that so long as the estimate made by STO was not arbitrary and has nexus with facts discovered, the same could not be questioned.*
- 2.2 *The Ld.CIT(A) erred in observing that the action of the AO in extrapolation in the absence of evidence and quantification of undisclosed income without matching with the assets found and expenditure incurred is neither logically correct nor legally tenable. Shri. D. Bhaskarraaj, Individual in his sworn statement dated 06/02/2020 admitted that the income earned from suppression of sales has been utilized for settling the balance of trade creditors, but even after settling some of the balances, the same was continuing to be shown in the books of account. Hence, it is clear that the CIT's observation regarding estimation of income on the basis of extrapolation in the absence of evidence and quantification of undisclosed income without matching with the assets found or expenditure incurred is contrary to facts of the case. On the date of survey, there was a difference in cash balance of Rs.9,63,312/- which could not be explained. This showed that the suppression of sales is the regular practice of the assessee and the extrapolation of undisclosed income is justifiable.*
3. *The CIT(A) erred in restricting the addition made to Rs.50,828/- as against Rs. 1,47,12,564/- by adopting Gross profit on undisclosed sales is not acceptable as the assessee did not prove that for unaccounted sales, there were corresponding unaccounted purchases. The assessee is showing 1.7% of GP, which is very low whereas the assessees in the same line of business are showing GP around 20 to 32%.*
4. *For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.*

2. The appeal filed by the Revenue is delayed by 19 days in filing the appeal and filed a petition for condonation of delay in the form of an

affidavit to which; the Id. Counsel has not raised any serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 2019-20 on 11.03.2020 admitting total income of ₹.6,55,390/-. A survey under section 133A of the Income Tax Act, 1961 ["Act" in short] was conducted on 06.02.2020 in the business premises of the assessee. Shri Bhaskar Raj was available in the premises at the time of survey. During the course of survey in the business premises of the assessee, a diary containing evidences for the sales particulars for the period from April 2018 to June 2018 was impounded and it was found that the entries were made for all the three type of sales collections for all the business concerns of the assessee group. The cash collection on cash sales and Line collection amounts to ₹.1,33,37,997/- for the entire group for this period. Details of Cash collection and Cash receipt on Line collections were taken from the cash sales ledger and cash book respectively as submitted by the assessee for the period of 3 months from April 2018 to June 2018 during the course of assessment proceedings and the Assessing Officer found that only

₹.47,95,472/- was disclosed by the assessee's group. Based on the analysis of the details unearthed in the diary and the details of cash sales ledger, cash book and the ITR submitted by the assessee, the Assessing Officer noted that 2/3rd of the actual sales collection in the form of cash and line collections were suppressed by the assessee. Only 1/3rd of the sales collection was disclosed as income for the period of April 2018 to June 2018. The Assessing Officer has also observed that the same kind of business model was adopted by the assessee for the entire financial year, the ratio of suppression, i.e., 2:3 was adopted for the entire financial year. Accordingly, the Assessing Officer determined the income of the assessee in view of the total cash collections on cash sales and line sales as reported by the assessee at ₹.73,56,282/- and the unaccounted sales income has been arrived at ₹.1,47,12,564/- being 200% of disclosed income and completed the assessment under section 143(3) of the Act dated 26.09.2021 assessing total income of the assessee at ₹.1,53,67,954/-. On appeal, after considering the submissions of the assessee as well as considering the decision in the case of CIT v Maheswari Synthetics (P.) Limited [2016] 73 taxmann.com 253 (P&H), the Id. CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the suppression of sale for financial years 2016-17 and 2017-18 for the entire year had been found in the impounded diary. For the financial year 2019-20, evidence for suppression of sale has also been found in the computer for the period from 01/04/2019 to 04/02/2020. These facts make it clear that the assessee has been continuously practicing the same modus operandi in its business. In the absence of suppression of sales for the period from July, 2018 to March 2019, the Assessing Officer has logically extrapolated and estimated the undisclosed income for the financial year 2018-19 relevant to the assessment year 2019-20 based on the evidence available for 3 months and estimated the suppression sale @ 200%. It was further submission that the assessee's GP at 1.7% is very low whereas the assessees in the same line of business are showing GP around 20 to 32%.

5. On the other hand, the Id. Counsel for the assessee strongly supported the order passed by the Id. CIT(A) on merits and also filed Cross Objection.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, a survey under section 133A of the Act has been conducted in the business

premises of the assessee and a diary has been impounded, which contained evidences for the sales particulars for the period from April, 2018 to June, 2018, the Assessing Officer has calculated the unaccounted sales for the entire financial year 2018-19 and estimated the income on the basis of extrapolation in the absence of evidence and quantified the total income of the assessee at ₹.1,53,67,954/-. On appeal, after considering the submissions of the assessee and going through the assessment order, the Id. CIT(A) has observed that the survey team has not come across any evidence to indicate that the assessee firm has adopted the same kind of suppression of sales for the whole year and moreover, the survey team has also not recorded any statement from any of the responsible persons about the suppression of sales. In the case of CIT v Maheswari Synthetics (P.) Limited (supra), wherein, the Hon'ble Punjab & Haryana High Court has held that a single instance of suppression of sales may not justify an interference of a consistent pattern of similar suppression all through and it was further held that once piece of evidence of suppressed sale should not result in estimation for a larger period. The Id. CIT(A) has observed that where income is sought to be estimated by way of extrapolation without there been any corroborative evidence, it will not be prudent on the part of the Assessing Officer to evaluate the estimated income with reference to the application

of such income. Moreover, while estimating the income on the basis of extrapolation in the absence of evidence and quantification of undisclosed income without matching with the assets found or expenditure incurred, the addition made by the Assessing Officer is neither logically correct nor legally tenable and accordingly, the Id. CIT(A) has not accepted the estimation of suppression of sales @ 200%.

6.1 In this case, evidence was found during the course of survey indicating the suppression of sales to the extent of ₹.85,42,525/- from April, 2018 to June, 2018 for all the group concerns of the assessee. Moreover, there is no evidence indicating about the suppression of sales @ 200% of the sales returned by the respective concerns. No statement was recorded from the responsible persons about the suppression of the sales as found for the first three months of the financial year. Therefore, the Id. CIT(A) has correctly apportioned among the four assessees and on the basis of gross profit admitted by the assessee in the return of income for the assessment year 2019-20, the Id. CIT(A) has allocated among the four assessees and determined the undisclosed income of the assessee at ₹.50,828/- and accordingly deleted the balance addition made by the Assessing Officer. In the absence of evidence indicating about the suppression of sales @ 200% of the sales return by the

assessee and its ground concerns as well as any statement recorded from the responsible persons about the suppression of the sales for the entire year as found for the first three months of the financial year, we find that the Id. CIT(A) has rightly apportioned the amount of suppression among the four assessees and directed the Assessing Officer to adopt the total income determined which has been considered as the undisclosed income of the assessee and its group concerns. The GP around 20 to 32% in the same line of business in respect of any other assessees has nothing to do in the present case. We find no reason to interfere with the order passed by the Id. CIT(A) and thus, the grounds raised by the Revenue are dismissed.

6.2 Since we have sustained the appellate order passed by the Id. CIT(A) on merits, the Cross Objection filed by the assessee become infructuous and accordingly, the same is dismissed.

7. In the result, the appeal filed by the Revenue as well as CO filed by the assessee are dismissed.

Order pronounced on 23rd June, 2023 at Chennai.

Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER
Chennai, Dated, 23.06.2023

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.