

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.77/RPR/2022

(Assessment Year: 2018-19)

The Assistant Commissioner – of Income Tax, Central Circle -2, Raipur.	Vs	Shri Vikas Kumar Fatehramka Pvt. Ltd., Prop. Goyal Sales, Behind Mata Garage, Near Jai Bhole Complex, Pandri, Raipur (C.G.) PAN No. : AADPF 2412 Q
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma. Sr.
निर्धारिती की ओर से /Assessee by	:	DR Shri Ravi Agrawal, CA
सुनवाई की तारीख / Date of Hearing	:	01/08/2023
घोषणा की तारीख/ Date of Pronouncement	:	17/08/2023

Per Arun Khodpia, AM:

The captioned appeal is filed by the revenue against the order passed by the Commissioner of Income Tax (Appeals)-3, Bhopal, dated 24.02.2022, for the assessment year 2018-19.

2. Ground of appeal raised by the department in the present appeal are as under:-

1. "Whether or not on the facts and in the circumstances of the case, the Ld.CIT(A) is justified in accepting the revised computation of income and in deleting the charging of tax rate u/s.115BBE of Act on undisclosed investment of Rs.2,01,25,976/-, ignoring the fact that the investment in stock remains unexplained and the assessee failed to substantiate such investment during the survey proceeding.'

2. "Whether or not on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in ignoring the fact that these amounts being unrecorded fall in nature of income classified in section 115 BBE of the Act."

3. Brief facts of the case culled out from the records available are that the assessee is an individual having income from trading of household goods in the name of his proprietary concern M/s.Goyal Sales. A survey action u/s.133A of the Income Tax Act, 1961 (in short “the Act”) was conducted at the business premises of the assessee on 18.01.2018. Subsequently, regular return of income was filed by the assessee on 30.07.2018 declaring total income of Rs.2,30,85,600/-. During the continuation of assessment proceedings, the assessee, who has voluntarily surrendered an amount of Rs.2,01,25,976/- on account of excess stock found during the course of survey proceedings, have offered tax in accordance with provisions of section 115BBE of the Act, showing his income from other sources, has shifted its stand, submitted a revised computation moving the undisclosed income surrendered under the head of income “Income from other sources” to “Income from Business and Profession”, with a plea that the impugned excess stock was accumulated from regular business activities and therefore was in the nature of Business Income. Ld.AO without giving any finding on this issue, has proceeded with the original computation, wherein, the appellant has calculated tax u/s.115BBE of the Act. Aggrieved with the order of Ld.AO, assessee filed an appeal with the Ld.CIT(A) which was allowed and therefore, against such order of Ld.CIT(A), now the revenue is in appeal before us.

4. At the out-set, Ld.Sr. DR submitted that the assessee was subjected to a survey proceedings u/s.133A of the Act, conducted on 18.01.2018. During the proceedings, statement of the assessee was recorded and the assessee himself has admitted that on physical verification, excess stock of Rs.2,01,25,976/- was found and has agreed to the quantum of such excess. On being asked to explain about the source of such investment in stock, the assessee has shown his inability to make any clarification. Finally, the assessee has offered the said sum of Rs.2,01,25,976/- as his undisclosed income other than the regular income for the AY 2017-18. It was the submission of the Ld.Sr. DR that, in absence of any explanation about the source of investment in stock by the assessee, income should be treated as income from undisclosed sources and therefore, the same should be chargeable under the head "Income From Other Sources" and not income from Business.

5. On the contrary, Ld.AR submitted that inadvertently, the assessee has offered his income on account of excess stock under the head 'Income from Other Sources' and paid taxes u/s.115BBE of the Act, but during the assessment proceedings itself assessee had submitted a revised computation. On perusal of the revised computation, as per notice dated 07.04.2021, Ld.AO has also show caused the assessee to explain that "*why tax on surrender of income of Rs.2,01,25,976/- should not be charged u/s.115BBE of the Act*". In response, the assessee had submitted that the surrendered income is shown as income form business for the FY 2017-18, duly recorded in the books of

accounts of M/s. Goyal Sales, Raipur, also shown in Audit Report as well as in ITR for the year under consideration. Ld.AR further submitted that, since the assessee have no other source of income apart from trading business, hence surrendered amount on account of difference in stock found during the survey, is assessee's income from business only. Ld.AR placed his reliance on the judgment of co-ordinate bench of the ITAT Raipur in the case of M/s. Shree Sita Udyog v. DCIT in ITA No.249/RPR/2017 dated 22/07/2022, wherein, the Tribunal has held as under:

8. We have heard the rival contentions, perused the material available on the records. In principle, we find force in the argument and contentions of the Ld AR on the following aspects:

- a. *Ld AO himself has observed that the Excess Stock or Unexplained investment or cash surrendered during the course of survey operations was nothing but the accumulation of profits which the assessee has been systematically enjoying and hence difference detected during the survey and surrendered as undisclosed income is assessable as undisclosed income, thereby, has admitted that the undisclosed stock was part of the business of assessee.*
- b. *From the order of Hon'ble Jurisdictional High Court in the case of Dhanush General Store (Supra) it is emerged that the assessee has shown the income trading and P&L account but not in computation of income. However, in the present case which is distinguished on the facts and verifiable from the records that the amount surrendered was duly considered in the Audited P&L account and finally was became part of the taxable income in the computation of income.*
- c. *During the survey Statement of Mr Suresh Kumar Agarwal as a partner of the assessee partnership firm were taken on oath u/s 131 of the Income Tax Act. Q no 3 and answer given are relevant, which was place in paper book of the assessee at page 9-12, the same is reproduced as under:*

प्र.3- सर्वेक्षण के दौरान दिनांक 17/01/2012 को आपके कंपनी के व्यावसायिक/फैक्टरी परिसर में उपलब्ध स्टॉक का आपके समक्ष एवं आपके कर्मचारियों की मदद से भौतिक समापन कर सूची तैयार की गई भौतिक समापन पर पाये गये स्टॉक का आपके द्वारा सर्वेक्षण दिनांक 17/01/2012 तक की दिये गये ट्रेडिंग एकाउन्ट में दर्ज Closiny Stock से मिलान करने पर निम्नानुसार स्थिति परिलक्षित होती है :-



(10)

स्टॉक का विवरण	भौतिक सत्यापन पर स्टॉक	खाते बही के अनुसार स्टॉक	भौतिक सत्यापन पर अधिक पाया गया स्टॉक
धान	23108.00 किं.	19778.31 किं.	3329.70 किं.
चावल	7849.74 किं.	7276.99 किं.	572.75 किं.

उपरोक्तानुसार भौतिक सत्यापन पश्चात 3329.70 किं. धान एवं 572.75 किं. चावल का स्टॉक बही खाते में दर्ज स्टॉक से अधिक पाया गया। उक्त अधिक पाये गये स्टॉक का आपके द्वारा बताये गये मूल्य/बाजार मूल्य के आधार पर निम्नानुसार मूल्यांकन किया गया -

	स्टॉक	दर (रु./किं.)	कुल मूल्य
(I)	धान 3329.70 किं.	रु. 1050/-	रु. 3496185/-
(II)	चावल 572.75 किं.	रु. 1750/-	रु. 1002313/-
			रु. 44,98,498/-

कृपया इस अधिक पाये गये रु. 44,98,498/- मूल्य के स्टॉक बावत अपना स्पष्टीकरण साक्ष्य सहित दें।

- उ. - इस बावत ठीक - ठीक स्पष्टीकरण देने में मैं असमर्थ हूँ। हो सकता है कि बही खाते में स्टॉक संबंधी प्रविष्टियां करते समय कुछ प्रविष्टियां त्रुटिवश छूट गई हों। मेरे पास इस बावत कोई साक्ष्य नहीं है। अतः सवैक्षण के दौरान इस अधिक पाए गए रु. 44,98,498/- मूल्य के स्टॉक की रकम को चालू वित्तीय वर्ष 2011-12 की फर्म की अघोषित आय में से स्टॉक में निवेश (Investment) मानते हुए, कर निर्धारण वर्ष 2012-13 के लिए कराधान हेतु प्रस्तुत करना चाहता हूँ। तथा उक्त अघोषित Investment /आय रु. 44,98,498/- पर नियमानुसार अग्रिम कर का भुगतान करने का वचन देता हूँ।

9. On perusal of the above question and answer offered by the assessee during the survey proceedings, it is very clear that the excess stock was found in the business premises of the assessee on physical verification by the survey team with the help of employees of the assessee. Assessee, without objecting to the figures of excess stock arrived at by survey team accepted the same and offered the same as undisclosed income for the current year. In this context, we are of the considered view that since the excess stock of rice and paddy are the commodities in which the assessee was dealing under his regular business and accordingly any surrender on account of mismatch in physical stock and accounting balance of the stock cannot be treated as income from the other source, the same has to be brought to tax under income from business, which the assessee has rightly done.

6. With regard to filing of revised return instead of submitting a revised computation before the AO, the Ld.AR submitted that according to the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT, Jalandhar v. M/s. Ramco International Dhogri Road, it was the contention of the Ld.Counsel for the Revenue in the said case that the claim made by the assessee by way of application without filing a revised return is not allowable in accordance with judgment of the Hon'ble Supreme Court in the case of Goetze India Ltd. v. CIT reported in 284 ITR 323 in this aspect, the Hon'ble Highcourt Court has held as under:

4. We are unable to accept the submission, The Tribunal has considered this issue and found that as per Form 10CCB filed during assessment proceedings, the claim of the assessee was admissible, Finding of the Tribunal is as under:-

"19, In view of the above, we find no error in the order of the learned CIT(A) it has correctly been held by the first appellate authority, inter alia that as per Form No.10CCB filed during the assessment proceedings, the claim made by the assessee was admissible and the same remained to be allowed. The order of the learned CIT(A) is hereby upheld in view of the above discussion. The grievance of the department stands rejected."

5. In view of the finding that the assessee was not making any fresh claim and had duly furnished the documents and submitted Form for claim under section 80IB, there was no requirement for filing any revised return. The judgment relied upon was not applicable.

7. On the basis of aforesaid submissions, the Ld.AR submitted that the claim of the assessee by way of revised computation was also acceptable. Therefore, the AO was at gross error in not accepting the claim of the assessee. The Ld.AR further submitted that the assessee is liable to pay tax only upon such income as

can be in law included in his total income and which can be lawfully assessed under the Act. On this aspect, the Ld.AR submitted before us that the decision of the Hon'ble Kolkata High Court in the case of CIT v. Baskar Mitter, wherein, the observations of the Hon'ble Kolkata High Court on this issue are found in Para No.8 of the said order, which is extracted as under:

8. The controversy raised in the second question is as to whether the annual letting value of the property determined by the Tribunal could be a figure lower than that returned by the assessee. The principles for determining the annual letting value under s. 23 are now well-settled and if the value returned is not in accordance with such principles, it is open to the assessee to contend that the value as may be determined upon correct application of the law should form the basis of assessment. The Revenue authorities, in our view, cannot be heard to say that merely because the assessee has returned a figure which is higher than the annual value determined in accordance with the correct legal principles, such higher amount and not the correct amount should be lawfully assessed. An assessee is liable to pay tax only upon such income as can be in law included in his total income and which can be lawfully assessed under the Act. The Law empowers the ITO to assess the income of an assessee according to law and determine the tax payable thereon. In doing so he cannot assess an assessee on an amount, which is not taxable in law, even if the same is shown by an assessee. There is no estoppel by conduct against law nor is there any waiver of the legal right as much as the legal liability to be assessed otherwise than according to the mandate of the law (sic) . It is always open to an assessee to take the plea that the figure, though shown in his return of total income, is not taxable in law. The Tribunal, therefore, in our view did not commit any error in directing to fix the correct annual letting value of the premises in question, in accordance with the provisions of s. 23 of the said Act with reference to the municipal valuation, although such sum was lower than the figure shown by the assessee in his returns of total income.

8. With the aforesaid observations, the Ld.AR submitted that the income disclosed by the assessee during survey proceedings on account of excess stock should be considered as his income from business and profession, which was inadvertently shown by him as income from other sources which immediately when understood that a mistake has committed, was subsequently rectified by way of filing a revised computation before the AO, on which, the AO has not taken any cognizance and have passed the assessment order treating income on account of excess stock as undisclosed income liable to be taxed under the provisions of sec.115BBE of the Act. It was, therefore, the prayer that the Ld.CIT(A) duly considered the matter and lawfully granted the deserving relief to the assessee, therefore the same deserves to be upheld.

9. We have heard rival contentions, perused the materials available on record, analyzed the facts of the case in light of judicial pronouncements relied upon by the assessee. The admitted facts of the case are that a survey was conducted in the premises of M/s. Goel Sales on 01.02.2018 and during the course of survey, stock was physically verified and an excess stock of Rs.2,01,25,976/- was found. When the assessee was queried to explain the source of investment in such excess stock (which was undisputedly accepted by the assessee), the answer to the query pertaining to investment, the assessee responded that he does not have any evidence with respect to source of investment in this excess stock. Therefore, he was unable to give any explanation on the same. The assessee further admitted that since he was not able to explain the source of investment in excess stock, the amount invested in such excess stock which is not from the regular income of the assessee. Therefore, the same should be considered as undisclosed income of the assessee for the relevant year i.e. FY 2017-18 (AY 2018-19). As per return of income filed by the assessee, copy of the same was furnished before us. The assessee himself has declared undisclosed income in excess stock as chargeable to income tax at special rates and therefore, under Schedule-SI at Item No.13, the amount of Rs.2,01,25,976/- was shown as income chargeable at the rate of 60% and tax of Rs.1,20,75,586/- was paid. This fact was also apparent from the original computation of the assessee which was available at assessee's Paper Book on Page Nos.22-23, wherein, the surrender income was shown as income from other sources (Chapter-IV F) and tax u/s.115BBE of the Act, was calculated and offered. During the course of assessment proceedings, the assessee revised its computation, copy of which is available as assessee's books on Page Nos.20 & 21,

wherein, the excess stock was considered as income from business and profession (Chapter -IV D) and the tax was calculated under normal rate of income tax. Copy of relevant question asked during survey proceedings and answer of the assessee is extracted as under:

प्रश्न 22/- उपरोक्तानुसार बनायी गयी सूचि के अनुसार आपके यहाँ कुल 5,71,02,926 रु. मूल्य के स्टॉक पाये गये हैं, जबकि आपके नियमित लेखा पुस्तको (जो कि computer पर Tally system में maintain हैं) के मुताबिक दिनांक 01/02/2018 को कुल स्टॉक 3,69,76,950 ही दिखाया हुआ है। इस प्रकार अतिरिक्त सत्यापन पर कुल 2,01,25,976 रु. मूल्य के स्टॉक अस्थिर पाया गया है। कृपया इस अस्थिर पायी गयी स्टॉक बतलायें।

Vishish
22.18

मे 'Investment' के स्रोत को आप स्पष्ट करे साथ ही इसके सम्बन्ध मे 'दस्तावेजी प्रमाण भी प्रस्तुत करे।
 उत्तर - अधिक पायी गयी कुल 2,01,25,976 रु. मूल्य के स्टॉक को मे 'स्वीकार' करता हूँ परन्तु इस सम्बन्ध मे कोई दस्तावेजी साक्ष्य देने मे मे 'समर्थ' नहीं हूँ।

प्रश्न 23 - उपरोक्त दशा मे 'अधिक पायी गयी स्टॉक के Investment' के स्रोत के बारे मे आपका क्या कहना है?
 उत्तर - जैसा कि मे 'ने ऊपर बताया है कि इस सम्बन्ध मे मेरे पास कोई प्रमाण नहीं है। इसलिए मे 'अधिक पायी गयी 2,01,25,976 रु. मूल्य के स्टॉक के स्रोत को स्पष्ट करने मे असमर्थ हूँ, इसलिए इस राशि 2,01,25,976 रु. को मे 'चालू वित्त वर्ष 2017-18 के लिए अपनी नियमित आय के अलावा, अधोषित आय के रूप मे 'स्वीकार' करता हूँ तथा इस पर नियमानुसार देय कर को समय पर अदा करने का वचन देता हूँ।

10. With regard to assessee's contention based on ratio of law laid down in the case of M/s. Ramco International, wherein, the Revenue's contention that claim of the assessee cannot be accepted without filing a revised return based on the order of the Hon'ble Supreme Court in the case of Goetze India Ltd. v. CIT reported in 284 ITR 323, was declined by the Hon'ble High Court, since the claim of the assessee was accepted by the Tribunal. However, in the present case, since the claim was made before the AO and the same was not accepted, rightly so,

because, as per the Hon'ble Supreme Court judgment in the case of Goetze India Ltd. v. CIT, wherein, the question raised was that the deduction disallowed by the AO on the ground that there was no provision under the Income Tax to make amendment in the return of income by modifying an application at the assessment stage without revising the return, so answered by the Hon'ble Supreme Court that the decision in question is that the power of Tribunal u/s.254 of the Income Tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which, the issue of before the Tribunal. The decision does not in any way relates to the power of the AO to entertain a claim for deduction otherwise by filing a revised return. Such observation of the Hon'ble Supreme Court undoubtedly clarify the issue that the AO has no powers to entertain a claim of deduction of the assessee without having the claim covered under the return of income or by way of a revised return. So, in the present case, the order of the AO cannot be held as erroneous on this count.

11. The reliance of the Ld.AR in the case of M/s.Shree Sita Udyog v. DCIT (supra) was also considered but the same also cannot rescue the contentions of the assessee for the reason that in the case of M/s.Shree Sita Udyog v. DCIT (supra), the AO himself has observed that the excess stock or unexplained investment or cash surrender during the course of survey operations was nothing, but the accumulation of profits which the assessee has been systematically enjoying and hence difference detected during the survey and surrendered as assessable as undisclosed income, thereby, he has admitted that the undisclosed stock was part of the business of the assessee. However, no such observations were recorded by the AO in the present case neither the assessee has offered any explanations during the survey proceedings while statements of the assessee were

recorded or afterwards during the assessment or appellate stage supported with any cogent material evidence of such source. It was also the fact in the case of M/s.Shree Sita Udyog v. DCIT that the stock physically verified was the same stock in which the assessee was dealing with i.e. Dhan & Rice etc. Therefore, there was no ambiguity pertaining to whether the stock relates to business of the assessee or not. In such circumstances, the facts of the case are that in the case of M/s.Shree Sita Udyog v. DCIT, and Facts of the present case are altogether on different footing and therefore, such contentions of the assessee cannot be acceptable.

12. With respect to assessee's contention by relying upon the judgment of Kolkata High Court in the case of CIT v. Baskar Mitter (supra), wherein, the assessee was held that the assessee is liable to tax upon only such income which can be included in his total income and lawfully assessed under the act, has no relevance in the present case, since the issue in the present appeal is with respect to categorization of income that under which head the same is chargeable, it is not a question at all that whether the income so surrendered is chargeable or not. Since in the foregoing discussion, we have held that the source of undisclosed income surrendered by the assessee could not be substantiated, the same should be covered as taxable income under the head 'Income From Other Sources'. Therefore, the original computation and return of income filed by the assessee was with correct application of law, wherein the income was shown as income from other sources and the tax was offered at special rates under the provisions of sec.115BBE of the Act. The assessee's explanation before the Ld.CIT(A) which were accepted by the Ld.CIT(A) were found under the erroneous appreciation of facts by the Ld.CIT(A), wherein, there was no whisper or observation on the source

of investment in excess stock found during the survey. The Ld.CIT(A) has recorded that the assessee has offered income on account of excess stock found during the survey by crediting the capital amount of the assessee and subsequently, adding the excess stock to the closing stock in the balance sheet, the stock becomes part of regular books of accounts of the assessee and was made available for subsequent sale. The Ld.CIT(A) further observed that the AO has not rejected the books of accounts of the assessee and rather accepted the entries passed in the books of accounts. We cannot subscribe to the view expressed by the Ld.CIT(A), since the AO has accepted the income offered by the assessee comes under the head 'Income from Other Sources' and offered higher rate of tax on the said income, therefore, there was no occasion for the AO to go into the integrities of the books of accounts to make them liable to be rejected. Under such circumstances, we are of the considered opinion that the order of the Ld.CIT(A) was not according to the facts and law and therefore, the same is liable to be quashed and the findings of the AO in his order deserves to be sustained. Consequently, appeal filed by the Revenue is allowed with the observation that surrender amount on account of excess stock accepted as undisclosed income by the assessee, source of which is unexplained nonetheless belongs to activities other than regular business of the assessee, as admitted by assessee himself, should be categorized as 'Income From Other Sources', and taxes to be charged at special rates in accordance with provisions of sec.115BBE of the Act.

11. In the result the appeal of the Revenue is allowed.

Order pronounced in the court on 17/08/2023.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 17/08/2023
TLN, Sr.PS (On Tour)

आदेश की प्रतिलिपि अग्रहित/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, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur