

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 303 & 304/Asr/2019
Assessment Years: 2010-11 & 2013-14

Surinder Sat Agro Foods,
Tiwana Road, Jalalabad
Punjab

[PAN: AAMFS3137J]
(Appellant)

Vs. Deputy Commissioner of Income
Tax, Circle-II, Bathinda

(Respondent)

I.T.A. No. 214/Asr/2017
Assessment Year: 2013-14

Surinder Sat Agro Foods,
Tiwana Road, Jalalabad
Punjab

[PAN: AAMFS 3137J]
(Appellant)

Vs. Asstt. Commissioner of Income
Tax, Circle-II, Bathinda

(Respondent)

Appellant by : Sh. Ashwani Kalia, CA
Respondent by : Sh. Rajiv Wadhera, Sr. DR

Date of Hearing : 04.10.2023
Date of Pronouncement : 30.10.2023

ORDER**Per Dr. M. L. Meena, AM:**

These captioned appeals have been filed by the assessee against the orders of the Id. Commissioner of Income Tax (Appeals), Bathinda dated 18.02.2019, 15.02.2019 and 17.03.2017 in respect of Assessment Years: 2010-11 and 2013-14.

2. The assessee has raised the following grounds of appeal in ITA No. 303/Asr/2019:

- “1. *The Ld. CIT(A) erred on facts and law in confirming the validity of the proceedings initiated by the AO u/s 147/148 because the notice u/s 148 was not served on the assessee in accordance with the provisions of section 282 of the Income Tax Act, 1961.*
2. *The Ld. CIT(A) erred on facts and law in confirming the validity of the proceedings initiated by the AO u/s 147/148 because no proper satisfaction as prescribed u/s 151 was recorded by the Pr. CIT that the case of the assessee was fit for issue of notice u/s 148.*
3. *The Ld. CIT(A) erred on facts and law in confirming the addition of Rs.79,51,206/- on the basis of alleged P & L account available in the impounded documents without rebutting the explanation of the assessee.*
4. *That the Ld. CIT(A) erred on facts and law in confirming the adhoc addition of Rs.50,00,000/- on account of alleged un-explained initial investment despite the fact that the impounded documents were available with the department and there was no evidence of alleged initial investment.*

5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

3. Grounds of appeal in ITA No. 304/Asr/-2019:

- "1. *The Ld. CIT(A), Bathinda erred on facts and law in confirming the penalty imposed by the AO u/s 271(1)(c) of the Act on the tax sought to be evaded on the income of Rs. 84,42,200/- without rebutting the contentions of the assessee raised during the course of assessment as well as appellate proceedings.*
2. *The Ld. CIT(A) Bathinda erred on facts and law in confirming the penalty imposed by the AO u/s 271(1)(c) of the Act on the tax sought to be evaded on the addition of Rs. 64,42,200/- made by the AO without rebutting the contentions of the assessee raised during the course of assessment as well as appellate proceedings.*
3. *The Ld. CIT(A), Bathinda erred on facts and law in confirming the penalty imposed by the AO u/s 271(1)(c) of the Act on the tax sought to be evaded on the addition of Rs. 20,00,000/- which was estimated by the AO as alleged initial investment trading in paddy, rice and their bye-products without rebutting the contentions of the assessee raised during the course of assessment as well as appellate proceedings.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

4. Grounds of appeal in ITA No. 214/Asr/-2017:

- "1. *That the Ld. CIT(A), Bathinda erred on facts and law in confirming the total addition of Rs. 1,10,60,880/- made by the AO vide order u/s 143(3) dated 28-03-2016.*
2. *That the Ld. CIT(A) erred on facts and law in confirming the action of the AO of applying the provisions of section 145(3) after rejecting the books of account despite the fact that no specific defect has been pointed out in the*

books of account which were produced during the course of assessment proceedings.

3. *That the Ld.CIT(A), Bathinda erred on facts and law in confirming the addition of Rs.64,42,200/- on account of alleged profits earned on the sale of properties. The addition was made by the AO and has been confirmed by the Ld. CIT(A) without making any independent inquiry to rebut the contentions of the assessee raised during the course of assessment as well as appellate proceedings that no purchase/sale of property was made by the firm.*
4. *Alternatively without prejudice to the above stated grounds of appeal, that the Ld. CIT(A), Bathinda erred on facts and law in confirming the addition of Rs.64,42,200/- on account of alleged profits earned on the sale of properties because the alternative plea raised during the course of appellate proceedings that the profits could at best be estimated has been rejected without rebutting the same.*
5. *That the Ld. CIT(A), Bathinda erred on facts and law in confirming the adhoc addition of Rs.20,00,000/- on account of alleged initial investment required for trading of paddy, rice and the purchase/sate of immovable properties made by the AO. The explanation furnished during the course of assessment as well as appellate proceedings has been rejected without rebutting the same.*
6. *That the Ld. CIT(A), Bathinda erred on facts and law in confirming the addition of Rs.26,18,680/- made by the AO by applying NP rate of 3% on the alleged unaccounted sales of Rs. 8,72,89,354/-. The explanation furnished during the course of assessment as well as appellate proceedings that the computation of alleged unaccounted sales is factually wrong has been rejected without rebutting the same.*
7. *Alternatively without prejudice to the above sated grounds of appeal, the addition made on account of profits from properties deserves to be telescoped against the addition on account of initial investment for alleged unaccounted transactions as well as gross profits from alleged unaccounted sate transactions.*

8. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

5. **In ITA No. 303/Asr/2019**

Briefly facts of the case are that a survey u/s 133A was carried out at business premises of M/s J.P. Industries, Jalalabad, a sister concern of the appellant on 20.02.2014 and department impounded certain books and documents including one ledger and two cash books relating the AY 2010-11, which belonged to the appellant. From perusal these books, the AO observed that the appellant debited a total amount of Rs. 3,78,77,528/- during the year to another sister concern named M/s Rakesh Kumar Devinder Kumar and made large transaction of Rs. 1,57,83,569/- with Sh. Amokal Chand where most of these transactions were made in cash in excess of Rs 20,000/-, in violation of section 40A(3) of the Act. Hence for the above reasons, proceedings u/s 147 of the Act were initiated and issued notice u/s 148 of the Act. Being not satisfied with the reply of the assessee, the AO made an addition of Rs.79,51,206/- being the alleged undisclosed profit and Rs. 50,00,000/- unexplained initial investment on ad hoc basis.

6. Aggrieved by the assessment order the appellant filed appeal on 18/01/2018 before the Ld. CIT(A) who has granted part relief by observing that the AO noticed from the profit and loss account as casted in impounded books that net profit worked out was Rs. 1,41,85,726/- and if market fees of Rs 57,91,898/-and advanced tax paid of Rs. 72,736/- is reduced for the reason that these were wrongly credited, the profit still remains Rs. 83,21,092/- but the appellant declared Rs. 4,42,622/- in the return of income. Accordingly, he confirmed the addition made by the AO amounting of Rs. 79,51,206/- in the returned income being undisclosed profit. The decision is extracted here under:

6.2 I have given careful consideration to the contention above and find that a similar argument was taken before the Assessing Officer who has in consideration of the contention allowed benefit of market fee and advance tax. The other contentions of the appellant are fallacious because entries in the nature of expenses appear both on the credit side and also on debit side in the tempered accounts [impounded documents). The reasoning for making entries on both sides can be explained that these are apparently parallel books of accounts in addition to regular books of accounts maintained for the purposes of producing before the authorities. In case, any expense/part of expense has been claimed in the regular books of accounts which was mere an entry but the expense was not actually incurred then such excess not spent but claimed expense would automatically become part of income in the parallel books of accounts. For example, if the expense of salary in the regular books of accounts is posted at Rs. 100/- but the actual expense was Rs. 80/- then in the parallel books of accounts Rs. 20/- would appear as salary on the credit side of income. Similarly, if some expenditure has been paid over and above what is claimed in the regular books of accounts then the excess portion of expenses would be debited in the parallel books of accounts. In such circumstances, merely because

*some of the expenses have been shown in the credit side of unaccounted profit and loss account does not mean that the same is not believable. In fact it is these kind of entries which make it credible by establishing that these are the balancing entries vis-a-vis regular books of accounts. I do not find any merit in the contentions of the appellant and these have been suitably addressed by the Assessing Officer in the assessment order hence the ground of appeal is **dismissed**.*

7.2 I have given careful consideration to the facts of the case and find that a large part of turnover of the appellant is outside the books of account which is recorded in the impounded parallel books of accounts. These accounts do not contain any Balance Sheet similar to profit and loss account, therefore there was no method to determine the amount of investment which might be required for making turnover after making purchases to the extent of Rs. 2,30,78,277/-. The Assessing Officer was left with no choice but to make a guess work as to how much amount would be required for making purchases and rotating the cycle of turnover with sales. The Assessing Officer made an addition of Rs. 5,000,000/- which means that in the view of the Assessing Officer by investing Rs. 50,00,000/- it was possible to rotate it more than four times but less than five times resulting into suppressed purchases of Rs. 2,30,78,277/-. The rotation of 4 to 5 times is usual in the business, therefore the inference drawn by the Assessing Officer regarding investment made by the appellant outside the books of accounts is correct. The ground of appeal is dismissed.”

7. The Ld counsel submitted that the Id. CIT(A) erred on facts and law in making the addition of Rs.79,51,206/- being the alleged undisclosed profit based on one profit and loss account in the impounded record. The explanation submitted during the course of assessment proceedings and the appellate proceeding has been rejected by authorities below without rebutting the evidences. He argued that it was brought to the notice of the AO/CIT(A) during the course of proceedings that the market fee amounting

to Rs. 57,91,898/- and advance tax Rs. 72,736/- have been credited to the profit and loss account which proves that the profit and loss account has not been properly prepared as per the accounting norms; that the AO allowed relief of Rs. 57, against the profit of Rs. 1,41,85,726/- as appearing in the profit and loss account and made the addition of Rs. 79,51,206/- while admitting that the advance tax amounting Rs. 72,736/- was a part of expenses and that the assessee has prepared the details of expenses which appears on page 10 of Paper Book totaling Rs. 1,14,98,783/- which have been credited to the profit and loss account and he claimed that the profit as computed by the AO deserves to be reduce by this amount. He prayed that the matter may be remanded back to the AO to verify the details of expenses which appears on page 10 of Paper Book totaling Rs. 1,14,98,783/- which have been wrongly credited to the profit and loss account by the accountant and addition of unexplained initial investment at Rs. 50,00,000/- on *ad hoc* basis may be deleted.

8. Per Contra, the learned additional CIT (DR) has no objection to the request of the council of the assessee.

9. We have heard both the sides, perusal of record, written submission, and impugned orders. We find that the assessee has filed the details of

expenses totaling Rs. 1,14,98,783/- which have been credited to the profit and loss account wrongly by the accountant and the profit as computed by the AO would liable to be reduced by the said amount of expenses on examination of the veracity of the same with reference to the books of account and the business activity undertaken during the year under consideration. The Ld. CIT(A) has rejected the contention of the appellant assessee without addressing the submission and reasoning given by the appellant for the alleged entries of expenses credited in the books by merely stating that these are apparently parallel books of accounts in addition to regular books of accounts maintained for the purposes of producing before the authorities, without granting opportunity to the appellant to establish its claims raised in the grounds of appeal and rebutting the documentary evidences filed on record in support of its explanation regarding amount of Rs.57,91,898/- confirmed. Similarly, the Ld. CIT(A) has confirmed another estimated addition regarding initial investment at Rs. 50,00,000/- without giving any basis for taking this amount as part of amount expended on purchase of unaccounted rice was being allegedly expended out of regular books of accounts and partly out of unaccounted profits as initial investment in purchase of rice from unexplained sources as unexplained investment u/s 69 of the Act. In our

view, neither the AO nor the Ld. CIT(A) has addressed the relevant issue on merits of the case by examining the veracity of the details of the expenses filed and the manner, it was accounted for with reference to books of account. It is seen that neither the AO nor the Ld. CIT(A) has addressed the relevant matter regarding appellants claim of source of alleged estimated initial investment if any in rice purchase. In support, the Ld. AR filed statement of account with documentary evidence to establish its claim which goes to the root of the matter and hence, the authorities below are required to examine the same before arriving at the decision.

10. In view of the principles of natural justice, the authorities below ought to have disproved the claim of the assessee by way of rebutting its contention by disproving the corroborative documentary evidence produced on record after granting an adequate opportunity of being heard. The Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 in which their Lordships of Supreme Court of India observed as under:

“Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee has been given reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the

Tribunal is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration.”

11. In the instant case, the assessee could have placed further evidence either before the AO or the first appellate authority, if he has been provided adequate opportunity of being heard. The argument of the Ld. DR that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing. In our view, the classification made by the Revenue by way of the Circular dated 23rd November, 2020 is not legally sustainable as the classification between fact and law is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by Section 144B of the Act.

12. In view of the above, we consider it deem fit to restore back the matter to the file of the Ld. AO to pass *de novo* assessment after considering the written submission and evidences filed on record and may be filed before him during the fresh Assessment Proceedings after granting sufficient opportunity of being heard to the assessee with a direction that the AO shall issue a Show Cause Notice and thereafter pass a reasoned order in accordance with law. Accordingly, Assessment order is *set aside*

and matter remanded back to assessing authority to pass de novo assessment as per law.

13. ITA No. 304/Asr/2019

Since, the assessment order is set aside, the consequential penalty u/s 271(1)(c) is also set aside.

14. ITA No. 214/Asr/2017

The main grievance of the appellant is that the Ld. CIT(A) erred on facts and law in confirming the action of the AO of applying the provisions of section 145(3) after rejecting the books of account despite the fact that no specific defect has been pointed out in the books of account which were produced during the course of assessment proceedings; that he was not justified in confirming the addition of Rs.64,42,200/- on account of alleged profits earned on the sale of properties which was made by the AO and has been confirmed by the Ld. CIT(A) without making any independent inquiry to rebut the contentions of the assessee raised during the course of assessment as well as appellate proceedings that no purchase/sale of property was made by the appellant firm and that even the alternative plea raised during the course of appellate proceedings that the profits could at

best be estimated has been rejected without rebutting the same. He further submitted that CIT(A) was not justified in confirming the adhoc addition of Rs.20,00,000/- on account of alleged initial investment required for trading of paddy, rice and the purchase/sate of immovable properties made by the AO. The explanation furnished during the course of assessment as well as appellate proceedings has been rejected without rebutting the same. Similarly, he erred in confirming the addition of Rs.26,18,680/- made by the AO by applying NP rate of 3% on the alleged unaccounted sales of Rs. 8,72,89,354/-. The explanation furnished during the course of assessment as well as appellate proceedings that the computation of alleged unaccounted sales is factually wrong has been rejected without rebutting the same. The counsel requested that the matter may be remanded back to the AO to pass de novo assessment after considering the submission and rebutting the contention raised therein. The learned additional CIT (DR) has no objection to the request of the council of the assessee.

15. In view of the principles of natural justice, the authorities below ought to have disproved the claim of the assessee by way of rebutting its contention with support of corroborative documentary evidence on record after granting an adequate opportunity of being heard in view of the

principle of natural justice as laid down by the Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216. In view of that matter, we consider it deem fit to restore back the matter to the file of the Ld. AO to pass de novo assessment after considering the written submission and evidences filed on record and may be filed before him during the fresh Assessment Proceedings after granting sufficient opportunity of being heard to the assessee with a direction that the AO shall issue a Show Cause Notice and thereafter pass a reasoned order in accordance with law. Accordingly, in this case also, Assessment order is set aside and matter remanded back to assessing authority to pass de novo assessment as per law.

16. In the result, the three appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 30.10.2023

Sd/-

**(Anikesh Banerjee)
Judicial Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)

Sd/-

**(Dr. M. L. Meena)
Accountant Member**

- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order