

IN THE INCOME TAX APPELLATE TRIBUNAL ALLAHABAD "SMC"
BENCH, ALLAHABAD

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.57/Alld/2023
(निर्धारण वर्ष / Assessment Year: 2006-07)

Sheo Chandra Gupta 1129 Old Katra, Allahabad- 211002.	बनाम/ Vs.	ACIT, Central Circle Allahabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BVKPG0509C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Amlendu Nath Mishra (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 12/09/2023
घोषणा की तारीख /Date of Pronouncement: 19/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A), Lucknow-3 dated 23.03.2023 for AY. 2006-07.

2. None appeared for the assessee, despite notices. Therefore, I am inclined to decide the appeal *ex-parte* qua the assessee.

3. Addition of Rs.1,12,676/- on account of jewellery found in the course of search.

4. Brief facts are that a search and seizure operation was conducted u/s 132 of the Income Tax Act, 1961 (hereinafter "the Act") at the residential and business premises of the assessee on 17.05.2005 wherein according to the AO, the search team seized the daybook, ledger, and loose papers etc. The AO noted that the assessee who was the proprietor of M/s. Dakkhi Lal Sree Nath Saree Centre was engaged in the business of cloth and sarees. According to the AO, cash and



ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta

jewellery were found and seized. According to the AO, gold jewellery weighing 714.620 gm were found and the assessee submitted that jewellery belonged to his wife Smt. Geeta Gupta & daughter-in-law Smt Renu Gupta; and that jewellery were acquired long ago; and that he got married in the year 1974 and jewellery was acquired at the time of marriage (*Stridhhan and acquired during various festival occasions*). It was also brought to AO's notice that jewellery was received at the time of his son's marriage, (*i.e. daughter-in-law brought in jewellery*). For verification of this fact, the AO deputed the Inspector of Income tax to the residence of father-in-law Shri Garib Das (*father of Smt. Renu Gupta*) who was a liquor contractor and had stated that he had given whatever he could to his daughter at the time of marriage. But the AO noted that marriage between assessee's son and Smt. Renu Gupta was a love marriage. Therefore, according to him, the source of acquiring jewellery of Smt. Renu Gupta was not proved. Therefore, he accepted the jewellery upto 500 gms as explained by the assessee of his wife, and the remaining jewellery of 214.620 gm was treated as unexplained. Thus made an addition of Rs.1,12,676/- @ Rs.525 per gm of 22 carat purity as investment from unexplained sources, which action of the AO was confirmed by the Ld. CIT(A). Aggrieved, the assessee is before this Tribunal.

5. Having heard, the Ld. DR and after perusal of the records, I do not countenance the action of the Ld. CIT(A). It is noted that the assessee had brought to the notice of the AO that the total gold jewellery weighing 714.620 gm belong to his wife as well as daughter-in-law. And also submitted that no addition on this account be made on



ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta

the strength of the CBDT Instruction 1994 dated 11.05.1994 which allows a presumption to be drawn that married women would be holding jewellery of 500 gms. However, the AO/Ld. CIT(A) has not accepted the contention of the assessee and was of the opinion that the CBDT Instruction (supra) only deals with the seizure of jewellery during the search and it does not come to the aid of the assessee regarding source of investment in jewellery. This reasons given by the Ld. CIT(A) cannot be countenanced. Taking into consideration, the common cause of natural events, conduct of families in Indian Society at general and especially the married women, the CBDT instruction (supra) need to be seen as explaining the source of jewellery to the limit given therein. Accordingly, since there are two married women in the house of the assessee, considering 500 gms each in the hands of the married ladies, the jewellery found in residence of assessee worth 714.620 gm in my view stands explained. And therefore, no addition was warranted in this case. And therefore, I direct deletion of addition of Rs.1,12,676/-.

6. Regarding addition of Rs.46,280/- out of cash found amounting of Rs.96,280/- found during search.

7. Brief facts are that the during the course of search, total cash of Rs.96,280 was found out of which Rs.88,000/- was seized. The AO suo-motu allowed benefit of Rs.30,000/- and balance Rs.66,280/- was added as unexplained cash. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to give partial relief to



ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta

the assessee to the tune of Rs.20,000/- and thus confirmed the addition of balance Rs.46,280/-. Aggrieved, the assessee is before this Tribunal.

8. Having heard the Ld. DR and after perusal of the records, it is noted that during the search total cash of Rs.96,280/- was found, out of which Rs.88,000/- was seized. The assessee in his statement recorded u/s 132(4) of the Act explained that the cash belonged to Shri Ashish Gupta (Son) and Shri Rajesh Singh (Relative). Further, he explained that Rs.30,000/- belonged to Shri Rajesh and Rs.53,245/- was from the sale proceed of sari business and Rs.13,035/- belonged to the assessee's son Shri Ashish Gupta. However, the AO accepted Rs.30,000/- and balance Rs.66,280/- was added as unexplained cash. However, the Ld. CIT(A) after going through the reply filed by the assessee dated 15.11.2007 (*details of cash sale*) was of the opinion that the assessee was able to discharge burden of proving Rs.20,000/- also. And therefore, he deleted of Rs.20,000/- and confirmed of Rs.46,280/-. In this regard, it is noted that the assessee had shown sale proceeds of sari of Rs.53,245/- and the Ld. CIT(A) has accepted out of it Rs.20,000/- without assigning any reason as to why he has not accepted the balance amount of sale of sarees which assessee has given as source of cash at the time of search & seizure of cash as noted (*supra*). And the explanation of assessee about sale proceeds of Rs.53,245/-, has not been controverted by Ld CIT(A)/AO. In such a scenario, I find that there was no reason to doubt the source of Rs.53,245/-, when Ld. CIT(A) has accepted Rs.20,000/- out of the sale proceeds of saree to the tune of Rs.53,245/-. Therefore, balance



*ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta*

amount of Rs.33,345/- also is directed to be deleted. Therefore, the assessee gets part relief to the tune of Rs.33,245/-.

9. Next ground of appeal of the assessee is against the action of the Ld. CIT(A) confirming the addition of Rs.2,01,516/- on account of investment in undisclosed stock.

10. Brief facts are that AO noted that during the course of search at the business premises of the assessee (sari centre) sari worth of Rs.10,33,655/- were also found. The AO asked the assessee to explain the nature of possession and source of such acquisition of stock. The assessee's reply has been reproduced by the AO in his order at para no. 8 of assessment order. And thereafter, the AO held as under: -

“The assessee in support of his reply has enclosed copy of Trading account for 31-3-1994 and 31-3-1996 when the concern was Partnership Form and when regular books of accounts were kept. The assessee has also enclosed list of Creditors as on 17-5-2005 with total liability of Rs.2,56,954/- But this details creditors would not help the assessee as value of stock after accounting for dead stock comes to Rs.10,07,405/-.He has also claimed for deduction @ 20% due to G.P. but the rate of G.P. as claimed by assessee is not supported by any evidence. Even going by the Trading account for A.Y. 1996-97 as submitted by the assessee, the G.P. rate was then at 10.99%. So benefit of at most 12% could be given to assessee looking to rise in Inflation but it cannot be overlooked that price of Surat Sarees has fallen considerably. So position of stock after allowing for G.P. @ 12% comes to Rs.886516/-. As against this the assessee has been able give list of creditors for only Rs.2,56,954 -. It is of no help to assessee. Simultaneously it is also



*ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta*

to be considered that the assessee must be keeping stock at a particular ratio of the Turnover so that his stock keeps on rotating. If looked from this angle, it is seen that for different asstt. years total turnover is declared as under:

Asstt. Year	Declared Turnover	Profit shown	Rate adopted u/s 44AF
2006-07	1914285	102000	5.0%
2005-06	1700956	87500	5.14%
2004-05	1345374	74620	5.54%
2003-04	1365706	75300	5.51%

it is unlikely that for effecting sale of around Rs.17 Lakh, one would keep stock of Rs.886516/-. To ascertain the ratio of turnover and stock, endeavour is made to have a correlation from the documents submitted by the assessee himself in its own case and from copy of trading results as given for AY. 1996-97, the figure appear as under:-

Sales Rs.24,13,153/-

Closing stock Rs.7,38,980/-

As against above in AY. 2006-07, total sales is declared at Rs.19,14,285/- hence by above analogy the stock should be around at Rs.5,81,837/-. On rounding it should at Rs.5,85,000 only. Against this stock value after allowing for margin of G.P rate at 12% comes to Rs.8,86,516/-. Value of surplus stock comes to Rs.3,01,516/- which is added to income in AY. 2006-07 as unexplained stock.

(Addition Rs.301516/- AY. 2006-07).”

11. Aggrieved by the aforesaid action of the AO, assessee preferred an appeal before the Ld. CIT(A) who partly allowed the same by giving relief of Rs.1 Lakhs after considering the assessee's working of stock as under: -



ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta

Particulars	As per assessee working (Rs.)	As per Department working
On the date of search stock inventory prepared by the department on MRP (tag price list at page...)	10,33,655.00	10,33,655.00
Less: Dead stock	26,250.00	26,250.00
Balance stock	10,07,405.00	10,07,405.00
Less: Gross Profit @ 20% as per assessee	2,56,954/-	
Less Gross profit @ 12% as determined by the department		1,20,888.00
Total	8,05,924.00	8,86,516.00
Less: Sundry creditors as claimed	2,56,954.00	
Working as per assessment order page 9		5,85,000.00 (estimated stock)
Disclosed stock as per the assessee paid stock	5,48,970.00	
Alleged Surplus stock added (886516 -585000)		3,01,516.00

12. And thereafter, he adjudicated the issue by holding as under:-

“14.2 I have carefully gone through the appellant's submission and facts of the case. During the search stock was inventorised and stock of worth Rs.10,33,655/- was found. After considering the past history of the case, ‘the Assessing Officer allowed the Gross Profit of 12% & dead stock amounting to Rs.26,250/- and arrived at the closing stock of Rs.8,86,516/- at cost price. Further, the Assessing Officer calculated the stock as per books amounting to Rs.5,85,000/- on the estimate basis. In this way the Assessing Officer has arrived at undisclosed stock of Rs.3,01,516/- and added to the total income. During the appellate proceeding, the appellant failed to controvert the finding of the Assessing Officer with evidence. However, it is also fact that the calculation of Assessing Officer of closing stock is on the estimate basis. Considering these facts, I am of the view that addition of Rs. 3,01,516/- is not justified. Since the Assessing Officer arrived at the closing stock as per books on estimate basis at Rs. 5,85,000/is not justified, therefore, it will be justified if Rs. 6,85,000/- treated as closing stock as per books. Therefore, the difference of stock will be of Rs.2,01,516/-. Thus, the appellant gets a relief of Rs.1,00,000/- and remaining addition of Rs. 2,01,516/- is hereby confirmed. Thus, this ground of appeal is partly allowed.”



ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta

13. Aggrieved, the assessee is before this Tribunal.

14. After having heard the Ld. DR, and after perusal of the records, it is noted that during search physical stock of sari was under taken and found to be worth Rs.10,33,655/- (*maximum MRP rate*). And the AO after taking note of the dead stock (Rs.26,250/-) and deducting gross profit @ 12% of Rs.1,20,888/-, computed closing stock at Rs.8,86,516/-. And thereafter, estimated the stock by taking note of the sale conducted by the assessee for earlier year [*i.e. AY. 1996-97 wherein the assessee had shown sale of Rs.24,13,153/- and closing stock of that year to the tune of Rs.7,38,980/-*] and compared the sales declared by assessee in the year of search i.e. AY. 2006-07 to the tune of Rs.19,14,285/, and according to him, the stock should be around Rs.5,81,837/- and took round figure of Rs.5,85,000/- reduced the same from Rs.8,86,516/- and came to a figure of Rs.3,01,516/-; and held it to be value of surplus stock and added as unexplained stock i.e., Rs.3,01,516/-. On appeal, the Ld. CIT(A), gave relief of Rs.1 Lakh by estimating the stock at Rs.6,85,000/- instead of Rs.5,81,837/- (5,85,000/-) and thus he was of the opinion that difference in stock would be Rs.2,01,516/- and thus gave relief of Rs.1 Lakh, which action is assailed before this Tribunal. In this regard, it is noted that other than the chart reproduced at para no. 11 (*supra*), the assessee has not filed any evidence to controvert the finding of AO/Ld. CIT(A). However, taking into consideration the fact that AO as well as Ld. CIT(A) has calculated the closing stock on the basis of estimation, the addition of Rs.2,01,516/- as confirmed by the Ld. CIT(A) is on the higher side on the facts and circumstances of the case. Therefore, the



ITA No.57/Alld/2023
A.Y. 2006-07
Sheo Chandra Gupta

closing stock as determined by Ld. CIT(A) at Rs.6,85,000/- is estimated at Rs.7,50,000/-. Thus, the surplus stock is re-computed at Rs.8,86,516 – Rs.7,50,000/- ie, Rs.1,36,516/-.Therefore, this ground of appeal of the assessee is partly allowed and addition of Rs.1,36,516/- is sustained.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 19/10/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Allahabad दिनांक Dated : 19/10/2023.
Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar