

IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH, GUWAHATI

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 195 to 199/GTY/2020
Assessment Year: 2015-16 to 2017-18**

ACIT, Circle-2, Guwahati	Vs.	Sh. Daulal Sarda 2 nd Floor, UCO Bank Building, H.B. Road, Fancy Bazar, Guwahati-781 001. PAN: AIKPS 1167 L
(Appellant)		(Respondent)

Present for:

Appellant by : Shri S.P. Bhati, FCA
Respondent by : Shri Chandan Dutta, DR

Date of Hearing : 10.08.2023
Date of Pronouncement : 07.11.2023

ORDER

PER SONJOY SARMA, JM:

The captioned appeals are filed by the revenue challenging the orders passed by the ld. CIT(A) dated 02.11.2020 for different assessment years. Since the facts and issues are identical and similar in nature. Therefore, the assessment year 2015-16 taken as lead case and result will be followed for the other assessment years. The main grievance of the revenue is against the action of the ld. CIT(A) by stating that when the assessee has accepted / admitted in quantity of betel nuts. The assessee has disputed the rate of betel nuts. However, the ld. CIT(A) while passing the impugned order simply deleted the addition by taking a plea that no incriminating document has been found during the course of search.

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2015-16 by showing the income of Rs. 14,26,800/-

and it was duly processed u/s 143(1) of the Act. Subsequently, a search & seizure operation u/s 132 of the Act was conducted in the case of assessee and statement of the assessee was recorded u/s 132(4) of the Act. During the search & seizure operation, excess stock of supari was found and assessee accepted the excess quantity by admitting the amount of Rs. 8,44,59,322/- as additional income of his group for the A.Y. 2017-18 by taking the price of betel nuts at Rs. 140 per kg. The ld. AO in order to verify the rates of supari issued notice u/s 133(6) of the Act to various agriculture market committees to furnish the purchase and sale rates of supari in Assam but no reply was received from authority. Therefore, the ld. AO estimated the purchase and sales as on certain estimation by calculating profits of the assessee at Rs. 5,33,62,401.96 as against Rs. 16,86,042.64 shown by the assessee. The ld. AO, therefore, by making various additions in the hands of assessee assessed the income of the assessee at Rs. 5,57,13,793/-.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was allowed.

4. Aggrieved by the above order, revenue is in appeal before the Tribunal. At the time of hearing, the ld. DR stated that assessee did not maintain any books of accounts, bills & vouchers for any of the assessment years and was duly admitted expenses stock of supari during the search. He further contended that the addition in the assessment order on account of excess stock found during the course of search operation by considering the disclosure made by the assessee and the ld. AO found that assessee took the rate of betel nut @ 140 per kg whereas assessing officer took the rate of betel nut at Rs. 200 per kg. However, while passing the impugned order, ld. CIT(A) deleted the

addition on the ground that those were made purely on estimation and not based on incriminating material found during the search. He also viewed that betel nut rate as offered by the assessee was accepted in the assessments of some other cases of the same group. The ld. AR further stated that the dispute is here regarding the rate adopted by the assessee for the whole group of the assessee for all 6 assessment years where the assessee could only produce 4 purchase bills total amounting to Rs. 20 lakh whereas the total purchase is more than 100 crore for all the group. The ld. AO while passing the assessment, he was taking the rate of the excess stock based on 4 purchase bills only and had taken the rate rationally from the local markets and also from the Govt. websites. He further stated while framing the assessment, the ld. AO has also discussed the issue elaborately how the assessee undervalued its sale, purchase and stock in the assessment order and in absence of any books of accounts, bills, vouchers the ld. AO has to calculate the rate when the assessee has failed to furnish any books of accounts without any basis taking the rate of betel nuts @ 140 per kg is not proper. In such a situation, the view taken by the ld. CIT(A) may be set aside and sustained the order passed by the ld. AO.

5. On the other hand, ld. AR stated that during the search operation, there was no incriminating document in the said seized material no addition has been called for in the hands of assessee. He further stated that during the course of search unaccounted stock-in-trade i.e. supari was detected amounting to Rs. 8,44,59,322/- and the said undisclosed stock belonged to following persons as it has been deposed u/s 132(4) of the Act on 27.12.2016 as under:

<i>i. M/s. Balaji Traders</i>	<i>Rs. 39,48,891/-</i>
<i>ii. M/s. Maa Kamakhya Traders</i>	<i>Rs. 22,00,124/-</i>

<i>iii. M/s. Daulal Sarada & Sons</i>	<i>Rs. 2,58,02,028/-</i>
<i>iv. M/s. Govind & Co.</i>	<i>Rs. 2,41,12,425/-</i>
<i>v. M/s. Adras Traders</i>	<i>Rs. 2,83,95,854/-”</i>

6. The ld. AR further contended that when the authorized officer accepted the disclosure considering the purchase bills of supari @ 140 per kg and seizure of VAT returns which contains names of buyers and sellers and transaction value of supari at actual market rates below to Rs. 140 per kg. in such situation, the enhancing price of supari made by AO is uncalled for. The ld. AR brought to our notice that while framing the assessment, the assessing office has recasted the trading account by relying on the rates in website ignoring the material found during search and books of accounts produced by the assessee in this context. Further, the ld. AO has not made any endeavour to it any enquiry either with the buyer or with seller. Moreover, the ld. AO was never provided any report to the assessee nor to the First Appellate Authority while furnishing the remand report of being challenged by the assessee. Therefore, the view taken by the ld. CIT(A) granting relief to the assessee on the ground that no incriminating material has been found during the course of search and even department has accepted value of the purchase bills of betel nuts in other three assessee of the same group i.e. in the case of Pawan Kumar Swami Proprietor of M/s. Balaji Traders vide order dated 20.11.2019 for the A.Y. 2017-18, Neeraj Singh proprietor of M/s. Maa Kamakhya Traders vide assessment order dated 04.12.2019 for A.Y. 2017-18, Govind Sarada proprietor of M/s. Govind & Co. vide assessment order dated 02.12.2019 for the A.Y. 2017-18 respectively. In such a situation, the department cannot take two views in respect of same search. He, therefore, prayed before the bench that the impugned order passed by the ld. CIT(A) is correct and

did not need to interfere any more and the appeal filed by the revenue is liable to be dismissed.

7. We, after hearing the rival submission of the parties and perusing of the record find that during search no incriminating material has been found in the case of assessee and department has accepted the rate of supari of Rs. 140 per kg in the cases of 3 other assessee of the same group while framing the assessment for the A.Y. 2017-18 which are namely Pawan Kumar Swami assessment order dated 20.11.2019, Neeraj Singh assessment order dated 04.12.2019 & Govind Sarma dated 02.12.2019 and revenue cannot take two views for different assessee in respect of same search. We, therefore, do not find any infirmity in the impugned order passed by the ld. CIT(A) by allowing the appeal of the assessee on this issue. Accordingly, we sustained the order passed by the ld. CIT(A) by dismissing the grounds taken by the revenue.

8. In so far as the appeal in ITA No. 196, 197, 198 & 199/GTY/2020 are concerned facts being identical to our decision in ITA No. 195/GTY/2020, therefore our decision would apply, mutantis mutandis apply to these appeals as well. Accordingly all the appeals filed by the revenue are hereby dismissed.

9. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the open court on 07.11.2023

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Copy to:

1. The Appellant: ACIT, Circle-2, Guwahati.
2. The Respondent: Sh. Daulal Sarda.
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata