

आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.212/NAG/2014

निर्धारण वर्ष / Assessment Year : 2008-09

Shri Sachin M. Sathone, 209, Jai Maa Durga Apartment, KDK Colege Road, Nandanvan, Nagpur – 440009. PAN: ASRPS9582N	V s	The ACIT, Circle-6, Nagpur.
Appellant/ Assessee		Respondent/Revenue

Assessee by	Shri Rachit Thakar – AR
Revenue by	Shri Rajat Singhal – Sr.DR
Date of hearing	22/09/2023
Date of pronouncement	08/11/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the assessee against the order under section 250 of the Income Tax Act, of Id.CIT(A)-II, Nagpur dated 11.12.2013 for A.Y.2008-09 emanating from assessment order under section 143(3) of the Act, dated 31.12.2010. The grounds of appeal filed by the assessee are as under :

“1] Learned C.I.T.(A) erred in disallowing salary etc. amounting to Rs.4,99,431/- being 30% of total salary of Rs. 16,64,770/- on the

ground that the appellant did not file designation and job profile of workers. However he failed to see that the assessee had already produced vouchers of salary along with salary register and the same was consistent with earlier years and hence the disallowance was unjustified.

2] Learned C.I.T.(A) erred in disallowing sales promotion expenses amounting to Rs.8,70,590/- being value of gold coins given to retailers who had achieved targets. Assessee had already produced the bill for purchase of gold coins and payment by a/c. payee cheque and had produced the list before A.O. to whom such gold coins were given. Since the assessee's firm was closed he could not produce confirmation from retailers at the time of assessment. The said business expenditure was sufficiently proved and hence disallowance was unjustified.

3] Learned C.I.T.(A) erred in confirming the addition of Rs.37,16,761/- on the alleged ground of difference in trading account said to have been found at the time of survey and the audit report.

4] The alleged trading account was not found from the premises of assessee's business at Nandanwan, Nagpur. The so called paper was found from the premises of M/s. Lottery Bazaar, Maharajbag Road, Nagpur and the same contained same wild figures without any support and was wholly unreliable vis-a-vis the audited account fully supported by primary evidence.

5] Learned C.I.T.(A) wrongly threw burden on the assessee and wrongly assumed the said unsupported paper to be correct as against the audited accounts. He wrongly applied provisions of section 292-C to hold the said paper to be correct which not found from assessee's premises and holding the audit report found from the assessee's premises in survey dt.06.09.2010 as incorrect. This was illegal and contrary to facts and material on record."

**Brief facts of the case :**

2. The assessee was in the business of selling lottery tickets across various cities of Maharashtra. Assessee was running a

proprietary concern i.e. Swetha Enterprises. It is claimed by assessee that assessee closed his business in April, 2010. However, there was a survey under section 133A of Income Tax Act, on 06.09.2010 in the case of Swetha Enterprises, proprietors Sachin Sathone, address: 209, Jai Ma Durga Apartment, Nagpur. Certain documents have been impounded during the survey. The list of said documents is at page 65 of the paper book filed by assessee. In the Assessment Order, the Assessing Officer(AO) has disallowed 30% of total salary of Rs.16,64,770/- on account that assessee could not produce the persons to whom salary has been claimed to have been paid. Assessing Officer has disallowed Sales Promotions Expenses of Rs.8,70,590/- as assessee could not file any evidence. The AO has also made addition of Rs.37,16,761/- on account of difference in the Trading Account found during survey and Actual Trading Account as per Audit Report. AO has also made addition of Rs.2907812/- on account of bogus claim of software charges paid ( which has been deleted by Ld.CIT(A)).

3. Aggrieved by the Assessment Order, the assessee filed appeal before the ld.CIT(A). Assessee filed certain additional evidence before the ld.CIT(A). The ld.CIT(A) called for the

Remand Report from the Assessing Officer. The ld.CIT(A) confirmed the above mentioned three additions and deleted the addition of Rs.29,07,812/-. Aggrieved by the order of the ld.CIT(A), the assessee filed appeal before this Tribunal.

**Submission of ld.AR :**

4. The ld.Authorised Representative (ld.AR) filed written submission and paper book. The ld.AR submitted that assessee had submitted vouchers which were duly signed by the employees to demonstrate payment of salary. Also, the assessee's books of account were audited. Therefore, ld.AR submitted that assessee had discharged his onus. The ld.AR further submitted that during the assessment proceedings, the AO had not asked the assessee to produce employees, hence, assessee did not produce any employee in person before the AO. During the Remand Report Proceedings, the AO asked assessee to produce the employees. However, Remand Report Proceedings were conducted in 2013 by that time the assessee had closed down his business. Therefore, assessee could not produce the employee. The ld.AR submitted that during the survey, no question was asked on this issue. There is no disallowance in earlier years on this issue. The ld.AR submitted

that Attendance Registers were submitted before the Assessing Officer. At page 27 of the paper book, assessee filed comparative chart for the salary. The Id.AR explained that there is no increase in the salary as compared to other years.

M/S SWETA ENTERPRISES, NAGPUR				
A.Y.	2007-2008	2008-2009	2009-2010	2010-2011
F.Y.	2006-2007	2007-2008	2008-2009	2009-2010
SALES	41,842,761.00	77,981,555.00	63,008,129.00	90,306,978.00
SALARY	1,162,095.00	1,664,700.00	2,070,959.00	2,287,637.00
<u>SALES PROMOTION</u>	-	870,599.00	109,687.00	165,093.00
<b>NET PROFIT</b>	<b>2,581,510.00</b>	<b>2,649,633.00</b>	<b>3,052,034.00</b>	<b>3,299,070.00</b>

5. Regarding Sales Promotion Expenses, the Id.AR submitted that assessee had given Gold Coins to sellers of the lottery ticket. The Id.AR submitted that assessee had purchased the Gold Coins by account payee cheque, the copy of the bill was submitted at the time of assessment. The Id.AR submitted that during the Remand Report Proceedings, assessee could not produce the persons as assessee had closed down his business.

5.1 Regarding addition on account of difference in Trading Account, the Id.AR submitted that the impugned document was not found in the assessee's premises. The Id.AR submitted that there was a survey in the case of M/s.Lottery Bazaar, Sitabuldi, Nagpur, one of the retailers of the appellant's lottery business.

At the premises of M/s.Lottery Bazaar, Sitabuldi, the impugned document was found. Therefore, the impugned document has no relations to the business of the assessee. Assessee's books of accounts were audited, no defects were found in the Audit Report. The ld.AR submitted that AO has not rejected the books of accounts. Therefore, ld.AR submitted that the impugned addition is baseless.

**Submission ld.DR :**

6. The ld.DR relied on the order of the Lower Authorities.

**Findings & Analysis :**

7. We have heard both the parties virtually and perused the records. We will discuss each addition here onwards.

**Disallowance out of Salary Expenditure :**

7.1 The Assessing Officer has disallowed 30% out of total salary expenditure of Rs.16,64,770/- claimed by the assessee. It is a fact that assessee had produced vouchers containing name of the employee, amount and signatures. There is no evidence filed by the Department to demonstrate that during the assessment proceedings, Assessing Officer had asked the assessee to produce employees. It is also a fact that remand proceedings

were conducted in F.Y.2012-13. During the Remand Proceedings, assessee produced Salary Register and Vouchers for the verification. These vouchers which are part of paper book are having signatures of the employees on Revenue Stamp. Each voucher possesses a serial number. Assessing Officer has not pointed out any defect in these documents. As seen from the Remand Report which is at page no.1, 2 & 3 of the paper book, one cannot infer that AO had asked assessee to produce the employees. However, we agree with the assessee's submission that in 2013, it was more than three years from closure of the business and hence assessee could not produce the employees. In this case, no evidence has been brought on record by the AO regarding any defect noticed during the survey vis-à-vis Salary Expenditure claimed by the assessee. No defect pointed out by the AO in the Salary register, vouchers. In these facts and circumstances of the case, we are of the opinion that the ad-hoc disallowance is not sustainable. Therefore, we direct the AO to delete the addition of Rs.4,99,431/-. Accordingly, Ground No.1 raised by the assessee is allowed.

**Sales promotion Expenses :**

7.2 The Assessee has claimed that assessee distributed Gold Coins to his retailers. Assessee produced copy of purchase bill to demonstrate the purchase of gold coins by account payee cheque. However, assessee has to prove that the said expenditure was incurred wholly and exclusively for the purpose of business of the assessee. In this case the assessee has not submitted name and address of the so called retailers to whom the gold coins were distributed. Even during the remand proceedings these details were not produced before the AO. The primary onus is on the assessee to prove that the expenditure was wholly and exclusively for the purpose of the business of the assessee. In this case assessee has not produced any evidence. Hence, we confirm the addition of Rs. 8,70,595/-.

**Addition on account of difference in Trading Account :**

7.3 The relevant paragraph 8 of the Assessment order is reproduced here as under :

*“8. During the course of survey dated 06.09.2010 a copy of Trading account of M/s Sweta Enterprises for F.Y. 2007-08 was found as a loose paper and which was kept and impounded as a annexure B/4 at Page No.180 at M/s Sweta Enterprises, 209-Jai Maa Durga Apartment, K D K College Rod, Nandnvan, Nagpur. The Gross Profit has shown in that trading account is Rs.2,92,88,936/- and another trading account alongwith the*

*audit report was found, which is kept in impounded file at page No.22 of annexure B/5, in which Gross Profit has shown of Rs.2,55,72,175/-. Hence, there is difference of Rs.37,16,761/- between both the trading accounts. The assessee has been asked vide letter dated 02.12.2010 as to why the difference amount of Rs.37,16,761/- found in both the trading accounts shall not treat as your concealed income.*

*9. In response to that, the assessee has produced his reply dated 07.12.2010 in which he mentioned that “one of our employees for the purpose of learning might have prepared this trading account. It has no relevance/corroborate neither books of account nor with the sale and purchase voucher of the assessee.”*

*10. The contention of the assessee could not be accepted because P&L account as found during the survey proceedings an not be accepted to the work of employee who has made it for learning purpose and this could not be work of a non technical person. Therefore the contention of the assessee is not acceptable. It is also established law that any document whether it is loose paper or other documents found in the business premises during the course of survey, is might be create as the document of the assessee. At the time of conclusion of the survey, the above paper which was found as loose paper has been attached in file and categorized as annexure B/4 and the assessee in his full conciseness has signed on the same paper. Hence, an amount of Rs.37,16,761/- is being added back in the total income of the assessee.”*

8. The Id.CIT(A) while confirming the addition, held as under:

“7. Regarding the addition of Rs.3716761/- being the difference of profit in the impounded trading account during the course of survey proceedings vis-à-vis another trading account found along with audit report, during the course of appellate proceedings also the appellant had reiterated the same submissions which were made before the Ld.AO. It is again submitted that one of the employees, for the purpose of learning, may have prepared the said trading account which is not relevant since it does not tally either with the books of account or with the sales/purchase vouchers of the appellant.

7.1 I have carefully considered the facts of the case and the submission of the appellant. It is evident from the facts brought out in the assessment order that two separate trading accounts were found during the course of survey. One trading account tallied with the audit report while the other trading account shows additional GP amounting to Rs.3716761/-. As per the provisions of section 292C whenever any documents is found in the possession or control of the appellant during the survey proceedings, the Ld. AO may presume that such document belongs to the appellant and that the contents of such document are true. Thus as per the above provisions, the facts contained in the impounded trading account have to be presumed to be correct unless the appellant gives an appropriate explanation. The appellant has merely made one self-serving statement that one of its employees may have prepared trading account for learning purposes. The said assertion of the appellant is not backed by any evidence what so ever. The onus is on the appellant to establish that the impounded trading account at Annexure B-4 page 180 does not reflect the true state of affairs. Since the appellant has failed to do so, the addition made by Ld. AO amounting to Rs.3716761/- is hereby confirmed. This ground is therefore dismissed.”

9. Thus, the assessee during assessment proceedings and appeal proceedings before the Id.CIT(A) had taken the plea that the impugned Trading Account impounded during survey had been prepared by his employee for practice purpose. During the assessment proceedings and appeal proceedings before the Id.CIT(A), the assessee had not taken the plea that the document does not belongs to him.

9.1 However, before us, the Id.AR submitted that document does not belong to assessee and it was not found at assessee's premises, but it was found at Lottery Bazaar, Sitabuldi, Nagpur.

9.2 We have carefully considered the submission of the Id.AR. However, we find it to be incorrect. On perusal of the page 67 of the paper book which is Inventory of Books of Accounts/Documents found during the survey in the case of Sachin M.Sathone on 06.09.2010, numbered as Annexure-B. The said Document(Annexure-B) is duly signed by the Assessing Officer and Assessee. The said Annexure-B at S.No.4 have loose papers from 1 to 184. One of the said loose papers was the Trading Account. The AO has also passed impounding order on 06.09.2010 which also refers to the Inventory-B in

addition to other Inventories. The said impounding order is also duly signed by assessee. The Annexure-B is scanned as under :

ANNEXURE 'B' Page No. 1

Inventory of Books of accounts / documents found during the course of survey under section 133A carried out on date 06/09/10 in the case of Sh. Sachin M. Sathone  
Prop. Sruenta Enterprises, Nandanwadi, Nagpur  
at premises located at M/S Atthey Bazar, Near Mure Hospital  
Mohanj Bagn Road, Sitabdi, Nagpur.

Sr. No.	Description of item	Period from	Period to	Pages from	Pages to	Total no. of written pages.	Identification marks placed at
1	Invoice Book of	25/09/09	10/10/09	1	30	30	first & last
2	Income tax file	-	-	1	23	23	-do-
3	Paper Lottery Koshan Agency.	-	-	1	56	56	-do-
4	Loose Paper	-	-	3	184	184	-do-
5	Adv. Tax challan Files 08-09	-	-	1	50	50	-do-
6	Bills File	-	-	1	85	85	-do-
7	Expenses File	-	-	1	187	187	-do-
							- Raunak Agency -
8	Balance sheet (Hilmit)	-	-	1	205	205	-do-
9	M/S Raunak A.Y. 07-08 sell Purchase Bank chik, Exp.	-	-	1	112	112	-do-
10	Loose Paper	-	-	1	55	55	-do-
11	Raunak Agency 2009-10	-	-	1	132	132	-do-

These have been impounded U/s 131 on 07.09.2010.

Signature of the assessee: S.M. Sathone 6/9/10

Signature of the Authorized Officer: (Do. Ashwini. Do. Hasmata) 6/9/10  
सहायक आयकर आयुक्त,  
सर्कल-6, नागपुर.

10. The signature of the assessee Sachin M.Sathone appearing in Form No.36 filed before this Tribunal is scanned for ready reference.

KJK College Road, Nandgaon  
Nagpur

VERSUS

RESPONDENT / ACCT. Circle-4 (Sri Jagdamba)

Signature  
Signed Appellant

**GROUNDS OF APPEAL**  
Separately Attached.

.....  
( Signed Authorised representative, if any )

Signature  
Signed Appellant

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**VERIFICATION**

I, **Sachin M. Sathone** the Appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the 15<sup>th</sup> day of April, 2014.

Signature  
Signed Appellant

11. Thus, one can very well infer that Signature on Annexure-B; the impounding order and Signature on Form-36 are almost similar and are of the assessee.

11.1 In these facts and circumstances of the case, when assessee has duly signed the inventory which contains the impugned documents, duly signed the impounding order explains that the documents mentioned in the Inventory Annexure-B belongs to the assessee. During the assessment proceedings, the assessee has merely stated that the impugned document is rough working by one of his employees. It means that during the assessment proceedings and during the proceedings before the Id.CIT(A), the assessee had accepted that the impugned document was

found and inventories during the survey in his case. Therefore, at this stage, the submission of Id.AR that the impugned document was not found at assessee's premises, is factually incorrect, therefore, we reject it.

11.2 The impugned document is a Trading Account. Assessee had not explained the difference. No one prepares Trading Account casually just for the sake of it, therefore, assessee's submission that it was prepared by one of his employees for practice is a baseless statement. Assessee has not even filed an affidavit of the said employee. The content of the document which is found during the survey is believed to be true unless proved otherwise. In this case in Annexure-B at Sr.No.4 are loose papers from page 1 to 184, and at Sr.No.5 is Advance Tax Challan file, at Sr.No.2 is Income Tax File. If the assessee has not doubted the contents of Annexure-B at Sr.No.2 and 5, obviously the contents at Sr.No.4 are also true. Therefore, in these facts and circumstances of the case, we agree with the Id.CIT(A) and Assessing Officer and uphold the addition of Rs.37,16,761/-. Accordingly, the Ground No.3, 4 and 5 raised by the assessee are dismissed.

12. In the result, appeal of the assessee is Partly Allowed.

Order pronounced in the open Court on 8<sup>th</sup> November, 2023.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 8<sup>th</sup> November, 2023/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुरबेंच,  
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.