

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.91/JAB/2019
Assessment Year:2011-12

A.C.I.T., Circle-Chhindwara.	Vs.	Shri Shevendra Singh Parihar, Ward No. 33, State Bank Colony, Gaykhuri Road, Balaghat. PAN:AWEPP2767M
(Appellant)		(Respondent)

C.O.No.01/JAB/2020
(in I.T.A. No.91/JAB/2019)
Assessment Year:2011-12

Shri Shevendra Singh Parihar, Ward No. 33, State Bank Colony, Gaykhuri Road, Balaghat. PAN:AWEPP2767M	Vs.	A.C.I.T., Circle-Chhindwara.
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Revenue by	Smt. Garima Chaudhary, CIT (D.R.)
Assessee by	Shri Dheeraj Ghari, C.A.
Date of hearing	28/11/2023
Date of pronouncement	01/12/2023

ORDER

PER YOGESH KUMAR U.S.; J.M.

The present appeal filed by the Revenue against the order of CIT(A)-I, Jabalpur dated 13/09/2019 for the assessment year 2011-12 and the assessee has also filed Cross Objections on the very same order impugned. The grounds of appeal of the Revenue and the grounds raised in the Cross Objection are as under:

Grounds of I.T.A.No.91/JAB/2019

- "1. *Learned CIT(A) erred in deleting the addition of Rs.86,45,615/- on account of bogus purchase expenses.*
2. *The learned CIT(A) erred in deleting the addition of Rs.84,65,420/- on account of difference in gross receipts.*
3. *Learned CIT(A) erred in deleting the addition of Rs.82,23,678/- on account of unexplained cash deposits.*

Grounds of Cross Objection No.01/JAB/2020

- "1. *Considering the fact that in spite of repeated request to Id AO the assessee has not been provided with reason recorded for reopening of the assessment under section 147/148, the Hon'ble CIT(A) should have held that impugned assessment order is bad in law on account that Id AO has passed the assessment order under section 143(3) without supplying reason recorded to assessee.*
2. *Considering the fact of the case and the mechanical manner in which the reopening of the assessment under section 147/148 of assessee has been made the Hon' ble CIT(A) should have held that the Id AO was not justified in reopening of the assessment.*
3. *Considering the fact that no notice under section 143(2) was issued before the completion of the assessment the Hon'ble CIT(A) should have held that the assessment order of Id AO is bad in law.*
4. *Considering the fact that the assessee has produced on 15.10.2018 books of account and supporting bills, royalty payment challan etc, in respect of expenses of Rs.89,72,239/- debited under the head of purchases, development, royalty and direct expenses before Id AO the Hon'ble CIT(A) should not have confirmed addition of Rs.3,26,624/- under above heads. Without prejudice to above the CIT(A) appeal was justified in deleting the addition of Rs.86,45,615/- under above heads.*

5. *On the facts and in the circumstances of the case the CIT(A) was fully justified in deleting the addition of Rs.84,65,420/- being worked out by Id AO on the basis of treating gross receipts of the assessee at Rs.1,89,48,254/- on the basis of imaginary entries of TCS and TDS. (i.e. difference in gross receipt as per books of accounts and gross receipts worked out on the basis of imaginary entries of TCS/TDS in form 26AS.)*
6. *Considering the fact that all the cash deposits in the joint saving no.31108019668 of Smt. Sonam Shivendra Parihar (wife) and the assessee, are fully explained and the cash deposited by the assessee in this joint bank account is recorded in his regular books of accounts as produced before Id AO the Hon'ble CIT(A) should not have confirmed addition of Rs.7,15,102/- by adopting 8% of Net profit on total cash deposits of Rs.89,20,000 and Closing Balance of Joint account Rs.18,780/-(total Rs.89,38,780/-).*
7. *On the facts and in the circumstances of the facts the CIT(A) was not justified in confirming the addition of Rs.14,265/- to the income of the assessee."*

2. Brief facts of the case are that the assessee is an individual. The assessee filed return of income for assessment year 2011-12 on 28/09/2011 declaring total income of Rs.15,60,000/-. The case of the assessee was selected for scrutiny by issuing notice u/s 148 of the I.T. Act on 01/03/2018 & 13/03/2018. The Assessing Officer issued notices u/s 142(1) along with questionnaire. The Assessing Officer made addition of Rs.89,72,239/- on account of bogus purchases shown in trading account, Rs.84,65,420/- on account of undisclosed receipts, Rs.89,38,780/- on account of unexplained cash deposits and Rs.14,265/- on account of unexplained interest. Aggrieved by the assessment order dated 30/11/2018, the assessee preferred appeal before the CIT(A). The learned CIT(A), vide order dated 12/09/2019 deleted certain additions made by the Assessing Officer. Aggrieved by the deletion of the additions, the Revenue filed the present appeal on the grounds mentioned above..

3. Ground No. 1 of the appeal is regarding deletion of addition of Rs.86,45,615/- on account of bogus purchase expenses.

4. The assessee in trading and profit & loss account has debited Rs.89,72,239/- in single figure mentioning further sub-heads "to purchases, development and royalties and direct expenses (Gitti, Sand, Cement, Iron, Steel, Diesel, Damer, Grains and other materials) (Clay, Digging, Iron binding, Sentring, Labour Payment, entry tax, transportation, Machinery Rent, Sub-contractor payment, etc. expenses)". The Assessing Officer asked the assessee to provide copy of the purchase account along with the supporting evidence. The explanation given by the assessee was found not satisfactory to the Assessing Officer, accordingly, the Assessing Officer made addition of Rs.89,72,239/- treating purchase shown in the trading account are bogus in following manner:

"The assessee instead of furnishing copy of accounts and supporting evidences explained accounting principles which has no relevancy and unwarranted too. The assessee has filed audited report under section 44AB of IT. Act. But, the manner in which the balance sheet, trading and P&L a/c prepared, do not serve the purpose as expected from a chartered accountant. It clearly appears that the assessee has not maintained proper books of accounts and no basic evidence/documents available with him. The audit report filed is just to complete the formalities as it was mandatory as per the provision of section 44AB of I.T. Act.

As queried, the assessee was required to furnish a copy of accounts alongwith supporting evidence of purchase booked in trading a/c, but failed to provide a single paper as supporting evidence. The facts are clearly proves the purchases shown in trading account are bogus and therefore, the same are added to the income of the assessee. It clearly indicates the assessee has furnished inaccurate particulars of his income and therefore penalty proceedings u/s 271(c) of I.T. Act is initiated separately."

5. The learned CIT(A), while restricting the addition at the rate of 10% out of the expenses, held as under:

"Ground No. 4 & 5:- Through these grounds of appeal the appellant has challenged the addition of Rs. 89,72,239/- on account of bogus purchase expenses. The appellant is engaged in the sand mining business. The appellant have to pay royalty and have to incur other expenses like transportation, purchases, labour expenses etc. The AO had disallowed the total expenses debited at Rs.89,72,239/-. It is to be mentioned here that out of the above expense, Rs.57,06,000/- was paid by the appellant to the mining department as royalty. The same cannot be disallowed as the appellant has made the payment to the Govt. Department and the same is an allowable expenditure. The remaining expenses as Rs.32.66.239/- pertains to mine development and sub contract expenses. In order to carry out the business the appellant have to incur the expenses. The AO is not justified in disallowing the expenses without assigning any reason. The appellant during the course of assessment proceeding has produced the books of account alongwith supporting bill on 15.10.2018. The AO without pointing any defects in the books of account cannot disallow the whole expenditure. It will be appropriate to restrict the disallowance at the rate of 10% out of the expenditure pertaining to mine development and sub contract. Therefore. The addition made by AO amounting to Rs.3,26,624/- ($Rs.32,66,239 \times 0.1$) is confirmed and the appellant will get relief of Rs.86,45,615/- ($Rs.89,72,239 - Rs.3,26,624$). Therefore, the appeal on these grounds is partly allowed."

6. It is found that the assessee has produced the books of account along with the supporting bills before the CIT(A). Considering point that Assessing Officer has disallowed the whole expenditure without pointing out any defect in the books of account, the disallowance was restricted by the learned CIT(A) @10% out of the expenditure pertaining to mine development and sub-contract. The said approach of CIT(A) is found to be reasonable which requires no interference at the hands of this Tribunal as the Department has not pointed out any defect in the books of account. Accordingly, ground No. 1 of the Revenue is dismissed.

7. Ground No. 2 of the Revenue's appeal is regarding deleting the addition of Rs.84,65,420/- on account of difference in gross receipts. The learned Assessing Officer made the above addition as the assessee has not provided the copy of account in respect of receipt shown in the trading account. Accordingly, difference of receipts of Rs.84,65,420/- found to be undisclosed by the Assessing Officer and made addition in following manner:

"The assessee's submission on this point is without corroborative supporting. Only saying gross receipts in 26AS downloaded by department are wrong and baseless is not sufficient compliance to consider the submission. The assessee in support of his claim should have been furnished related evidence in respect of contract receipts shown in the trading account but completely failed to do so. During the assessment proceedings, 26AS was downloaded on 11.10.2018 and accordingly queried regarding difference in receipts shown in trading account and 26AS generated. However, as disputed by assessee in reply again 26AS downloaded on 23.10.2018 undoubtedly it is latest, of which details are as under:

S.No.	TAX deductor	Name of deductor	Section	Amount paid/ credited	Total tax collected/ deposited	Return financial year
1.	BPLOO0860G	Office of the Collectred Mining Section	H	0	0	2010-11
2.	BPLOO0860G	Mining Office Balaghat	H	1,41,33,000	3,19,818	2010-11
3.	NGPAO2538E	ALTAF Ahmed	94C	48,15,254	48,154	2010-11
					3,67,972	

Thus, the gross receipts of Rs.1,89,48,254/- based on information available on 26AS generated through system, but the assessee's version saying receipts are estimated as mentioned in the reply being superficial is not acceptable. Even the assessee on being queried has not provided the copy of account in respect of receipts shown in trading account. As the entire facts based on documentary evidences the difference of receipts Rs.84,65,420/- (1,89,48,254 - 1,04,82,834/-) stands undisclosed and hence added to the income of

the assessee. As the assessee concealed the income, the penalty proceedings u/s 271(1)(c) of Income tax Act is initiated separately."

8. The learned CIT(A), while deleting the said addition, held as under:

"Ground No. 6 & 7:- Through this ground of appeal the appellant has challenged the addition of Rs.84,64,420 /- on account of difference in gross receipts. The AO made the addition on the basis of difference in turn over reflected in the individual transaction statement generated in the system and turn over reflected in the books of account. On comparison of the individual transaction statement and form no. 26AS it is observed that most of the entries are duplicated entries in the individual transaction statement. The individual transaction statement is clubbing the information supplied by various agencies. The turnover shown in the form no. 26AS is same as the turnover shown by the appellant in the books of account. The AO in the assessment order fail to bring on record any receipt which has been received by the appellant and not shown in the books of account. The Assessing Officer made the addition without any basis. Therefore, the addition made by the Assessing Officer amounting to Rs.84,64,420/- is deleted. Therefore, the appeal on these grounds is allowed."

9. The learned CIT(A), after making comparison of individual transaction statement and Form-26AS, found that most of the entries are duplicated entries in the individual transaction statement. The individual transaction statement was clubbed, the information supplied by various agencies and the turnover shown in the Form-26AS was found to be the same as turnover shown by the assessee in the books of account. We have also cross verified the said fact and found that the observation of the learned CIT(A) is right that most of the entries are duplicated entries therefore, we find no merit in ground No. 2 of the Revenue. Accordingly, ground No. 2 is dismissed.

10. Ground No. 3 is regarding deletion of addition of Rs.82,23,678/- made on account unexplained cash deposit. During the assessment proceedings, it was found that a bank account with SBI has not been

disclosed in books of account by the assessee. On verifying the bank account by the Assessing Officer, it is found that the assessee has deposited cash of Rs.89,20,000/-. Therefore, the assessee was asked to furnish the documentary evidence for source of such deposit. The reply given by the assessee has not been accepted and the learned Assessing Officer made addition of Rs.89,38,780/- as unexplained cash deposit in following manner:

"It is beyond doubt the assessee owns saving bank account No.31108019668 with SBI Balaghat jointly with his wife and undisputedly this a/c no. should have been disclosed in his books of a/c. On going through the balance sheet, it revealed that the assessee has disclosed one saving bank account no. 10750521582 only. The reply of the assessee in this regard is astonishing. In reply, it is stated that "this account no. 31108019668 used by both for business and personal transaction. And in next para of same reply it is stated that the transaction recorded by his wife Smt. Sonam Shevendra Parihar. The assessee furnished a copy of acknowledgment of ITR of his wife for A.Y. 2011-12 where in income shown of Rs.3,35,376/- which includes income from other sources Rs.69,460/-. The ITR does not show which transaction are pertains or recorded by assessee or his wife. It was the onus of the assessee to furnish the bifurcation of the transactions, but did not discharge liability. Further, the assessee neither furnish any evidence regarding transactions recorded in the bank statement nor furnished a single iota of source of cash deposits Rs.89,20,000/-. Only contending all transactions recorded is not sufficient to prove unless it is supportive by documents. After, analyzing the facts as discussed and available on record entire cash deposits pertains to assessee's from undisclosed sources.

Summing-up the point, the assessee has not accounted for closing balance of Rs.18,780/- which appears in bank statement as on 31/02/2021 in books of account and further, unexplained cash deposits amounting to Rs.89,38,780/- (8920000 + 18780/-) is added to the total income of the assessee. As the facts proves the assessee has apparently concealed the income, the penalty proceedings u/s 271(1)(c) of Income tax Act is initiated separately."

11. The learned CIT(A), while adopting 8% net profit on total cash deposit, held as under:

"Ground No. 8 & 9:- Through this ground of appeal. the appellant has challenged the addition of Rs.89,38,780 /- on account of unexplained cash deposits. The AO made the addition on the basis of cash deposited in the bank account which was in the joint name with his wife. The appellant stated that the said bank account is a disclosed bank account and the cash deposited in the bank account is recorded in the regular books of account. Even if the cash deposited in not reflected the regular books of account, the AO is not justified in making the addition equal to the amount of cash deposited. In the assessment order the AO mentioned that the appellant is carrying out the business of sand mining. The AO failed to bring on record that this cash is other than the routine trading business of the appellant. The AO is not justified in making the addition equal to the total cash deposit. It will be appropriate to adopt 8% net profit on the total cash deposit. Therefore, the net profit earned by the appellant is equal to Rs.7,15,102/- (Rs.89,38,780/- x 0.08). Therefore. the addition made by the AO to the extent of Rs.7,15,102/- is Confirmed. The appellant will get the relief of Rs.82,23,678/-."

12. The learned Assessing Officer while making addition is of the opinion that the assessee has not reflected the cash deposited in the regular books of account. The learned CIT(A) observed that since the assessee is carrying out the business of sand mining and in the absence of anything on record that the cash is other than the routine trading business of the assessee, the Assessing Officer is not justified in making the addition equal to the total cash deposited, therefore, adopted 8% net profit on the total cash deposited and confirmed the partial addition by giving relief of Rs.82,23,678/-. Considering the above facts and circumstances, the approach of the learned CIT(A) in adopting 8% of the net profit of the total cash deposited needs no interference at the hands of this Tribunal. Accordingly, we find no merit in ground No. 3 of the Revenue.

13. In the result, the appeal of the Revenue is dismissed.

14. The learned counsel for the assessee submitted that the assessee does not press the Cross Objection. Accordingly, the Cross Objection filed by the assessee is dismissed as not pressed.

(Order pronounced in the open court on 01/12/2023)

Sd/.
(DR. B.R.R. KUMAR)
Accountant Member

Sd/.
(YOGESH KUMAR U.S.)
Judicial Member

Dated:01/12/2023
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar