

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.889/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

Revathi Modern Rice Mill 34/2, Attur Main Road, Ayothiapatnam, Salem-636 103.	बनम/ Vs.	ACIT Circle-1 Hosur.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AADFR-9657-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri N. Arjunraj (CA)- Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	01-05-2024
घोषणा की तारीख / Date of Pronouncement	:	13-05-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 25-07-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2019. The sole issue that arises for our consideration is to determine the head of income under which the impugned additions would be assessable. The grounds raised by the assessee read as under: -

1. The order of the NFAC, Delhi dated 25.07.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1054584863(1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.
2. The NFAC, Delhi erred in sustaining the addition of **Rs.2,86,31,392/-** as unexplained investment in terms of Section 69B of the Act and consequently erred in confirmation the taxation of such sum at an enhanced rate of tax in terms of Section 115BBE of the Act without assigning proper reasons and justification.
3. The NFAC, Delhi failed to appreciate that that provisions of Section 69B of the Act had no application to the present facts and in circumstances of the case, there by vitiating the findings in relation there to.
4. The NFAC, Delhi failed to appreciate that the pre-requisite conditions required for making an addition in terms of Section 69B of the Act were absent in the present case and in circumstances and further ought to have appreciated that the provisions of Section 115BBE of the Act had no application to the present case and in circumstances of the case, there by negating the findings in relation there to.
5. The NFAC, Delhi failed to appreciate that having offered to tax the said presumed differential sum between the total value of the physical stock and value of the stock as per the books of accounts arrived at (Refer to tabulation prepared by the Survey Party, reflected in Question No.4 of the statement recorded from Mr. P. Ganapathy on 28.02.2018) as income of the appellant under the head 'Business Income', the shifting of such sum as deemed income by reckoning the same as unexplained investment under Section 69B of the Act for standalone tax as per Section 115BBE of the Act was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.
6. The NFAC, Delhi failed to appreciate that there was no scope of shifting / recomputing the nature of the income already forming part of the return of income filed for the assessment year under consideration and further ought to have appreciated that the action of the Assessing Officer in this regard should accordingly be reckoned as bad in law.
7. The NFAC, Delhi failed to appreciate that findings from para 5 of the impugned order were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.
8. The NFAC, Delhi failed to appreciate that the quantification of book stock as on the date of survey on 28.02.2018 and quantification of the physical stock again on the date of survey both in terms of the value had no scientific basis, not backed by primary workings in utter disregard to the books of accounts maintained in the regular course of business were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law, thereby vitiating the differential stock arrived at.
9. The NFAC, Delhi failed to appreciate that offer of the disputed differential stock by including such sum as part of the closing stock of the previous year relating to the assessment year: 2017- 18 by incorporating such enhanced sum of closing stock as part of the opening stock for the assessment year: 2018 - 19, while crediting such sum under the head 'Stock admitted at the time of survey' in the Profit and Loss account forming part of 'Income from Business', was wrongly disturbed by picking out the said sum for taxation as deemed income invoking Section 69B read with Section 115BBE of the Act.
10. The NFAC, Delhi failed to appreciate that having noticed the fact of only source of income from running modern Rice Mill, there could not be any hidden source of income, so as to justify the taxation of the disputed sum as unexplained investment under Section 69B read with Section 115BBE of the Act, thereby vitiating the related findings.

11. The NFAC, Delhi failed to appreciate that the entire re-computation forming part of the assessment order was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

12. The NFAC, Delhi failed to appreciate that the assessment order passed by the ACIT, Circle 1, Hosur was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

13. The NFAC, Delhi failed to appreciate that there was no effective/proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.

2. The Ld. AR advanced arguments and submitted that difference in valuation of stock was rightly offered as 'Business income'. The Ld. AR drew attention to the statements made during survey and to support the submissions, Ld. AR relied on various decisions of Tribunal. The copies of the same have been placed on record. The Ld. Sr. DR controverted the arguments of Ld. AR and supported the findings given in the orders of lower authorities. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

Assessment Proceedings

3.1 The assessee being a resident firm is engaged as a rice mill. The assessee declared income of Rs.350.88 Lacs in return filed on 08-03-2018. The assessee was subjected to survey u/s 133A on 27-02-2018 wherein physical stock was valued at Rs.607.86 Lacs whereas value of stock as per books was Rs.321.55 Lacs. The difference of Rs.286.31 Lacs was offered to tax by the assessee in statement recorded during survey. The admission made by the assessee was as under: -

Q.17 As per the loose sheets impounded supra, as per page no.42 & 43, the closing stock as on 31.03.2017 is reported at Rs.6,38,02,465/-. The physical stock has been taken today and the book stock is arrived as under:

Closing stock as on 31.03.2017 based on impounded material.	Rs.	6,38,02,465
Add: Purchases from 01.04.2017 to 27.02.2018	Rs.	27,34,98,887
	Rs.	33,73,01,352

Less: Sales from 01.04.2017 to 27.02.2018	Rs.	32,81,13,732
	Rs.	91,87,620
Add: GP @ 7% on sales	Rs.	2,29,67,961
Book stock as on 27.02.2018	Rs.	3,21,55,581
Physical stock taken on 27.02.2018	Rs.	6,07,86,973
Excess stock	Rs.	2,86,31,392

Please offer your explanation.

Ans. I have perused the above working and it is done in a scientific and accepted way. I would like to submit that since I was constantly on medical treatment, which required frequent hospitalization, I could not concentrate on the accounts of the business. The closing stock figure was arrived at based on the rough and improper way of estimates prepared by the staff members and I was not available at the time of submitting this figure (Rs.6,38,02,465) to my auditors for finalization of accounts for the Fin. Year 2016-17. I would like to reiterate that all my purchase and sales are through RTGS and this error in under-reporting the closing stock may kindly be condoned on compassionate grounds. With a view to set right my accounts and to file the returns of income, I voluntarily agree for including the excess stock of Rs.2,86,31,392/- to the closing stock value as on 31.03.2017 and pay due taxed thereon. I will be filing the firm's return of income for the Asst. Year 2017-18 before March, 2018 and my closing stock as on 31.03.2017 will be Rs.6,38,02,465 + Rs.2,86,31,392 = Rs.9,24,33,857.

3.2 Honoring aforesaid admission, the assessee added this excess stock to its book-stock and filed the return of income and paid due taxes. However, Ld. AO was of the opinion that excess stock was in the nature of unexplained investment u/s 69B which would be subjected to higher rate of tax as per Sec.115BBE. The assessee stated that the said income was out of business income only and therefore, the same was assessable as business income. The assessee bolstered the same by submitting that the firm had carried out this business for past 20 years and there was no scope for any income to be derived from any other source. The excess stock was only an accumulation over the past several years.

3.3 The Ld. AO, considering the deposition made by the assessee, held that the assessee did not bring out any material to show that source of excess stock was from business. The excess sock was an investment

which was not fully explained. Therefore, the aforesaid income was to be assessed u/s 69B which would be subjected to special higher rate of tax u/s 115BBE.

Appellate Proceedings

4.1 During appellate proceedings, the assessee, inter-alia, submitted that stock was found in the shape of paddy, rice, packing material etc. It was not an investment but a current asset. Sec.69B does not refer to such stock. The stock of running business would not be an investment. The closing stock would be nothing but part of purchases already accounted. Reliance was placed on various decisions of Tribunal to support the same wherein it was held there that unexplained investment was nothing but stock-in-trade which was not separate and unidentifiable from regular stock-in-trade and therefore, the income arising out of such unexplained investment would be nothing but business income of the assessee and not 'income from other source'.

4.2 The Ld. CIT(A) noted that the assessee was unable to explain the source of funds utilized for acquisition of such surplus stock from the funds reflected in the books of accounts. The assessee was unable to furnish any evidence to show that the assessee used its funds out of its own books of accounts. Entire business activity in itself was an investment made by the owner to earn profits. On the date of survey, the accounts for FY 2016-17 must have been completed and the accounts of the next year were under preparation. The assessee admitted non-disclosure of such income as a mere mistake and agreed to offer such income for taxation since assessee was not in a position to clarify the sources of such investment. Therefore, that stock remained unexplained and not disclosed in the books of account. The provisions of Sec.69B

does not put any condition of identifying each item of stock separately. Here quantum of undisclosed stock was determined which had been accepted by the assessee and valued accordingly. Unless survey was conducted, such undisclosed stock would not have been disclosed by the assessee. Further, there was no proof that stocks were purchased out of their business income only and there was no scope of presumption or relevance since Sec.69B talks about source of income for investment / acquisition of article and the onus was on the assessee to explain it to the satisfaction of Ld. AO. The addition u/s 69B is deemed income and surrender of same would not give any immunity to the assessee from penal provisions of Sec.69B and Sec.115BBE. Accordingly, the action of Ld. AO was upheld against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee is engaged as a rice mill. The assessee was subjected to survey action on 27-02-2018 wherein based on certain material, the valuation of closing stock as on 31-03-2017 was disturbed. The physical stock was valued at Rs.607.86 Lacs whereas book-stock was Rs.321.55 Lacs. The difference of Rs.286.31 Lacs was offered to tax by way of credit to Profit & Loss Account. Upon perusal of question no. 17 as put to assessee during survey, it could be seen that such differential has been arrived at as under: -

Closing stock as on 31.03.2017 based on impounded material.	Rs.	6,38,02,465
Add: Purchases from 01.04.2017 to 27.02.2018	Rs.	27,34,98,887
	Rs.	33,73,01,352
Less: Sales from 01.04.2017 to	Rs.	32,81,13,732

27.02.2018		
	Rs.	91,87,620
Add: GP @ 7% on sales	Rs.	2,29,67,961
Book stock as on 27.02.2018	Rs.	3,21,55,581
Physical stock taken on 27.02.2018	Rs.	6,07,86,973
Excess stock	Rs.	2,86,31,392

It could be seen that Ld. AO has disturbed the closing stock of earlier year or opening stock of this year by adopting GP rate of 7% on sales. The computation of differential in stock is based on mathematical formula only. However, no discrepancy in the physical stock vis-à-vis book quantities has been noted by Ld. AO. The assessee has merely accepted the computations made by Ld. AO and voluntarily agreed to increase the closing stock of earlier years by way of credit to Profit & Loss Account. All the sales and purchase, as per admission, have taken place through bank transfers only. Unless, discrepancy is pointed out in the physical quantities, no case of unexplained investment, in our considered opinion, could be made out against the assessee. Further, it is undisputed fact that the assessee is assessed to tax for past several years and its only source of income is 'Business income' only. In such a case, whatever discrepancies are noted, the same would be part and parcel of business operations and could be considered to be Business income only and not from any other sources. It could very well be said that entire stock was accumulated out of income from business and the undisclosed business income, if any, was ploughed back into business to acquire further stock. In such a case, the excess stock could be said to have arisen out of normal business activity only and therefore, the same would be assessable as 'business income' only in terms of decision of Chennai Tribunal in **M/s Mookambika Impex vs. DCIT (ITA**

No.299/Chny/2023 dated 26-07-2023). Considering various decisions including the decision of Hon'ble Rajasthan High Court in the case of **CIT vs Bajargan Traders (supra)** it was held by the bench as under: -

3. From the fact it emerges that the only source of assessee's income is 'Business income' arising out of sale of gold jewellery and silver articles. During survey proceedings, quantitative differences were found in the physical stock vis-à-vis book stock. The assessee brought the same into books of account by way of credit to partners' capital account with corresponding increase in book-stock. The excess stock was included in the stock register. Accordingly, the differential was separately offered to tax in the return of income as 'Business Income'. Naturally, the excess stock was acquired out of excess income regenerated from business activity only since the assessee do not have any other source of income since its inception. The entire stock was accumulated out of income from jewellery business. The undisclosed business income was ploughed back into business to acquire further stock. In such a case, the excess stock could be said to have arisen out of normal business activity only and therefore, the same would be assessable as 'business income' only in terms of decision of Hon'ble Rajasthan High Court in the case of **CIT vs Bajargan Traders (supra)** wherein it was held that with respect to such excess stock found during the survey, it could be said that the investment in procurement of such stock was clearly identifiable and related to regular business stock of the assessee. Therefore, the same should be considered as 'Business Income only. In the present case, the stock difference has arisen in the course of day-to-day business activity only and not otherwise. The entire stock was available as trading stock at the business premises and it was part and parcel of regular business stock. The decision of Hon'ble Supreme court in the case of **Lakshmidhand Baijnath vs CIT (supra)** also support the said conclusion. It was held by Hon'ble Court that when an amount is credited in the business books, it is not an unreasonable inference to draw that it is a receipt from business. Therefore, the impugned income, in our considered opinion, would be assessable as 'Business Income' only. Similar view has been taken in the decision of Chennai Tribunal in **M/s Overseas Leathers vs. DCIT (ITA No.962/Chny/22 dated 05.04.2023)**. We find that facts in that case are quite identical to the facts of the present appeal before us.

4. After going through the case law of Hon'ble High Court of Madras in the case of **M/s SVS Oil Mills vs. ACIT (supra)**, we find that said case is distinguishable on facts. In that case, though stock was added in the stock register but there was no corresponding credit in the books of accounts. It was thus held that stock could not come in from vacuum. Therefore, the excess stock was held to be unexplained investment. However, in the present case, there is corresponding credit to partners' capital account. Therefore, this case law is distinguishable on facts.

5. In the result, the appeal stand allowed in terms of our above order.

In this decision, the bench has also considered the decision of Hon'ble High Court of Madras in the case of **M/s SVS Oil Mills vs. ACIT (113 Taxmann.com 388)** and held the same to be distinguishable on facts.

6. Similar is the view of Chennai Tribunal in catena of decisions including the decision in **M/s Overseas Leathers vs DCIT (ITA No.962/Chny/22 dated 05-04-2023)**; the decision in **M/s Ethiraj Hotel Mart vs DCIT (ITA No.1096/Chny/2022 dated 29-12-2023)**; the decision in **M/s Santhilal Jain Vijay Kumar vs. ITO (ITA No.1103/Chny/2022 dated 30-08-2023)** as well as various other decisions, the copies of which have been placed on record.

7. Therefore, considering the facts of the case and respectfully following the aforesaid decisions, we would hold that the impugned additions have to be assessed as 'Business Income only'. The provisions of Sec.69B r.w.s. 115BBE would have no application. The Ld. AO is directed to recompute the tax payable by the assessee.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 13th May, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated :13-05-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF