

आयकर अपीलिय अधिकरण 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.444/Chny/2023
निर्धारण वर्ष/Assessment Year: 2019-20

M/s.VRV Lungi Co., No.3, Indrani Street, Ayyavoo Naidu Colony, Chennai-600 029.	v.	The ACIT, Central Circle-3(2), Chennai.
[PAN: AAEFV 8392 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri N.Arjun Raj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri R.Clement Ramesh – Kumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	21.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-18, (hereinafter in short 'the Ld.CIT(A)'), Chennai, dated 24.01.2023 for the Assessment Year (hereinafter in short 'AY') 2019-20.

2. The main grievance of the assessee is against action of the Ld.CIT(A) levying tax u/s.115BBE of the Income Tax Act, 1961 (hereinafter in short "the Act") on the cash sales declared by the



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assessee. The brief facts are that the assessee is a partnership firm engaged in the business of manufacture and sale of lungis. On 13.04.2019, at the time of search, cash of Rs.1,10,36,780/- was found and seized and the assessee was asked about the source of the cash seized from the premise and the assessee accepted that Rs.1,10,36,780/- was additional sale receipts over and above the sales of Rs.41,05,34,061/- as per the books of accounts for the year ending 31.03.2019 without any additional purchase expenses or any other expenses. During the search, team asked the following questions and assessee answered the same as under:

Q.8. During the Search action conducted u/132 of the Income Tax Act, 1961 at VRV Lungi Company and your residential Premise on 13/4/2019, cash of amount Rs.55,93,180/- and Rs.54,83,600/- were seized respectively. Please explain the source for the above cash held by you.

Ans. Sir I reiterate that the above Cash seized from VRV Lungi Company and my residence were generated from out of book. Cash Sales of Lungi which was not accounted in my books of Account.

Q.9. While answering Question no. 8, you have stated that the cash seized of Rs.1,10,36,780/- in your Business premise and residence during search action u/s 132 on 13/4/2019 were made from out of book cash sales of Lungi. Please produce details of corresponding purchase of raw materials made.

Ans. Sir, the entire purchase were accounted in my books of account. Only the Cash sales of Lungi were not shown in my Books of Account.

Q.10. Do you agree that the entire cash seized of Rs.1,10,36,780/- in your Business premise and residence during search action u/s 132 on 13/4/2019 were not accounted in your books of account.

Ans. Sir I confirm that the entire cash seized of Rs.1,10,36,780/- were made out of Cash Sales which is not accounted. I have paid Advance tax of Rs. 19 Lakhs under the Firm PAN for AY 2019-20. While paying the Advance

P. VUAIDEEPAN
Joint Director of Income Tax (Secy) 1050/15

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tax for AY 2019-20, the Tax liability was Calculated by taking Sales receipts of Rs.41,05,34,061/- without taking into account, the Cash Sales receipts of Rs.1,10,36,780/-. I promise that I will show Rs. 1,10,36,780/- as additional Sales receipts over and above the Sales receipts of Rs.41,05,34,061/- without claiming any Additional Purchase expenses or any other expenses while filing ITR for AY 2019-20.



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3. Thereafter, the assessee has shown the amount of Rs.1,10,36,780/- as cash sales in the P & L A/c for the Financial Year 2018-19 (AY 2019-20) and has offered it as profit (without claiming any purchase expenses or other expenses against the sale) and filed the return of income admitting income from business amounting to Rs.3,89,57,470/-. However, the AO was not satisfied with the reply of the assessee, even though, assessee pointed out that the cash sales of Rs.1,10,36,780/- has also shown in the GST returns and offered tax thereon. However, the AO was of the view that the assessee could not place any evidence for unaccounted cash sales in the form of notings or bills which could have been found during the course of search. Therefore, according to him, the cash found amounting to Rs.1,10,36,780/- was unexplained money and therefore, he taxed it u/s.69A of the Act and charging tax at the subject rate as per sec.115BBE of the Act. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the material available on record. The assessee is a partnership firm engaged in the business of manufacture and sale of lungis. On 13.04.2019, search u/s.132 of the Act was conducted in the premise of the assessee and cash of Rs.54,83,600/- as well as Rs.55,53,180/- were found (total Rs.1,10,36,780/- of cash)



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when the search team asked the partners of the assessee, to explain the source of this cash, Shri V.V.Deenadayalan (partner of the assessee's firm) in his sworn statement u/s.134 of the Act recorded during the course of search on 13.04.2019 admitted that the same were generated from the cash sales made outside the books of accounts and not accounted for and also submitted that the cash of Rs.1,10,36,780/- was being offered as additional sale receipts over and above the sales of Rs.41,05,34,061/- as per books of accounts for the year ending 31.03.2019 without claiming any additional purchases, expenses or any other expenses, while filing the ITR for AY 2019-20. Thereafter, search team didn't make any further enquiries to the assessee regarding source of the cash of Rs.1,10,36,780/-. Thereafter, the assessee while filing the return of income for AY 2019-20 had shown the cash sales of Rs.1,10,36,780/- as additional sale receipts over and above the sales of Rs.41,05,34,061/- which was the turnover as per the books of accounts for the year ending 31.03.2019 without any additional purchase expenses or any other expenses while filing returns for the AY 2019-20 and the assessee also filed GST Returns showing the GST had been paid for the cash sales of Rs.1,10,36,780/-. In such a scenario, the assessee's explanation about the source of the cash found during the course of search, should have been accepted unless, the Revenue could have confronted with some information or evidence which was in their



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possession to show the inherent weakness of the assessee's explanation (about the source of the cash). The Hon'ble Supreme Court in the case of Smt. Srilekha Banerjee & Othrs. V. CIT reported in [1963] 49 ITR 112 (SC) held that before the Department reject the explanation of the assessee, it must either show an inherent weakness in the explanation or rebutted by putting to assessee, some information or evidence which it has in its possession. The Department cannot be merely rejecting unreasonably a good explanation, convert good proof into a no proof. The only reason given by the AO to take an adverse view was that during search, no evidence could be unearthed to show that there was out of book cash sales of lungis. However, that cannot be the sole reason for rejecting explanation of the assessee, because, when assessee was searched and the partner was confronted with the cash of Rs.1,10,36,780/-, he accepted the source of cash sales which was unrecorded in the books. The search team didn't ask further questions to find out 'as to whether' there was any other source of income for the assessee. The search team also didn't find any other source of income for the assessee and it is not the case of the AO also that he has information regarding any other source of income for the assessee to generate cash of Rs.1,10,36,780/-. In such a scenario, the assessee's explanation at the time of search and the assessee offering the entire amount as profit (without any additional purchase expenses or any other expenses for



ITA No.444/Chny/2023 (AY 2019-20)
M/s.VRV Lungi Co.

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generating this amount) ought to have been accepted and we are inclined to accept it and direct the deletion of the action of the AO/Ld.CIT(A) who have made separate addition u/s.69A of the Act and charged it u/s.115BBE of the Act. Therefore, we direct deletion of the addition made u/s.69A of the Act to the tune of Rs.1,10,36,780/-. The AO to accept the return of income filed by the assessee returning income of Rs.3,89,57,470/-

5. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 05th day of July, 2024, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05th July, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF