

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

I.T.A No.557/Kol/2024
Assessment Year: 2016-17

Nirvin Cold Storage Pvt. Ltd.....Appellant
1st Floor Suit No.5,
Onkara Chambers,
30 Bentick Street, Near Lal Bazar,
Kolkata -1.
[PAN: AABCN1213E]

vs.

ITO, Ward-6(1), Kolkata.....Respondent

Appearances by:

Shri Akkal Dudhewala, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 10, 2024

Date of pronouncing the order : August 26, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 18.12.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that on the facts and in circumstances of the case, the Ld. CIT(A), NFAC erred in disposing of the appeal on merits ex-parte without affording sufficient opportunity of being heard.

2. (a) For that on the facts and in circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the AO's action of making addition of

Rs.40,63,095/- on adhoc and estimates basis and thus the same deserves to be deleted.

(b) For that on the facts and in circumstances of the case, the AO's action of estimating the income at Rs.40,63,095/- without pointing out specific defect in the audited accounts and without invoking provisions of Section 145(3) of the Act rendered the impugned addition to be bad in law and on facts and thus deserves to be deleted in full.

3. (a) For that on the facts and in circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the addition of Rs.4,45,44,398/- made by way of unexplained loans & advances by the AO and therefore the same be deleted.

(b) For that on the facts and in circumstances of the case, the lower authorities failed to appreciate that the loans & advances of Rs.4,45,44,398/- were already forming part of the books of accounts and therefore the same could not have been legally added by way of unexplained investments in the hands of the appellant.

(a) For that on the facts and in circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the AO's action for denying the benefit of exemption claimed u/s 10(1) of the Act in relation to the agricultural income of Rs.27,97,000/- derived during the year.

5. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

3. **Ground No.1** is not pressed.

4. **Ground No.2** – Vide Ground No.2, the assessee has agitated the confirmation of addition of Rs.40,63,095/- made by the Assessing Officer on account of estimation of income for the year under consideration by considering the income for the preceding assessment year.

5. The brief facts of the case are that the Assessing Officer observed that the income declared by the assessee for the year under consideration was comparatively low as compared to the income of the preceding assessment year. The Assessing Officer observed that in the preceding assessment year i.e. A.Y 2015-16, the assessee had earned interest income amounting to Rs.17,40,926/- on investment of Rs.2,88,80,076/- and thus the assessee had earned interest @6.03% on

the said investment. However, the assessee during the year has earned interest income of Rs.3,64,400/- only on investment of Rs.7,34,24,474/- , which was only 0.05% of the investments. He, therefore, estimated the interest income of the assessee at Rs.44,27,496/- by applying interest rate @6.03% on the investments and accordingly added an amount of Rs.40,63,095/- into the income of the assessee.

6. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

7. Before us, the ld. counsel for the assessee has submitted that the audited financial statements of the assessee were available to both the lower authorities. That the Assessing Officer without going through the audited accounts of the assessee and even without rejecting the same has estimated the interest income of the assessee in a casual manner. The ld. counsel for the assessee has explained that the assessee operates cold storage facility and was engaged in the business of providing warehousing services for agri-produce primarily 'potatoes'. In connection therewith, the assessee had obtained working capital loan from State Bank of India, which was utilized to finance farmers for the potatoes stored by them. The modus operandi of the assessee's line of business is that the farmers deposit their produce i.e. potatoes with the assessee's storage for which they are required to pay hiring charges, which is generally for a period of 6-8 months. At the time of storage, the farmers hypothecate their potatoes with the assessee and obtain loan against the value of the same. Upon sale of produce, the proceeds are first utilized to recover the hiring charges and thereafter principal value, and the balance, if any, is paid to farmer. That in the year under consideration, the opening balance of loans / advances to farmers as on 01.04.2015 was Rs. 247.55 lacs out of which Rs.46.09 lacs were recovered during the year. Further the assessee had provided fresh advances of Rs.483.28

lacs during the year, out of which Rs.365.76 lacs were provided at the fag-end i.e. February 2016 & March 2016 and accordingly the closing balance as on 31.03.2016 was Rs.684.74 lacs. The farmer-wise details of loans & advances outstanding as on 31.03.2016 was furnished before the Assessing Officer, copy of which has been placed at Pages 43-103 of Paper Book. Since the market scenario in the year under consideration was very bad and due to excess production, the supply of potatoes was far in excess of its demand resulting in accumulation of stock in as much as storages were forced to dispose off them due to their perishable nature. As a consequence, there was no recovery from the farmers in as much as the farmers defaulted on the loans advanced to them. In fact, even the State Government had prevented the storage houses to take any coercive measures for recovery of loans from farmers. That even the SBI did not charge interest on the operating loan which was given to the farmers. Hence, due to doubtfulness of the loans/advances itself, recovery of the interest which was payable to SBI was out of question and therefore, there was no real income which accrued from such loans/advances. The ld. counsel has also placed reliance on newspaper clippings, wherein, it has been reported that during the relevant year, there was a loss to cold storage business, wherein, the potatoes were stored by the farmers, which were not picked up by the farmers due to low prices in the market. The ld. counsel has also placed reliance on the copy of loan sanction letter from the SBI, copy of bank statement for receipt of crop loans and also audited financial statement of the assessee. The ld. counsel has further explained that even otherwise the Assessing Officer has picked the amount of the loan without examining the record by applying notional interest rate for the whole of the year, whereas, the said loan was provided to the farmers at the fag end i.e. for the month of February

2016 & March 2016 and there was no question of estimating interest income for the whole of the year.

8. The ld. DR could not rebut the aforesaid submissions and documents relied upon by the ld. counsel for the assessee.

9. The ld. AR of the assessee has duly demonstrated that majority of the loans were dispersed by the assessee only on February 2016 & March 2016 to the farmers and since there was excess crop and market price of the potatoes fell down and therefore, there was no recovery of either principal or interest from the farmers. The overall business of cold storage house had a fall due to market scenario. Moreover, the Assessing Officer has just estimated the income of the assessee without going through the accounts of the assessee and without rejecting the same and without pointing out any defect and infirmity in the accounts of the assessee.

10. In view of the above, the estimation of interest income of the assessee by the Assessing Officer is not justified and the addition made by the Assessing Officer is not sustainable on this issue and same is accordingly ordered to be deleted.

11. **Ground No.3** – The assessee vide Ground No.3 has agitated the action of the lower authorities in making addition of Rs.4,45,44,398/- made by way of unexplained loans and advances.

12. The Assessing Officer in this respect has observed that the assessee company had disclosed investment/advances/loans amounting to Rs.6,84,74,310/- under the sub head 'other loans and advances' of the head 'long term loans and advances', and amounting to Rs.49,50,164/- under the sub head 'others' of head 'short-term loans and advances'. He further observed from the return of income for A.Ys

2015-16 and 2016-17 that the long term loans and advances of the assessee had increased from Rs.2,47,55,085/- disclosed in ITR for A.Y 2015-16 to Rs.6,84,74,310/- in ITR for A.Y 2016-17 and further short-term loans and advances had increased from Rs.41,24,991/- to Rs.49,50,164/-. He held that since the assessee failed to explain the source of the aforesaid loans and advances, he, therefore, added back the same into the income of the assessee.

13. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

14. Before us, the ld. counsel for the assessee has submitted that it is an admitted fact that there was an increase in loans and advances of Rs.445.43 lakh, which was duly shown in the regular books of account. That the source in the value and loan advances was duly decipherable from the audited cash flow statement and balance sheet of the assessee, which were duly furnished before the Assessing Officer. He has explained that the source of increase in loans and advances was from working capital loan obtained from SBI and proceeds from redemption of fixed deposits. The ld. counsel in this respect has furnished the following chart:

Particulars	31.03.2015	30.03.2016	Increase / Decrease
Loans & Advances	247.55 lacs	684.74 lacs	437.19 lacs
Source of Funds:			
Working Capital Loan	433.82 lacs	637.27 lacs	203.45 lacs
Cash & Cash Equivalents	273.32 lacs	64.88 lacs	208.44 lacs
Loan from bodies	40 lacs	60 lacs	20.00 lacs

Corporate			
Profit before tax & depreciation	NA	27.96 lacs	27.96 lacs

14.1 From the above chart, the ld. counsel explained that there was an increase in working capital loan from the SBI, for which the ld. counsel has placed reliance on page 118 of paper-book, which is a copy of bank statement showing fresh loan and balance of Cash Credit Account. Further, regarding the cash and cash equivalent mentioned in the chart, the ld. counsel has explained that the said amount was obtained after redemption/liquidating the fixed deposits. Further, an amount of Rs.20 lacs was taken as loan from bodies corporate. The ld. counsel in this respect has placed reliance on the ledger and balance confirmations from the concerned parties.

15. The ld. DR could not rebut the aforesaid factual aspects.

16. In view of the above, the addition made by the Assessing Officer on account of unexplained loan advances cannot be held to be justified. Therefore, the same is accordingly ordered to be deleted.

17. **Ground No.4** - Vide Ground No.4, the assessee has agitated the action of the Assessing Officer in denying the benefit of exemption claimed u/s 10 of the Act in relation to agricultural income of Rs.27,97,000/-.

18. The Assessing Officer noted that the assessee had shown aggregate income of Rs.27,97,000/-. He treated the said amount as income from unexplained source and added back the same into the income of the assessee.

19. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

20. Before us, the ld. counsel for the assessee has submitted that the assessee owned 9.67 acres of agricultural land, out of which 4.52 acres were utilized for the potatoes storage facility and office. Further that staff residential quarters were on 0.30 acres of land. That the balance 4.85 acres of land was used for agricultural purposes. Further that the assessee had been consistently deriving agricultural income in the past years and that no adverse inference had ever been taken by the Assessing Officer. He, therefore, has submitted that the Assessing Officer was not justified in rejecting the claim of the assessee in respect of agricultural income. The ld. counsel has placed reliance on page 137 of the paper-book, which is the details of agricultural income and has stated that the said statement of agricultural income was duly furnished before the lower authorities. The contents of the said statement are reproduced as under:

<u>NIRVIN COLD STORAGE PVT. LTD.</u>			
<u>(Agricultural Income during the Financial Year 2015-16 (Asst. Year 2016-17))</u>			
Jun-15		Cultivation of TIL	425560
Nov. 2015		Cultivation of Paddy	606440
Mar.16		Cultivation of Potato	963780
Mar.16		--- DO ---	801220
			<u>2797000</u>

				Income	Expenses (Includes Seed, Manure & labour Charges)	Net Income
Til	600 kgs. Per bigha	9000 kgs.	65/	585000	-159440	425560
Paddy	1600 kgs per quintal	24000 kgs	32/-	768000	-161560	606440
Potato	410 bags per bigha	6150 bags	310/-	<u>1906500</u>	-141500	<u>1765000</u>
				3259500		2797000

20.1 The ld. counsel has also placed reliance on the copy of the land records in this respect.

21. We have considered rival submissions of the parties and gone through the record. We are of the view that the assessee has shown a higher income of Rs.27 lakhs from 4.85 acres of land. Moreover, it is the own case of the assessee that in the year under consideration, the potato crop did not earn a good income as the market prices fell down out of excess crop. Therefore, considering the overall facts and circumstances, the agriculture income of the assessee is assessed at Rs.17.97 lakhs as against the claim of 27.97 lakhs. However, the above estimation will not be taken as yardstick in any other case. This ground of the assessee is partly allowed.

22. In view of our findings given above, the appeal of the assessee is treated as partly allowed.

Kolkata, the 26th August, 2024.

Sd/-
[Rajesh Kumar]
लेखा सदस्य /Accountant Member

Sd/-
[Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 26.08.2024.

RS

Copy of the order forwarded to:

1. Nirvin Cold Storage Pvt. Ltd
2. ITO, Ward-6(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches