

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, RANCHI

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM

ITA No. 252/RAN/2023

(Assessment Year: 2019-20)

Kesho Lal
Payada Toli, Upper Bazar,
PIN-834001, Jharkhand,

Vs.

ACIT, Central Circl-1
7th Floor, Mahavir Tower,
Main Road, PIN-834001,
Jharkhand

(Appellant)

(Respondent)

PAN No.AAPPL9744F

Assessee by : Shri R.R. Mittal, AR

Revenue by : Shri Pranob Kumar Koley, DR

Date of hearing: 02.09.2024

Date of pronouncement : 03.09.2024

ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

01. This appeal preferred by the assessee emanates from the order of the learned CIT (A), Patna-3, dated 30th November, 2023 for A.Y. 2019-20, as per following grounds of appeal:-

"1. The order of the Asst. Commissioner of Income Tax, Central Circle-1, Ranchi is bad in law and facts.

2. The Commissioner of Income Tax (Appeal) erred in confirming the order of Asst. Commissioner of Income Tax, Central Circle-1, Ranchi without considering the evidence submitted in the form of VAT orders.

3. The Commissioner of Income-tax (Appeals) erred in giving direction to treat the stock found u/s

59 in place of u/s 69B whereas the said stock is stock in trade of business.

4. The Commissioner of Income-tax (Appeals) erred in not giving any allowance of Gross profit on sales affecting the closing stock."

02. The relevant facts are that the assessee is a proprietor of M/s Kesho Lal Jewellers. The assessee had filed original return of income declaring total income of ₹3,24,670/- for A.Y. 2019-20. Thereafter, the assessee had filed revised return declaring total income of ₹3,24,670/-, claiming refund of ₹ 1 lacs. The return was processed u/s 143(1) of the Income-tax Act, 1961 (the Act). Subsequently, the case of the assessee was selected for scrutiny and the statutory notices u/s 143(2) and 143(1) of the Act were issued to the assessee which were complied with. The learned Assessing Officer completed the assessment u/s 143(3) of the Act, determining the total income at ₹30,36,913/-. That in the assessment order, the learned Assessing Officer had given following findings:-

- i. The assessee filed return of income on presumption basis u/s 44AD of the Act.
- ii. No details have been mentioned in return of income filed. Closing stock and opening stock have been showing nil in the return of income for A.Ys. 2018-19 and 2019-20.
- iii. The state VAT order was passed on 15th February, 2020, i.e. after survey proceedings.



03. On basis of these observations, the learned Assessing Officer had issued show cause to the assessee, however, no compliance was made by the assessee till the completion of the assessment. The assessee had accepted the discrepancy found in stock and admitted to pay the tax on the same. The learned Assessing Officer added the discrepancy noted in the stock i.e. ₹27,12,243/- to the income of the assessee.
04. That before the learned CIT (A), written submission were filed by the assessee, wherein he has mentioned that the assessee had been filing ITR regularly u/s 44AD of the Act since the assessee was a small jewellery trader. the assessee also submitted the details of VAT return filed for F.Y. 2016-17, wherein the closing stock was declared at ₹22,77,824/-. Further, assessee has also declared closing stock of ₹28,20,116/- as on 30.06.2017. The assessee submitted that the learned Assessing Officer had ignored VAT assessment order placed on record by the assessee.
05. The learned CIT (A) after considering the assessment order, the submissions of the assessee, observed and held that the assessee had failed to produce any independent evidences regarding source of excess stock found during the course of survey and accordingly, the addition of ₹27,12,243/- was sustained.
06. I have considered the submissions of the parties and have analyzed the facts in this case. I have given thoughtful consideration to the submissions placed on record by the assessee in this case along with all the relevant

documents on record. That as per the examination of the afore stated facts in the case of the assessee, the assessee was unable to produce any independent documentary evidences in order to explain the source of excess stock found during the course of survey. The learned Authorized Representative for the assessee reiterated the submissions made before the subordinate authorities and contended that the Revenue have not considered the evidences submitted in the form of VAT assessment order, in spite of this, being produced right from the stage of assessments. However, the learned Authorized Representative failed to explain that assessee himself had admitted before the learned Assessing Officer about the excess stock found and agreed to pay the tax. At the same time the learned CIT (A) has also not given any findings on this self admission by the assessee and had only upheld the assessment order on the ground that no evidences were submitted by assessee regarding excess stock found during survey. Also, observed that the order of the learned CIT (A) is not in terms with Section 250 cl's (4) and (6) of the Act. The learned CIT (A) on the issue of excess stock found during the course of search should have called for an independent enquiry and should have directed the learned Assessing Officer to conduct the relevant verification of facts. That the powers of the learned CIT (A) is co-terminus with that of the learned Assessing Officer and the mandate of the Act is very clear with regard to the orders passed by the First Appellate Authority that it has to be in terms with Section 250



clause (4) and clause (6) of the Act. There are several judicial views supporting this principle of law and at this moment, I do not want to reiterate the same to avoid repetition. Having stated that this issue as per the facts and circumstances is no more *res-integra* and whenever the order is passed by the learned CIT (A) it has to be done on basis of specific enquiry and independent application of mind. Considering the totality of facts and circumstances, I am of the considered view that one opportunity should be given to the assessee to represent his case on merit before the learned CIT (A) and that the First Appellate Authority would resort to independent enquiry and verification of facts, considering all the documents on record while complying with the principle of natural justice. The assessee is also directed to furnish all the relevant details, documents corresponding to the issue of excess stock found and represent the matter substantively on merits. As per the above terms, the grounds of appeal stands allowed for statistical purpose.

07. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 03.09.2024.

Sd/-
(PARTHA SARATHI CHAUDHURY)
(JUDICIAL MEMBER)



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Ranchi
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Ranchi