

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**

**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.236/Nag./2023**

(Assessment Year : 2021-22)

Dy. Commissioner of Income Tax  
Central Circle-1(3), Nagpur

..... Appellant

v/s

Radhika Vegetable Oils Pvt. Ltd.  
Post – Shreeram Nagar, Garividi  
Vizianagram 535101 PAN – AAACR8333C

..... Respondent

Assessee by : Shri Manoj G. Moryani  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 08/10/2024

Date of Order – 30/10/2024

**ORDER**

**PER K.M. ROY, A.M.**

The Revenue has filed the captioned appeal challenging the impugned order dated 30/05/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2021-22.

2. The Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of unrecorded cash sales of Rs. 3,16,16,703/-, without appreciating the facts that Director of the Company i.e. M/s. Radhika Vegetable Oils Pvt. Ltd., Shri Manvendra Mor, in his statement recorded on oath had admitted the total cash sales amount of Rs. 8,60,03,537/- for the A.Y. 2015-16 to 2022-23 which included cash sales of Rs. 3,16,16,703/- for A.Y. 2021-22 and the assessee had failed to submit any evidences regarding purchases, direct expenses, indirect expenses related to this cash sales. Therefore, the A.O. added the entire unrecorded cash sales to the income of the assessee.

2. *On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in directing the A.O. to make addition of Gross Profit @ 11.65% which is average of last three years gross profit on unrecorded cash sales without appreciating the fact that the assessee failed to prove that the corresponding purchases were also not accounted against the unaccounted cash sales.*

3. *On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in directing the A.O. to make addition of Gross Profit @ 11.65% which is average of last three years gross profit on unrecorded cash sales without appreciating the fact that no accounted purchases were found during the course of search, therefore in absence of documentary evidences the A.O. was justified in addition entire sale of Rs. 3,16,16,703/- as income of the assessee.*

4. *Any other grounds and fact to be raised at the time of appeal"*

3. Fact in Brief:- A search and seizure action under section 132 of the Income Tax Act, 1961 ("*the Act*") was conducted in Radhika Group of cases Visakhapatnam on 25/08/2021. Consequent upon search and seizure operation in Radhika Group, a search and survey was conducted on 25/08/2021 in assessee's office and factory premises situated at Vizianagram. The assessee filed original return of income under section 139(1) of the Act on 26/02/2022, declaring total income of ₹ 4,50,09,160. The case was selected for compulsory scrutiny selection. Notice under section 143(2) of the Act was issued to the assessee on 30/06/2022 and duly served. Notice under section 142(1) of the Act was also issued on 14/10/2022. Accordingly, the Assessing Officer has made assessment under section 143(3) of the Act on 30/12/2022, determining total assessed income at ₹ 7,90,81,036, after making addition of ₹ 3,16,16,703, on account of unexplained money under section 69A of the Act. Being aggrieved the assessee preferred appeal before the first appellate authority.

4. The assessee has made details submission before the CIT(A), which has been reproduced by the learned CIT(A) in his order at Page-5 to 9, the extract of submission in the CIT(A) order are as under:-

"Addition of Rs. 3,16,16,703/-

4.1) *the assessee company is carrying on business of manufacturing of vegetable Palm oil. It purchases fresh fruits bunches (FFB, in short) from the farmers in nearby area. The FFB so purchased are crushed for extraction of palm oil.*

4.2) *During the course of search at the premises of the assessee, some loose sheets and rough note pads were found which contained some notings and figures with narration "cash". The Authorised Officer believed that these are cash sales which were not recorded in regular books of accounts. In the statement, Managing Director of the company explained that the management has neither any knowledge about any such entries of sales nor have they received any cash against sales.*

*During assessment proceedings, it was alternatively submitted that even if these amounts are considered as unrecorded sales in that case, only the profit embedded in such sales may be added to income. However, without fully appreciating facts of the case, the learned, AO held that the assessee has not given any evidence regarding purchases, direct expenses and indirect expenses related to these sales, hence treated the entries in the impounded documents as unrecorded sales and made addition of the entire amount as unexplained sales under section 69A, read with section 115 BBE of I T Act.*

4.3) *In this context it is submitted that During the course of search proceedings, some loose sheets and rough noting were found at the premises of the assessee. The production manager and the accountant of the assessee stated that such amount as mentioned in these rough noting represents cash sales made by the company. However, it is humbly submitted that no cash transaction was undertaken by the company and these rough noting belongs to the employees of the company.*

*The employees of the company were in contact with certain local buyers who could extract oil from the shells. The shells further required processing and therefore such employees may have incurred expenses like purchases, labour, transportation, loading and unloading etc.*

*The director of the company has also denied any sales being made by the company which were not accounted in the books of the accounts in his statement U/s 132(4) during the course of search proceedings. The assessee company has always denied any relation of such loose sheets with the sales of the company during the search proceedings and also during the post search proceedings. It is also submitted that no investment and /or cash to the extent of Rs. 3.16 crore to suggest unrecorded sales by the assessee.*

4.4) Without prejudice it is submitted that the assessing officer has treated the entire cash notings in the impounded documents as unrecorded sales and refused to accept argument of the assessee that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales, and only the profit embedded in it should be added to income. While doing so, the AO has held that the assessee has not given any evidence regarding purchases, direct expenses and indirect expenses related to these cash sales.

4.4.1) in this regard it is humbly submitted that in the case of *Man Mohan Sadani v. CIT (304 ITR 0052)* following question of law was raised before the hon'ble Madhya Pradesh High Court-

"(1) Whether, in the facts and circumstances of the case, the tribunal was correct in law in holding that the entire sales were liable to be assessed as income even when the purchases were recorded in books of accounts?"

Answering to the question the court held that the entire sale proceeds of the assessee should not be added to the income, only net profit rate has to be applied.

4.4.2) A similar question was raised by Revenue before Nagpur bench of ITAT in ITA No. 189/Nag/2013 (*ACIT v. Hasan Electricals*)-

"1. Whether on the facts and in the circumstances of the case, the CIT Appeal is correct whether income from unaccounted sales is to be estimated at GP rate inspite of the fact that the cost price of all the purchases including the purchases corresponding to unaccounted sales has been debited to Trading account."

Answering to this question the Hon'ble bench held as under-

"6. We have heard both the counsel and perused the records. We find that the AO in his case has held that the entire undisclosed sales is undisclosed income of the assessee. Learned CIT Appeals has referred to certain case laws and held that it is the profit embedded in the undisclosed sales that can be added to the income and not the entire undisclosed sales. This is a well settled proposition. Moreover, it is correct that the AO having accepted the assessee's submission in earlier two years cannot deviate and add the entire unaccounted sales as income of the assessee in the current assessment year. We find nothing in the AO's order, which shows that the AO has found that all the purchases and expenses relating to undisclosed sales were booked in the profit and loss account. Hence, the basis of such a ground relating to this effect which has been raised by the revenue is beyond our comprehension. In these circumstances we do not find any infirmity in the order of learned CIT Appeal. Accordingly, we uphold the same.

4.4.3) it is humbly submitted that it is settled position of law that in respect of unrecorded sales entire sale cannot be added to income but only the profit element in it may be added to income. Further reliance is placed on following judgments-

CIT V/s. Balchand Ajitkumar 263 ITR 610 (MP)

*Income from Undisclosed sources – Addition – Credit sales not reflected in books of account – Total un-recorded sales cannot be regarded as profit of the assessee – Net Profit rate has to be adopted*

CIT V/s. President Industries 258 ITR 654 (Guj)

*It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales.*

V. R. Textiles V/s. JCIT 11 ITR 476 (Trib) Ahmedabad

*It is settled law that the entire undisclosed sales could not be treated as profit of the assessee. We rely upon the decision of Hon'ble Gujarat High Court in the case of CIT V/s. President Industries Ltd. (supra) in which it was held that "addition cannot be of the entire undisclosed sale proceeds. Only the profit embedded in sale proceeds can be taxed." The learned CIT(A) was, therefore, justified in applying gross profit rate against unaccounted sales for the purpose of making the addition on account of undisclosed income of the assessee. Similarly, learned CIT(A) was justified in considering the issue of deployment of minimum capital investments for the purpose of making and rotating the sales outside the books of account.*

DCIT v. Brijwasi Developers Pvt Ltd. (ITA No. 290/Ahd/2013)

*In this case the issue involved was whether "on-money receipt" admitted by the assessee and calculated on the basis of material found during the course of survey is to be taxed in toto or income is to be determined by applying a specific rate of profit out of this "on-money receipt".*

*The Hon'ble ITAT held as under-*

*"In view of the facts of the case and respectfully following the law laid down by the jurisdictional High Court and Tribunal, I am of the considered view that even in the present case, where there are incomplete evidences of both unaccounted income (on money) and unaccounted expenditure incurred therefrom, the A.O. is not justified in making addition for the entire unaccounted receipts i.e. on-money in respect of 3 flats of 'Platinum Apartment' sold during the year under consideration and therefore, I hold that the income in this regard needs to be computed by applying a comparable rate of net profit on the on money received by the appellant on 3 flats sold during the year under consideration."*

ITO v. Shrikrupa Construction Co. (Mumbai ITAT) (13 SOT 459)

*In this case the AO proceeded on the basis of papers found during the course of survey and made addition. In appeal ITAT held that such papers apparently are not complete record of the income or expenditure*

of the assessee. Therefore, the total income cannot be properly calculated on the basis of such papers. CIT(A) has rightly directed that the profits of the assessee's business as a builder should be estimated by applying net profit rate of 15 per cent of the total consideration as per the sale agreements and also on the on money received by the assessee.

4.4.4) Considering facts of the case and legal position on the issue it is most humbly prayed to restrict the addition on account of unrecorded sales to the extent of profit embedded in the sales. Comparative gross profit and net profit ratio for last 3 years is as under-

Sr. No.	Assessment year	Gross Profit	Net Profit
1.	2021-2022	14.59%	5.56%
2.	2020-2021	10.42%	-2.71%
3.	2019-2020	9.95%	4.21%
4.	Average Profit	11.65%	2.55%

5. The learned CIT(A), at Page-10 to 13 of his order, observed as under:-

"Ground no. 6,7 and 8 are regarding addition of Rs. 3,16,16,703/-made u/s 69A of the Act on account of unrecorded sales. The appellant is carrying on business of extraction of vegetable Palm oil form Fresh Fruit Bunches which it purchases from the farmers in nearby area. During the course of search at the premises of the assessee, some loose papers are rough noted pads were found which contained notings and figures which narration "cash". The AO found that these cash are not recorded in regular books of accounts. In the statement, Managing Director of the company denied of having any knowledge about any such entries of sales. It was alternatively pleaded by appellant to add only profit embedded in such sales. The AO treated the entries in the impounded documents as unrecorded sales and made addition of the entire amount as unexplained sales under section 69A, read with section 115BBE of I.T. Act.

During appellate proceedings appellant submitted that through during search proceeding the Production Manager and the accountant of the assessee stated that such amount as mentioned in these rough noting represents cash sales made by the company however, no cash transaction was undertaken by the company and these rough noting belongs to the employees of the company. It was further stated by appellant that the employees of the company were in contact with certain local buyers who could extract oil from the shells. The shells further required processing and therefore such employees may have incurred expenses like purchases, labour, transportation, loading and unloading etc. Appellant alternatively pleaded to restrict the addition only to the extent of profit embedded in such cash sales.

During the course of search at business premises of the assessee various documents were found which contained receipt of cash from different parties that are not recorded in regular books of account. The

*AO is correct in holding that they are unrecorded sales. Now the issue is whether full amount of cash received can be added to income or the profit embedded in such sales should have been added to income. The appellant has relied on many judgment of various High Courts and Tribunal to plead that net profit on such sale should be added to income.*

*It is settled law that the entire undisclosed sales could not be treated as profit of the assessee. Hon'ble Gujrat High Court in the case of CIT Vs. President Industries Ltd (258 ITR 654) has held that "addition cannot be of the entire undisclosed sales proceeds. Only the profit embedded in sale proceeds cash be taxed"*

*Similar view has been taken in following cases -*

*a) Man Mohan Sadani v. CIT (304) ITR 0052) wherein following question of law was raised before the hon'ble Madhya Pradesh High Court*

*"(1) Whether, in facts and circumstances of the case, the tribunal was correct in law in holding that the entire sales were liable to be assessed as income even when the purchases were recorded in books of accounts?"*

*Answering to the question the court held that the entire sales proceeds of the assessee should not be added to the income, only net profit rate has to be applied"*

*b) A similar question was raised by Revenue before Nagpur bench of ITAT in ITA No. 189/Nag/2013 (ACIt v. Hasan Electricals)-*

*"1. Whether on the facts and in the circumstances of the case, the CIT Appeal is correct whether income from unaccounted sales is to be estimated at GP rate inspite of the fact that the cost price of all the purchases including the purchases corresponding to unaccounted sales has been debited to Trading account"*

*Answering to this question the Hon'ble bench held as under-*

*"6. We have heard both the counsel and perused the records. We find that the AO in his case has held that the entire undisclosed sales is undisclosed income of the assessee. Learned CIT Appeals has referred to certain case laws and held that is the profit embedded in the undisclosed sales that can be added to the income and not the entire undisclosed sales. This is a well settled proposition. Moreover, it is correct that the AO having accepted the assessee's submission in earlier two years cannot deviate and added the entire unaccounted sales as income of the assessee in the current assessment year. We find nothing in the AO's order, which shows that the AO has found that all the purchases and expenses relating to undisclosed sales were booked in the profit and loss account. Hence, the basis of such a ground relating to this effect which has been raised by the revenue is beyond our comprehension. In these circumstances we do not find any infirmity in the order of learned CIT Appeal. Accordingly, we upheld the same.*

c) CIT V/s. Balchand Ajitkumar 263 ITR 610 (MP)

*Income from Undisclosed sources – Addition – Credit sales not reflected in books of account – Total un-recorded sales cannot be regarded as profit of the assessee – Net Profit rate has to be adopted*

d) CIT V/s. President Industries 258 ITR 654 (Guj)

*It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales.*

e) V. R. Textiles V/s. JCIT 11 ITR 476 (Trib) Ahmedabad

*It is settled law that the entire undisclosed sales could not be treated as profit of the assessee. We rely upon the decision of Hon'ble Gujarat High Court in the case of CIT V/s. President Industries Ltd. (supra) in which it was held that "addition cannot be of the entire undisclosed sale proceeds. Only the profit embedded in sale proceeds can be taxed." The learned CIT(A) was, therefore, justified in applying gross profit rate against unaccounted sales for the purpose of making the addition on account of undisclosed income of the assessee. Similarly, learned CIT(A) was justified in considering the issue of deployment of minimum capital investments for the purpose of making and rotating the sales outside the books of account.*

f) DCIT v. Brijwasi Developers Pvt Ltd. (ITA No. 290/Ahd/2013)

*In this case the issue involved was whether "on-money receipt" admitted by the assessee and calculated on the basis of material found during the course of survey is to be taxed in toto or income is to be determined by applying a specific rate of profit out of this "on-money receipt".*

*The Hon'ble ITAT held as under-*

*"In view of the facts of the case and respectfully following the law laid down by the jurisdictional High Court and Tribunal, I am of the considered view that even in the present case, where there are incomplete evidences of both unaccounted income (on money) and unaccounted expenditure incurred therefrom, the A.O. is not justified in making addition for the entire unaccounted receipts i.e. on-money in respect of 3 flats of 'Platinum Apartment' sold during the year under consideration and therefore, I hold that the income in this regard needs to be computed by applying a comparable rate of net profit on the on money received by the appellant on 3 flats sold during the year under consideration."*

g) ITO v. Shrikrupa Construction Co. (Mumbai ITAT) (13 SOT 459)

*In this case the AO proceeded on the basis of papers found during the course of survey and made addition. In appeal ITAT held that such papers apparently are not complete record of the income or expenditure of the assessee. Therefore, the total income cannot be properly calculated on the basis of such papers. CIT(A) has rightly directed that the profits of the assessee's business as a builder should be estimated by applying net profit rate of 15 per cent of the total consideration as per the sale agreements and also on the on money received by the assessee.*

*Considering fact of the case and respectfully following the view taken by Hon'ble High Courts and ITAT the addition of Rs. 3,16,16,703/- made U/s. 69A on account of unrecorded sales is added and the AO is directed to make addition of gross profit @ 11.65%, which is average of the last three years gross profit, on unrecorded cash sales of Rs. 3,16,16,703/- as business income. Accordingly ground 6, 7 and 8 are partly allowed."*

6. We have heard the rival arguments, perused the material available on the record and gone through the order of the authorities below. Keeping in view the overall facts and circumstances of the case the appellant is carrying on business of extraction of vegetable Palm oil form Fresh Fruit Bunches which it purchases from the farmers in nearby area. During the course of survey at the office and factory premises of the assessee, some loose papers are rough noted pads were found which contained notings and figures which narration "cash", which are not recorded in regular books of accounts. The said facts have been denied by Managing Director of the company having any knowledge about any such entries of sales. During appellate proceedings appellant submitted that through during search proceeding the Production Manager and the accountant of the assessee stated that such amount as mentioned in these rough noting represents cash sales however, no cash transaction was undertaken by the company and these rough noting belongs to the employees of the company. It was further stated by appellant that the employees of the company were in contact with certain local buyers who could extract oil from the shells. The shells further required processing and

therefore such employees may have incurred expenses like purchases, labour, transportation, loading and unloading etc. In support of the its contention the assessee has submitted the affidavit of Vandrangi Satya Rao and K. Vamsi Khrishan, which is on Page-64 To 69 of the Paper Book, they have also denied the contention recorded in the statements during the course of search and seizure action. The assessee also furnished paper book containing the following documents which are tabulated below:-

<i>Sr. no.</i>	<i>Particulars</i>	<i>Page no.</i>
1.	<i>Copy of acknowledgment of return and Computation of Income</i>	<i>09 To 14</i>
2.	<i>Copy of audited Financial Statement and schedule</i>	<i>14 To 42</i>
3	<i>Copy of Ledger A/c. of Loss from LLP</i>	<i>43</i>
4.	<i>Copy of Intimation U/s. 143(1) of the Act Dated 24/08/2022</i>	<i>44 To 61</i>
5.	<i>Copy of reply filed before Assistant Commissioner of Income Tax dated 14/11/2022</i>	<i>62 &amp; 63</i>
6.	<i>Copy of Affidavit of Vandrangi Satya Rao &amp; K. Vamsi Khrishan</i>	<i>64 To 69</i>
7.	<i>Copies of reply filed before Assistant Commissioner of Income Tax dated 12/12/2022</i>	<i>70 To 76</i>

7. The learned CIT(A), at Page-9 of his order, has also prepared comparative chart of gross profit and net profit for last three years, which are reproduced below:-

<i>Sr. No.</i>	<i>Assessment year</i>	<i>Gross Profit</i>	<i>Net Profit</i>
1.	<i>2021-2022</i>	<i>14.59%</i>	<i>5.56%</i>
2.	<i>2020-2021</i>	<i>10.42%</i>	<i>-2.71%</i>
3.	<i>2019-2020</i>	<i>9.95%</i>	<i>4.21%</i>
4.	<i>Average Profit</i>	<i>11.65%</i>	<i>2.55%</i>

8. The chart showing the assessee was having gross profit @14.59% and net profit @5.56% during the previous year relevant to the assessment year

2021-2022, @10.42% gross profit and loss (-)2.71% during the previous year relevant to assessment year 2020-2021 and gross profit @9.95% and net profit @4.21% during the previous year relevant to assessment year 2019-2020 and there is average gross profit @11.65% and average net profit @2.55%. There is settled law that the entire undisclosed sales could not be treated as profit of the assessee. In support of the contention of the assessee, the assessee placed reliance on the following judgments:-

- i) *Man Mohan Sadani v/s CIT, [2008] 304 ITR 52 (M.P.);*
- ii) *ACIT v/s M/s. Hasan Electricals, ITA No.189/Nag./2013, order dated 15/01/2016; (ITAT Nagpur);*
- iii) *CIT v/s Balchand Ajit Kumar, [2003] 263 ITR 610 (M.P.);*
- iv) *CIT v/s President Industries, [2002] 258 ITR 654 (Guj.);*
- v) *V.R. Textiles v/s JCIT, [2011] 11 ITR 476 (ITAT Ahd.);*
- vi) *DCIT v/s Brijwasi Developers Pvt. Ltd., ITA no.290/Ahd./2012 and ITA no.3187/Ahd./2011, order dated 17/05/2017;*
- vii) *ITO v/s Saikrupa Construction Co., [2007] 13 SOT 459 (Mum. ITAT);*
- viii) *CIT v/s Hariram Bhambhani, [2015] 92 CCH 46 (Bom.);*
- ix) *Jyotibhaichand Bhaichand Saraf v/s DCIT, [2012] 139 ITD 10 (Pune ITAT).*

9. We have gone through order of the learned CIT(A) as well as judgment cited by the assessee supporting the case of the assessee. We find that the Assessing Officer has held that the entire undisclosed sales is undisclosed income of the assessee. The learned Departmental Representative strongly argued by relying upon the order of the Assessing Officer stating that the entire sale is the income of the assessee, which is a well settled proposition. We find nothing from the order passed by the Assessing Officer which shows

that the Assessing Officer pointed out purchases and expenses relating to undisclosed sales which were booked in the Profit & Loss Account. Hence, the basis of such ground relating to this effect which has been raised by the Revenue is beyond our comprehension. Under these circumstance, we do not find any infirmity in the impugned order passed by the learned CIT(A) and confirmed the addition of gross profit @11.65%, which is average of last three years' gross profit on unrecorded sales of ₹ 3,16,16,703. Considering these facts, the learned CIT(A) has rightly and fairly calculated the gross profit @11.65% and we uphold the order passed by the learned CIT(A) by dismissing the grounds no.1, 2 and 3, raised by the Revenue.

10. Ground No. 6, relates to charging of interest under section 234A, 234B and 234C of the Act.

7. Charging of interest being consequential and mandatory in nature, the Assessing Officer is directed to give consequential effect while computing the income of the assessee keeping in view my finding as aforesaid.

8. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 30/10/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 30/10/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur