

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 338/Bang/2014
Assessment Year: 2007-08

Late ML Krupal (HUF) Rpt. by legal Heir Suvina Krupal, Prop. M/s Prime Commodities BLV Complex, Somwarpet – 571236. PAN – AAFHK 0753 B	Vs.	The Income Tax Officer Ward – 1, Madikeri.
APPELLANT		RESPONDENT

Assessee by	:	Sri Abhijit P Bapu, Advocate
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	25.07.2024
Date of Pronouncement	:	25.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Id. CIT-A, Mysore dated 27/06/2013 in ITA No. 80/CIT(A)/MYS/12-13 for the assessment year 2007-08.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the addition of Rs. 25,64,032/-, representing unaccounted sale, made by the AO after ignoring the fact that the addition for the element of profit in the impugned unaccounted sales of Rs. 1,69,298/- has already been sustained.

2.1 It is the 3rd round of litigation before us. It is arising in pursuance to the directions of Hon'ble Karnataka High Court in ITA No. 638/2015 vide order dated 22/07/2022. The necessary facts are that the assessee is engaged in the business of trading of coffee seeds under the name and style of M/s Associated Coffee. The premises of the assessee was subject to survey operation u/s 133A of the Act dated 09/03/2007, wherein certain documents relating to the unrecorded purchase and sale were impounded. Based on the documents impounded, it was discovered that the assessee has made unaccounted purchase amounting to Rs. 1,43,64,108/- and unaccounted sales of Rs. 1,69,28,140/- only. Thus, the AO proposed to make an addition of Rs. 25,64,032/- being the difference of purchase and sale. However, the assessee submitted that there were certain parties (coffee planters) who have directly supplied to the companies and these companies required the assessee to raise the invoices on behalf of such parties. Accordingly, the assessee without having any element of profit has recorded purchase and sales of the same amount in the impounded documents. As per the assessee, such unaccounted purchase and sale did not have any element of profit. The assessee regarding the difference between the amount of purchase and sale bill i.e. Rs. 25,64,032/- discussed above, submitted that there was one purchase of Rs. 29,60,082/- from the coffee planters, which was inadvertently recorded in the books of account of the Karta in his personal capacity. As such, upon rectification of such mistake i.e. recording of unaccounted purchase of Rs. 29,60,082/- in the books, it (the assessee) has incurred losses against the profit as alleged by the revenue. Thus, according to the assessee no addition is warranted. However, the AO was not satisfied with the contention of the assessee and held that the assessee has earned a profit of Rs. 25,64,032/- from

the unaccounted trading and added the same to the total income of the assessee vide order dated 31/12/2009. Subsequently, the Id. CIT(A) also confirmed the order of the AO in his order dated 29/11/2011. On appeal before the ITAT in ITA No. 230/Bang/2012, the issue was set aside vide order dated 26/12/2012, to the file of the Id. CIT-A for fresh adjudication.

3. The Id. CIT(A) in consequence to the direction of the ITAT has again confirmed the addition made by the AO in his order dated 27/06/2013, which also subsequently confirmed by the Tribunal in ITA No. 338/Bang/2014 vide order dated 29/06/2015. Subsequently, the assessee against the finding of the ITAT in the order dated 29/06/2015 in ITA No. 338/Bang/2014 has challenged the same before the Hon'ble High Court of Karnataka in ITA No. 638 of 2015, which was decided in favour of the assessee vide order dated 22/07/2022. The relevant extract of the judgment is reproduced as under:

"9. A careful perusal of the orders passed by CIT(A) and ITAT extracted above, clearly shows that according to ITAT, CIT(A) had taken profit element on unaccounted sales as Rs.1,69,281/- (i.e., at 1% of unaccounted sales of Rs.1,69,28,140/-) and considered the balance amount of difference as unexplained investment and adjusted the same in the closing stock. Shri. Chandrasekar is right in his submission that this finding is not found in the order passed by CIT(A). The ITAT has recorded a further finding that assessee had adjusted the closing stock in re-cast accounts. If this finding is accepted, the question of adjusting the difference as 'unexplained investment' does not arise. Appellant has raised this specific ground in para 27 of the Memorandum of appeal. Thus, we are of the considered view that the findings recorded by the ITAT in para 11.5.6 is not sustainable and therefore, this appeal merits consideration.

10. Hence, the following "

(a) Appeal is allowed.

(b) The questions of law raised by assessee are answered in favour of the assessee and against the Revenue.

(c) Case is remanded to the ITAT to re-examine the matter and pass fresh orders in the light of the observations made herein."

4. At the time of hearing, the Id. AR submitted that the Hon'ble High Court of Karnataka has decided the issue in favour of the assessee but remitted the matter to the ITAT to re-examine the matter and pass the fresh order in the light of the observations discussed above. According to the Id. AR, the Higher judicial forum has clearly decided the issue in favour of the assessee and remitted back for the limited purpose to the ITAT to issue necessary direction to the revenue for allowing the appeal of the assessee.

5. On the other hand, the Id. DR could not controvert the arguments advanced by the Id. AR of the assessee.

6. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the issue in hand has reached finality by virtue of the order of the Hon'ble High Court of Karnataka vide order dated 22/07/2022. The extract of the same has been reproduced in the preceding paragraphs. The findings of the Hon'ble High Court are explicit that the appeal of the assessee is allowed but the issue was remitted to the ITAT for issuing the direction. Accordingly, we set aside the finding of the Id. CIT(A) and direct the AO to delete the addition made by him. Hence, ground of appeal of the assessee is hereby allowed.

7. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in court on 25th day of October, 2024

Sd/-

Sd/-

(GEORGE GEORGE K)

(WASEEM AHMED)

Vice President

Accountant Member

Bangalore,

Dated, 25th October, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore