IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

I.T.A. Nos. 1005 & 1006/Kol/2024

Assessment Years: 2018-19 & 2019-20

DCIT, Centra Circle-4(3), Kolkata	Vs.	Rajesh Jain 34, Ballygunge Circular Road, Kolkata-700019. (PAN: ACYPJ1553F)
Appellant		Respondent

Date of conclusion of Hearing	12.12.2024
Date of Pronouncement	17.12.2024
For the Assessee	Shri Akkal Dudhewala, AR
For the Revenue	Shri Praveen Kishore, CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

Both these appeals filed by the revenue are against the separate orders of Ld. CIT(A), Kolkata-27 evenly dated 22.02.2024 for AYs 2018-19 and 2019-20 arising out of assessment orders passed u/s. 153A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") by ACIT, Central Circle-4(3), Kolkata dated 30.09.2021 respectively.

2. At the outset, we note that there is a delay in filing the appeals by the revenue of 11 days by the revenue which was stated to be on account of the time taken in obtaining various information/sanctions and also in complying with the formalities in the administrative hierarchy. Considering the facts of the case and the rival contentions of the parties, we are inclined to condone the delay on the ground of reasons for delay being genuine and bona fide. Accordingly, the delay is condoned and the appeals are admitted for adjudication. First, we take up ITA No. 1006/Kol/2024.

3. Ground no. 1 of the revenue is against the deleting the addition of Rs.4,94,43,275/- in respect of undisclosed sales by the assessee without appreciating the materials brought on record and facts evaluated by the AO in the assessment order.

4. Facts in brief are that the assessee filed his return of income on 28.10.2019 declaring total income of Rs.1,82,15,400/-. A search action u/s. 132 of the Act was conducted in the case of Rajesh Jain & Ors on 02.04.2019 during which several incriminating documents were found and seized. The Rajesh Jain Group is engaged in the business of trading of readymade garments, fabrics and other related activities. Accordingly, notice u/s. 153A of the Act was issued on 27.02.2021 which was duly served on the assessee and the assessee complied with the said notice by filing return of income in compliance on 30.03.201 declaring income of Rs.1,82,15,400/-. Thereafter, statutory notices were duly issued and served on the assessee along with the questionnaire. The AO, during the course of assessment proceeding noted from the seized documents RJ/1, RJ/2, RJ/3 and RJ/SD/1 seized during the course of search proceeding that there was undisclosed sales to the tune of Rs.5,08,35,849/-. Pertinent to state that while filing the return of income in compliance to notice issued u/s. 153A of the Act, the assessee disclosed profit on undisclosed/unrecorded sales as stated above to the tune of Rs.13,92,624/- being income from unrecorded sales including initial investment. The Ld. AR submitted before the AO that the assessee was in the business of trading activities and readymade garments and fabrics at the relevant point of time in the name of following three companies wherein the unrecorded sales were found:

i) G.H. Agencies Pvt. Ltd.
ii) Vini Fabrics Marketing Pvt. Ltd.
iii) Subhphal Marketing Pvt. Ltd.

5. Accordingly, a show cause notice was issued to the assessee which was replied vide written submission dated 27.09.2021 whereby the assessee filed a detailed reply claiming expenses like purchases to arrive at net income from undisclosed sales. According to the AO, since the assessee has not produced any bills, vouchers of purchase/expenses the genuineness of the claim could not be verified and consequently, rejected the same by treating the unrecorded sales of Rs.5,08,35,899/- as income of the assessee . However, an allowance was made to the tune of Rs.13,92,624/- which was offered by the assessee in his return of income as income from unrecorded sales found during the course of search and

consequently, a sum of Rs.4,94,43,275/- was added to the income of the assessee in the assessment framed u/s.153A vide order dated 30.09.2021.

6. Being aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A), who allowed the appeal by observing and holding as under:

> *"5.2.1. I have gone through the assessment order as well as the submissions of the assessee. It is noticed that during the search & seizure operation conducted on the assessee u/s 132 of the Act, several incriminating documents with identification number RJ/1, RJ/2, RJ/3 & RJ/HD/1 were seized which depict undisclosed sale of Rs.5,08,35,899/-. It is also observed that during the recording of statement u/s 132(4) of the Act, the assessee had admitted the same undisclosed sale. Later, during the assessment proceedings, in response to the notice u/s 153A of the Act, the assessee had only included Rs.13,92,624/- as additional income. Further, in response to notices u/s 142(1) of the Act, the assessee explained how he had arrived to his additional income i.e., the net profit on the undisclosed sales of Rs.5,08,35,899/-. It is observed that during the assessment proceedings the assessee had claimed purchase of RsA,94,43,275/- against the said undisclosed income. Additionally, it is also observed from the assessment record that to substantiate his claim of the said purchase, he submitted all the relevant bills and vouchers to the AO during the assessment proceedings. However, during the assessment proceedings, the AO could not consider the said submissions of the assessee and made addition of total undisclosed sale of Rs.5,08,35,899/- to the income of the assessee.*
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> *5.2.2. It is noteworthy to mention that it is a settled law that for the purposes of computing the total income under the Act deduction shall be allowed in respect of expenditure incurred by any person in relation to the income which form part of the total income under the Act. It is a common knowledge that in case of any sales incurred, only profit therefrom could only be taxed as income of that person. The same is applicable to any undisclosed sales, that the relevant purchase should be allowed for deduction. The person is only liable to be taxed on the profit made on such sales and not on the entire sales amount. Here, in the present case also, the assessee had incurred purchase of Rs. 4,94,43,275/- and the relevant bills, vouchers and details were provided by the assessee to the AO during the assessment proceedings. In the appellate proceedings also, the assessee had submitted all the requisite details and documents in support of the purchase he had made in respect of the said undisclosed sale of Rs.5,08,35,899/-.*
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> *5.2.3. Reliance was placed by the assessee on the following judicial pronouncements in support of his contention:*
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> *a) In the case of 'MGV Jain Jewellers (P.) Ltd. vs. Income-tax Officer; [2022] 138 taxmann.com 482 (Delhi - Trib.)' the Hon'ble ITAT DELHI had held the following:*
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> *"Based on the details of purchases, the revenue authorities have added the entire quantum of the value of the sale of gold made by the assessee. We find that addition of the entire amount cannot be held to be valid and there is no dispute that the sale to Mis Kartika Gold Enterprises could not have been made without purchase of gold by the assessee. Hence, the cost of gold has to be deducted from the sale price and the profit earned by the assessee through the sale should be rightly brought to tax. The appropriate way to determine the profit earned by the assessee is to be based on the gross profit earned by the assessee in the regular course of business."*
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> *b) In the case of 'CIT v. Bokaro Steel Ltd. (No.1) [1988] 170 ITR 522 (Pat.)', the Hon'ble Patna High Court had held the following:*

'Gains' is really the equivalent of 'profits'. The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. The tax is upon income, profits or gains; it is not a tax on the gross receipts. The expression 'profits' or 'gains' is not limited to business only, but is used in the Act with reference to other sources of income as well.

c) In the case of 'ACIT, Central Circle 1(3), Chennai. VIs Shri V. N. Oevadoss, [2013] 32 taxmann.com 133', the Hon'ble ITAT, Chennai had held the following:

"Where an assessee has filed his return of income as prescribed by law, even if as a consequence of search carried out under section 132 and in consequence of notice issued under section 153A, the assessee is obviously entitled for claiming corresponding deductions provided in law. The deduction claimed in a return filed under section 153A cannot be denied on the ground that the claim was not made earlier in a return filed under section 139(1).

In the present case, the returns were filed because of section 132, section 153A and consequently because of section 139. Income of the assessees had to be declared because of the event of search. At that time the assessees were equally entitled to claim lawful deductions available to them. A claim made by an assessee cannot be denied only on the ground that the return was filed in consequence of search."

d) The Hon'ble Bombay High Court, in the case of 'CIT v. B. G. Shirke Construction Technology (P.) Limited [2017] 79 taxmann.com 306' had held the following:

"Consequent to notice under Section 153A of the Act the earlier return filed for the purpose of assessment which is pending, would be treated as non est in law. Further, Section 153A(1) of the Act itself provides on filing of the return consequent to notice the provision of the Act will apply to the return of income so filed. Consequently, the return filed under Section 153A(1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent-assessee is being assessed in respect of abated assessment for the, first time under the Act. Therefore the provisions of the Act which would be otherwise applicable in case of return filed in the regular course under Section 139(1) of the Act would also continue to apply in case of return filed under Section 153A of the Act and the case laws on the provision of the Act would equally apply."

e) The Hon'ble ITAT, Jaipur, in the case of 'The ACIT, Central Circle - 3, Jaipur Vs. Shri Nawal Kishore Soni 348, Manglam Marg, Brahmpuri Jaipur' had held the following:

"It is only profit on sale of said purchased gold which is income of assessee which was undisclosed income of assessee and the same could only be subjected to tax. It is settled law that in case of unaccounted sales only profit therefrom could only be taxed as income of assessee. The assessee relies on the judgement of ITAT, Ahmedabad Bench in case of DCIT Vs. Brijvasi Developers P. Ltd. ITA No. 290lAhdl2013 order dated 17-5-2017"

f) The Hon'ble Gujrat High Court, in the case of CIT Vs. President Industries 158 CTR 372 (Guj)' had held the following:

"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 realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold have been made by the assessee and that has also not been disclosed. In

the absence of such finding of fact the question whether entire sum of undisclosed sale proceeds can be treated income of the relevant assessment year answers by itself in negative.

g) In the case of in case of 'Manmohan Sadani Vs. CIT 304 ITR 52 (MP)', the Hon'ble Madhya Pradesh High Court had held the following:

"this Court in the said judgement his not held that the entire sale proceeds have to be should be regarded as profit or treated as undisclosed income of the assessee. On the contrary, this Court has categorically held that it is the net profit rate which has to be adopted in such cases."

5.2.4. In view of the aforesaid judicial pronouncements as well as the discussion held above, it can be inferred that total receipt of unaccounted sale proceeds cannot be considered as unaccounted income of the assessee. Relevant purchases and other expenses related to the said unaccounted sale should also be taken in account while determining unaccounted income of the assessee for unaccounted sale. The purchases and other expenses as declared by the assessee should be considered for arriving at unaccounted income of the assessee. Hence, the AO is directed to allow the expenses claimed by the assessee for such unaccounted sale. The assessee has accepted Rs.13,92,624/- as his income against the undisclosed sale which has already incorporated by the assessee in his Return of Income filed u/s 153A of the Act for the subjected AY 2019-20. Therefore, the addition of Rs.4,94,43,275/- is to be deleted. Hence, these grounds of appeal raised by the assessee are allowed."

7. After hearing the rival contentions and perusing the material available on record, we find that a search action u/s.132 of the Act was conducted on the assessee on 02.04.2019 during which certain documents were found and seized. The AO during the course of assessment proceedings noted that assessee had made some sales to the tune of Rs.5,08,35,899/- which were not unrecorded. We observe that in compliance to notice u/s 153A on 30.03.2021 the assessee filed the return of income in the assessee disclosed and showed income on unrecorded sales at Rs.13,96,624/- in respect of three companies qua which the unrecorded sales were found namely, G.H. Agencies Pvt. Ltd., Vini Fabrics Marketing Pvt. Ltd. and Subhphal Marketing Pvt. Ltd. The AO rejected the contention of the assessee to treat the net income on the said unrecorded sales on the ground that assessee could not produce any bills, vouchers in connection with the purchases and other expenses and thereby treated the entire sale of Rs.5,08,35,899/- as undisclosed sales and after making an allowance towards income/ profit of Rs.13,92,624/- already shown in the return of income filed u/s 153A of the Act, a net addition of Rs.4,94,43,275/- was made. In the appellate proceeding by Ld. CIT(A) noted that during the course of assessment proceeding assessee claimed to have made purchases and expenses to have been incurred in connection with the recorded sales to the tune of Rs.4,00,95,375/-. The Ld. CIT(A) also observed from

the assessment records that assessee submitted all the bills and vouchers during the course of assessment proceeding, which the AO somehow overlooked and treated the entire sales as undisclosed income of the assessee. Thereafter, the Ld. CIT(A) noted that even if the unrecorded sales were detected during the course of search, the entire amount cannot be added and only the profit element has to be estimated and added to the income of the assessee. According to Ld. CIT(A), the assessee has incurred purchases/expenses to the tune of Rs.4,94,43,275/- against such unrecorded sales. The bills and vouchers along with details were also provided during the assessment as well as appellate proceedings and finally after following a series of decisions as noted above, noted that the unaccounted sales cannot be treated as unaccounted income and allowance has to be made for the purchases and other expenses incurred by the assessee for arriving at the unrecorded income. Accordingly, the Ld. CIT(A) directed the AO to delete the addition of Rs.4,94,43,275/- as the AO himself accepted the profit of Rs.13,92,624/- as income against the said unrecorded sales. The AR of the assessee cited before us the following decisions which squarely covers the assessee's case:

i. CIT vs. President Industries (124 taxmann.com 654) [Gujrat HC]
ii. PCIT vs. Anumpam Organiser (Appeal No. 168 of 2020) [Gujrat HC]
iii. CIT vs. Ajay Kapoor (36 taxmann.com 513) [Delhi HC]
iv. CIT vs. Leo Formulations (P.) Ltd (48 taxmann.com 328) [Gujrat HC]
v. V.R. Textile vs. JCIT (ITA 949/ AHD/2007) [ITAT Ahmedabad]
vi. Jyotichand Bhaichand Saraf & Sons (P.) Ltd vs. DCIT (Appeal No. 08(PN) of 2011) [ITAT Pune]
vii. MGV Jain Jewellers (P.) Ltd vs. ITO (Appeal No. 2896 of 2017) [ITAT Delhi]

7.1. In the case President Industries (supra), the Hon'ble Gujarat High Court has held as under:

> *"The amountof sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that the investment by way of incurring cost in acquiring goods which have been sold has*

been made by the assessee and that has also not been disclosed, the question whether entire sum of undisclosed sales proceeds can be treated as income, answers by itself in the negative.
As a result, no question of law arose out of the Tribunal's appellate order."

7.2. Similarly, in the case of Anumpam Organiser (supra), the Hon'ble Gujarat High Court has held as under:

"13. Our attention was also drawn to the decision of the M. P. High Corut in the case of Man Mohan Sadani v. Commissioner of Income Tax, reported in (2008) 304 ITR 52, wherein referring to and relying upon the decision of this court in the case of Commissioner of Income Tax v. President Industries (supra) and other decisions of other High Courts, the M. P. High Court had also taken a similar view. It was observed that entire sale proceeds of the assessee should not be added in his income and that the Tribunal has erred in doing so.

14. We may recall that the Tribunal, in the impugned judgement, relied on its previous judgement in case of Kishor Mohanlal Telwala. The said judgement of the Tribunal was apparently carried in appeal by the revenue. The High Court by a speaking order dated 24.4.2000, dismissed the appeal holding that no question of law was involved. Significantly, in case or Kishor Mohanlal Telwala, the assessee was engaged in the business of construction. In his case, unaccounted receipt of Rs.1.47 crores was detected. In this background, the Division Bench confirmed the view of the Tribunal and did not accept the contention of the revenue that as no accounts had been maintained to substantiate the expenditure incurred by the assessee, the entire amount received by the respondent should be treated as income. The Court concluded that the Tribunal was justified in considering that the respondent- assessee ought C/TAXAP/168/2020 ORDER to have spent reasonable amount for the purpose of receiving such gross receipt.

15. It can, thus, be seen that consistently, this Court and some other Courts have been following the principle that even upon detection of on money receipt or unaccounted cash receipt, what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. If that be the legal position, what should be estimated as a reasonable profit out of such receipts, must bear an element of estimation.

16. In view of the legal position that not the entire receipts, but the profit element embedded in such receipts can be brought to tax, in our view, no interference is called for in the decision of the Tribunal accepting such element of profit at RS.26 lakhs out of total undisclosed receipt of Rs.62 lakhs. In other words, we accept the legal proposition, the Tribunal accepting RS.26 lakhs disclosed by the assessee as profit out of total undisclosed receipt of Rs.62 lakhs, would not give rise to any question of law."

7.3. In the case of Ajay Kapoor, the Hon'ble Delhi High Court has held as under:

" On reading the reasoning given by the Tribunal, it need not be interfered with on the ground that it is perverse. There may be some reservations, but the basic facts, form the core and foundation of the order. These include the GP rate of the assessee as recorded in the books of account for this year and the earlier years. There are some reservations on the observation made by the Tribunal that as it was a case of unrecorded sales, benefit of tax was passed on the third parties. Further, observation of the Tribunal that the Assessing Officer had not analyzed the item-wise purchase and sale price though the documents seized reflected the item-wise sales and purchases, is debatable. Nevertheless, there are substantial and good reasons for adopting the G P rate of 2.25 per cent, as it is apparent

that GP rate of 53.76 per cent adoptedby the Assessing Officer is too high and unacceptable. [Para 10]

• However, on the next issue whether any addition should have been made on account of unaccounted investment, the reasoning and logic given by the Tribunal cannot be comprehended. It was recorded that the assessee did not maintain day-to-day stock record/register and, therefore, it cannot be said that unrecorded sales could not have been of accounted stock, which was later on replenished from the sale proceeds of unrecorded sales. Thus, the assessee had not made any investment for the unrecorded transactions. It is held that no evidence of unaccounted investment was found at the time of search. Once the stock register was not there as recorded by the Tribunal in its order, the said finding itself apparently is contradictory. [Para 11]

• The finding that no incriminating document regarding investment was found is contradictory because the Tribunal has accepted and admitted that the assessee had himself confirmed that he had made sales outside the books of account, which were unaccounted sales. Thereafter, it was for the assessee to explain and state the source/funds for conducting and entering into the said transaction. Plea of the assessee that existing or available investment in the books was sufficient, has to be made good with material and proof by the assessee. The assessee had to explain that purchases recorded in the books were sufficient after adjustment of the recorded sales. In cases of unaccounted sales and purchases, all documents may not be available and certain amount of guess work is lalways required as noticed earlier, but a realistic and common sense approach is required. [Para 11]

• The finding recorded by the Tribunal that proof of unaccounted purchases did not prima facie indicate or show that unaccounted investment was made, as there was other apparent evidence to the contrary is also not acceptable. Onus, in such cases, is on the assessee to show that unaccounted investment was made out of accounted stock. There cannot be any assumption or presumption that unaccounted sales must be from accounted purchases. Unaccounted sales may result and can contribute towards the investment, but there has to be initial investment. Profits and income earned are also used for personal needs and are taken out of business. [Para 11]

• The Tribunal did not deal with the second issue in right perspective by placing the onus on the revenue to explain the source of investment made by the assessee though there were unaccounted sale transactions. It has ignored relevant and material facts and has gone on a tangent without examining the real issue and the controversy, i.e., whether the assessee explained the source of funds required for making investment to have such turnover as the unaccounted sales. Therefore, this part of the order is perverse and cannot be accepted. [Para 13].

The question is answered partly in favour of the appellant and against the respondent. (para 17)"

7.4. In the impugned appeal before us , the incriminating materials found during search undisputedly revealed that there were unrecorded sales by the assessee and therefore once it is established that there are recorded sales, then only profit rate can be applied to assess the income embedded therein. In the present case the assessee suo-motto disclosed the profit on the said unrecorded sales in the return of income filed in compliance to section 153A of the Act. Therefore, respectfully following the ratios as laid down in the above decisions, we

uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue. The appeal of the revenue is dismissed.

ITA No. 1005/Kol/2024

8. The facts and issue are identical in this appeal as we have decided in ITA No. 1006/Kol/2024 (supra). Therefore, our decision/finding of ITA No. 1006/Kol/2024 (supra) would, mutatis mutandis, apply in this case also.

9. In the result, both the appeals of the revenue are dismissed.

Order is pronounced in the open court on 17th December, 2024

Sd/-	Sd/-
(Pradip Kumar Choubey)	(Rajesh Kumar)
Judicial Member	Accountant Member

Dated: 17th December, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–DCIT, Central Circle-4(3), Kolkata.
2. Respondent – Shri Rajesh Jain
3. CIT(A), Kolkata-27
4. Pr. CIT
5. DR, ITAT, Kolkata,

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