

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 7548/DEL/2019 [A.Y 2015-16]

The A.C.I.T  
Circle - 47(1)  
New Delhi

Vs.

Nav Bharat Trading Company  
4048-A, Naya Bazar  
New Delhi

PAN - AAAFN 3041 J

(Applicant)

(Respondent)

Assessee By : Shri Salil Kapoor, Adv  
Ms. Ananya Kapoor, Adv  
Shri Shivam Yadav, Adv

Department By : Shri Maneesh Rajani, Sr. DR

Date of Hearing : 30.10.2024  
Date of Pronouncement : 18.12.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - 16, New Delhi dated 22.07.2019 pertaining to A.Y 2015-16.

2. The solitary substantive ground raised by the Revenue pertains to deletion of addition of Rs. 2,72,60,531/- out of addition of suppressed sales of Rs. 3,71,75,141/- on the reasoning that only gross profit on suppressed sales can be treated as income without appreciating that onus is on the assessee to prove that any expenses were incurred outside books of accounts against such suppressed sales.

3. Briefly stated, the facts of the case are that the assessee filed its return of Income on 30.11.2015 declaring an income of Rs. 13,71,270/. Return was selected for complete scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

4. The assessee is in the business as a dealer of food grains and commission agent and has income from other sources. Copy of Audit report in Form 3CD was furnished during the assessment proceedings. On perusal of the same, the Assessing Officer noticed that sale of Rs. 36,86,36,834/- included consignment sale of Rs. 3,71,75,141/- and the assessee has not shown any commission income on the said consignment sale.

5. The assessee was asked to furnish documentary evidence with details of commission income earned and TDS deducted. The assessee could not produce the required details. Therefore, the assessee was show caused to reply as to why the amount of Rs. 3,71,75,141/- should not be considered as suppression of sale and added back to the income of the assessee.

6. Reply tendered by the assessee was not found tenable by the Assessing Officer who was of the opinion that the difference of Rs. 3,71,75,141 claimed by the assessee between VAT return and ITR as consignment sale is an after-thought and accordingly, the amount of Rs. 3,71,75,141/- was added back to the income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act were initiated separately.

7. Aggrieved, the assessee went in appeal before the Id. CIT(A) who held that the claim of the assessee that sales of Rs 3,71,75,141/- were commission sales is not borne out by any authentic evidence and sales outside the books of account. The CIT(A), however, further held that the entire sales receipts cannot be treated as income of the assessee and only profits on the sales can be treated as income of the appellant. He, therefore, directed the Assessing Officer to ascertain

the gross profit rate of the appellant in his regular business and apply the same to the suppressed receipts of Rs 3,71,75,141/- and treat the consequent profits as taxable income in the hands of the assessee.

8. In addition, the CIT(A) also held that 20% of suppressed receipts be treated as undisclosed investment in purchases of agricultural products which were subsequently sold outside his books of account.

9. Now the Revenue is aggrieved and has come in appeal before us.

10. Before us, the ld. DR vehemently stated that the ld. CIT(A) erred in deleting the addition without realizing that such sales were already part of accounts and expenses fully claimed by the assessee as per audited accounts and granting further expense will be without any basis or rationale.

11. Per contra, the ld AR submitted that the rice during the year was purchased from agricultural marketing committees, wholesalers and the assessee had also sold rice on consignment basis received from small Kisans/Agriculturalists. The ld AR stated that the VAT returns reflected sales of Rs. 36,86,36,834/- as against the sales turnover of

Rs. 33,14,61,693/- reflected in the audited profit and loss account filed during the course of assessment proceedings.

12. The Id AR explained that the difference in turnover is because the VAT returns included the figure of consignment sales of Rs. 3,71,75,141/- which had not been treated as sales of the assessee firm.

13. The Id AR submitted that the assessee was approached by different parties who were not in organized trade to make sales on their behalf as the firm is located in the heart of the grain market and has a long established credibility in the market. The assessee firm as a matter of routine had received material at its premises from the consignors who were in the unorganized sector, and had made consignment sale of rice of Rs. 3,71,75,141/- during the year.

14. It is the say of the Id AR that the consignment sales of Rs. 3,71,75,141/- was not included in the audited sales figure reported in profit and loss account as the assessee firm was not the beneficiary of such sales proceeds and had acted in fiduciary capacity. The agricultural trade in India is still primarily conducted in cash and the assessee firm has merely facilitated sales on behalf of agriculturist.

15. The Id AR further stated that the assessee firm did not receive any commission on consignment sales as it effected sales on behalf of petty agriculturist who were in regular contact with the partners of the appellant firm since long. Detail of parties to whom consignment sale was made, was produced.

16. We have heard the rival submissions and have perused the relevant material on record. The assessee has before us filed a detailed list of parties to whom the sales were made during the year. The list includes names of parties for whom consignment sales are also made. We find that the parties to whom sales are made are also the same parties for whom consignment sales are made. There is, however, no details of any commission receipt from such parties for whom consignment sales are made.

17. We also note that the assessee has explained the non-charging of commission from such parties stating that such parties are small and petty agriculturalist belonging from unorganized trade and the assessee as a matter of routine had received material from such consignors at its premises to make sales on their behalf. We find from the list of sales produced before us, that one party namely Kirpal

Traders for whom consignment sales were made, the total sale is of Rs 97.78 lakh out of which Rs 58.15 lakh was on account of consignment sale. Similarly, another party by the name of Maruti Overseas, the consignment sales is Rs 64.42 lakh out of total sales of Rs 66.73 lakh. Similarly, the assessee made consignment sales of Rs 13.30 lakh out of Rs 18.55 lakh sales for Sunil Traders. Another party Sunrise agro Foods, the consignment sales is Rs 38.04 lakh out of total sale of Rs 38.04 lakh. We therefore note that parties to whom such kind of sales are being made without charging commission, can not be considered as small and petty agriculturalist. We also take note of the findings of the AO and the CIT(A) that proper evidence of consignment sales were not produced before the AO or the CIT(A). We therefore are of the opinion that the assessee explanation is too specious and are devoid of any cogent or documentary evidence.

18. We are therefore of the considered view that the CIT(A) rightly rejected the explanation of the assessee and held the consignment sales as suppressed sales. We also endorse the findings of the CIT(A) that the entire sales, claimed as consignment sales, cannot be treated as income of the assessee and only gross profits on the suppressed sales of Rs 3,71,75,141/- can be treated as income of the assessee. We

also uphold the direction of the CIT(A) to treat 20% of suppressed sales as undisclosed investment made in the purchase for such sales. Accordingly, the ground 1 and 2 of the revenue is dismissed.

19. In the result, the appeal filed by the Revenue in ITA No. 7548/DEL/2019 is dismissed.

The order is pronounced in the open court on 18.12.2024.

Sd/-

Sd/-

[VIKAS AWASTHY]  
JUDICIAL MEMBER

[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER

Dated: 18<sup>th</sup> DECEMBER, 2024.

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	