

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.17/Nag./2024
(Assessment Year : 2019-20)

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

..... Appellant

v/s

Radhika Vegetable Oils Pvt. Ltd.
Shreeramanagar (P.O)
Duvvam Village, Vizianagaram 535 101
PAN – AAACR8333C

..... Respondent

Assessee by : Shri Mukesh Agrawal
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/12/2024

Date of Order – 27/01/2025

ORDER

PER V. DURGA RAO, J.M.

The captioned appeal by the Revenue is directed against the impugned order dated 22/11/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2019-20.

2. In its appeal, 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 of Rs.1,49,01,910/- made by the A.O. on account of unrecorded sales made U/s 69A of the IT Act, 1961 and considering only G.P % for addition.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that the assessee follows mercantile system of accounting, books were audited and closed.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that also no withdrawal for corresponding purchase to these sales were noted in books hence unexplained source that is sales minus GP should be added u/s 69A and considered for violation u/s 40A(3) of the Act."

3. Facts in Brief:—The assessee is a company carrying on business of manufacturing of vegetable palm oil. It purchases fresh fruits bunches from the farmers in nearby area and the fresh fruits bunches so purchased are crushed for extraction of palm oil. There was a search and seizer action under section 132 of the Income Tax Act, 1961 ("*the Act*") was conducted in Radhika Group of cases at Visakhapatnam on 25/08/2021. In consequence of search and survey action was also conducted on 25/08/2021, at the office premises of the assessee and factory premises at Viziyanagaram. Subsequently, notice under section 148 of the Act was issued in response to which the assessee declared income of ₹ 2,54,08,560. The case was selected for compulsory scrutiny and ultimate the assessment order was passed under section 143(3) r/w section 147 of the Act on 30/06/2003, determining total income of ₹ 4,03,10,470, after making addition of ₹ 1,49,01,910, on account of unexplained money under section 69A of the Act.

4. The case of the assessee is that the addition made by the Assessing Officer of ₹ 1,49,01,910, on account of unrecorded sales. During the course of search at the premises of the assessee, some loose and rough noting pads were found which contained notings and figures with narration "*cash*". The Assessing Officer found that these cash were not recorded in the regular books of account. In the statement, the Managing Director of the assessee company denied of having any knowledge about any such entries of sales.

However, the Assessing Officer not accepted the explanation of the assessee and he made addition of ₹ 1,49,01,910, on the basis of loose sheets as unexplained sales under section 69A r/w section 115BBE of the Act.

5. On appeal, the learned CIT(A), considering the entire submissions made by the assessee, deleted the addition made by the Assessing Officer and restricted the addition to gross profit on such unrecorded sales. The relevant portion of the order of the learned CIT(A) is extracted below:–

"5. Decision & Discussion:

The appellant has raised Seven grounds of appeals, out of which ground no. 1, ground no. 2, ground no.3 and ground no. 7 are general in nature and not adjudicated. Hence these grounds of appeals are hereby dismissed.

Ground no. 4, ground no. 5 and ground no. 6 are regarding addition of Rs. 1,49,01,910/- made u/s 69A of the Act on account of unrecorded sales. The appellant is carrying on business of extraction of vegetable Palm oil from Fresh Fruit Bunches which it purchases from the farmers in nearby area. During the course of search at the premises of the appellant, some loose papers and rough note pads were found which contained notings and figures with 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 IT Act.

During appellate proceeding appellant submitted that though during search proceeding the Production Manager and the accountant of the appellant stated that such amount as mentioned in these rough noting represents cash sales made by the company however, however, no cash tran transaction was undertaken by the company and these rough noting belongs to the employers prane 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 appellant various documents were found which contained receipt of cash from different parties that are not recorded in regular books of accounts. 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 judgments of various High Courts and Tribunal to plead that net profit on such sales should be added to income.

It is settled law that the entire undisclosed sales could not be treated as profit of the appellant. Hon'ble Gujarat High Court in the case of CIT V/s. President Industries Ltd. (258 ITR 654) has held that "addition cannot be of the entire undisclosed sale proceeds. Only the profit embedded in sale proceeds can 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 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.

b). A similar question was raised by Revenue before Nagpur bench of ITAT in ITA No. 189/Nag/2013 (ACITV. HasanElectricals)-

"1. Whether on the facts and in the circumstances of the case, the CIT Appeal is correct Whether Income from unaccounted estimated ated at GP rate inspite of the fact that purchases including the purchases De Palace cost been debited to correspo Trading account AX DEP21 sales is be to price of all the unaccounted sales has

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.

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 facts of the case and respect wing the view taken Hon'ble High Courts and ITAT account of unrecorded sales is the addition of Rs. 1,49,01,910/- made u/s 69A on account of unrecorded sales is deleted and the A.O. is directed to make addition gross profit @8.95%, which is average of last three years gross profit, c unrecorded cash sales of Rs. 1,49,01,910/- as business income. According ground no. 4, 5 and 6 are partly allowed."

Against this order of the learned CIT(A), the Revenue is in appeal before the Tribunal.

6. Before us, the learned Counsel for the assessee submitted that this issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, rendered in assessee's own case for the assessment year 2021-22 and prayed that the same may be followed and the addition should be restricted to gross profit on such unrecorded sales.

7. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. The issue for our adjudication is squarely covered by the decision of the Co-ordinate Bench, passed in assessee's own case in DCIT v/s Radhika Vegetable Oils Pvt. Ltd., ITA no.236/Nag./2023, for A.Y. 2021-22, vide order dated 30/10/2024, wherein the Tribunal has dismissed the Revenue's appeal and confirmed the order of CIT Appeal. The relevant portion of the order of the Co-ordinate Bench is reproduced below for reference:-

"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:-

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

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:-

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%

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: –

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

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."

8. Since the issue before us is squarely covered by the aforesaid decision of the Tribunal rendered in assessee's own case, we decline to interfere with the order passed by the learned CIT(A) which is hereby upheld by dismissing the grounds raised by the Revenue.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27/01/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 27/01/2025

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