

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं

श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 195/GTY/2018
Assessment Year: 2014-15**

Sri Picklu Paul	Vs.	Assistant Commissioner of Income Tax, Circle-Silchar
(Appellant)		(Respondent)
PAN: AWPP6297L		

Appearances:

Assessee represented by : None.

Department represented by : Kausik Ray, JCIT.

Date of concluding the hearing : December 23rd, 2024

Date of pronouncing the order : January 28th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)-Shillong [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2014-15 dated 15.02.2018, which has been passed against the assessment order u/s 143(3) of the



Act, dated 30.12.2016. None appeared on behalf of the assessee and the appeal was heard with the assistance of the Ld. DR and on the basis of the paper book filed by the assessee.

2. There is a delay in filing the appeal. The date of the order of the Ld. CIT(A) is 15.02.2018 and as per column 9 of Form No. 36, the same was communicated to the assessee on 28.02.2018 while Form No. 36 is dated 02.07.2018. Thus, there is a delay in filing the appeal. The assessee has filed an application dated 02.07.2018 seeking condonation of delay along with an affidavit. It is stated in the application that the assessee is the Proprietor of M/s. P.P. Jewellers, Karimganj in the District of Karimganj, Assam. The impugned order was served upon the wife of the assessee on 28.02.2018 as the assessee was in Kolkata for treatment of his ailing father, Sri Dulal Chandra Paul throughout the month of March, 2018 and part of April, 2018. It is further submitted that as there is no Income Tax Practitioner in Karimganj who is willing to appear before the Hon'ble Gauhati Bench, Guwahati on behalf of the assessee, the assessee had to search for a tax consultant for remedial action against the order passed by the Ld. CIT(A). On 24th April, 2018, the assessee fell sick due to Jaundice with Hepatitis and was advised for bed rest and, therefore, the assessee could not file the appeal within the due date of filing of appeal before the Tribunal. The assessee then went to Shillong after recovery from illness for collecting the Income-tax records & materials from his Chartered Accountant who had appeared before the Ld. CIT(A), which were handed over to the consultant of Guwahati on 30th June, 2018. It is stated that Karimganj is close to India-Bangladesh Border where no Income Tax Practitioner is found to contest the appeal before the Gauhati Bench of the Tribunal and the appeal could be filed only on 2nd July, 2018 after a delay of 63 days and



it is prayed to admit the appeal after condoning the delay considering the circumstances stated in the petition. It is further stated that the assessee had to leave for Karimganj for executing an affidavit as the affidavit is part of the application for condonation of delay. Copy of the affidavit has also been enclosed stating the facts of illness and other details.

2.1. We have considered the application for condonation of delay and the accompanying affidavit and we find that there was sufficient cause for the delay in filing the appeal and the delay is neither mala fide nor has granted any undue benefit to the assessee. Hence, in view of the facts and circumstances of the case, the delay in filing the appeal is hereby condoned and the appeal is admitted for adjudication.

3. The assessee is in appeal before this Tribunal raising the following grounds of appeal:

"1. For that the Ld. Commissioner of Income Tax (Appeals), Shillong is not justified in dismissing the grounds taken by the Appellant before the Ld. Commissioner of Income Tax (Appeals) regarding addition of Rs.67,00,043/- under the head cash credit for the Assessment Year 2014-15 in the case of the Appellant.

2. For that the Ld. Commissioner of Income Tax (Appeals), Shillong is not justified in confirming the addition made by the Assessing Officer amounting to Rs.67,00,043/- under the head unexplained cash credit for the Assessment Year 2014-15.

3. For that the Ld. Commissioner of Income Tax (Appeals), Shillong is not justified in confirming the addition of Rs.67,00,043/- under the head alleged cash credit when the Assessing Officer admitted that the said amount of Rs.67,00,043/- was added to the income simply on the basis of presumption (reflected in the Page (4) of the assessment order dated 31.12.2016).

4. For that the Ld. Commissioner of Income Tax (Appeals), Shillong is not justified in enhancing the income of the Appellant amounting to Rs.7,99,957/- as per powers conferred on the Ld. Commissioner of Income Tax (Appeals) for enhancement of income under sub-section (2) of Section 251 of the I.T. Act in the case of the Appellant.



5. For that the Appellant craves leave to take up any further ground or grounds at the time of hearing of the appeal.”

4. The brief facts of the case are that the assessee Shri Picklu Paul was intercepted by the Air Intelligence Unit of Kolkata at the Kolkata Airport on 30.07.2013 while carrying cash of Rs. 73.25 lakhs. A search and seizure operation u/s 132 of the Act was conducted on 30.07.2013 at NSCBI Airport, Kolkata and out of ₹73.25 lakhs, an amount of ₹73 lakhs was seized. A survey u/s 133A of the Act was also conducted in the business premises of M/s P.P. Jewellers, Prop. Shri Picklu Paul at Station Road, Karimganj on 31.07.2013. The impugned order was served upon the wife of the assessee on 28.02.2018 as the assessee was in Kolkata for the purpose of treatment of his ailing father. During the course of survey, papers/documents found and marked as SC-1 to SC-56 were impounded. The books of account were not found in the business premises nor the assessee was present in the business premises during the course of survey. A statement on oath of Shri Dulal Krishna Paul, the father of the assessee was recorded on 31.07.2013 and subsequently the statement of Shri Picklu Paul was also recorded on 12.08.2013 by the ITO, Ward-Karimganj. During the course of survey, an amount of Rs. 75,00,000/- was disclosed by the assessee as undisclosed stock which was admitted as additional income representing unaccounted stock and accordingly the assessee paid Rs. 3,00,000/- as advance tax. The return of income was filed disclosing total income at Rs. 87,96,788/- including the additional income of Rs. 75,00,000/- as admitted by the assessee during the course of survey proceedings. However, during the course of assessment proceedings, the assessee explained that the cash seized was taken out of the cash in hand of Rs. 80,58,353.50/- as on 29.07.2013 and the assessee submitted that he had disclosed the cash amount of Rs. 73,00,000/-



during the course of survey operation and denied that he had disclosed Rs. 75,00,000/- on account of any stock discrepancy. It was submitted before the Ld. AO that there is no mention or signature of the Officers involved in this alleged disclosure as per the stock discrepancy sheet signed by the assessee on 12.08.2013. The assessee also objected to the stock valuation. The Ld. AO considered the submissions made and added a sum of Rs. 67,00,043/- as unexplained cash credit as the sales of Rs. 67,00,043/- on 29.07.2013 remained unexplained. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who enhanced the income by Rs. 7,99,957/- and the appeal was dismissed. Aggrieved with the appeal order, the assessee has filed the appeal before the Tribunal.

5. We have heard the rival contentions and also gone through the paper book filed during the course of appeal on 19.04.2024, copy of the Panchanama drawn in the case of Sri Picklu Paul on 30.07.2013 at Kolkata Airport, copy of the statement on Oath of Sri Dulal Paul, Father of the assessee recorded during the course of Survey u/s 133A of the Act on 31.07.2013, copy of the statement on Oath of Sri Picklu Paul recorded by the ITO, Ward-Karimganj on 12.08.2013 and copy of the return of income filed on 24.12.2015 along with the audit report, computation of income & audited balance sheet & profit & loss account as on 31.03.2014. The assessee has also enclosed a copy of the request made before the ACIT, Circle-Silchar vide letter dated 26.08.2022 for supply of certified copy of statement recorded on Oath u/s 132(4) of the Act by the DDIT (Inv.), Kolkata at NSCBI Airport, Kolkata on 30.07.2013 but the same is stated to be not provided to the assessee.



6. The Ld. DR drew our attention to page 4 of the assessment order. On 29.07.2013, the assessee had opening cash balance of Rs. 7,79,300.50/- and sales of Rs. 67,00,043/- and advance receipt of Rs. 8,50,000/- from four persons of Karimganj. Confirmation of accounts in respect of the four persons were filed and the same were accepted by the Ld. AO is no addition was made on account of advance received from the 4 customers at Rs. 8,50,000/-. The cash sales of Rs. 67,00,043/- on 29.07.2013 were claimed to be made vide cash memos shown as issued to 20 persons without any proper address. It is mentioned in the assessment order that no cash book, ledger, etc. was found during the course of survey. On the date of search i.e. 30.07.2013, the assessee stated that his father had the details of the cash found in his possession but the authorised officer reported that during the course of survey the father of the assessee, who was found conducting the business at the time of survey, had no idea about the books of account. Therefore, the submission of the assessee was treated as an attempt to camouflage the undisclosed income. The Ld. AO presumed that the whole cash was unaccounted and was out of books. Under the above circumstances, sales of Rs. 67,00,043/- on 29.07.2013 remained unexplained and accordingly the sum was added to the total income of the assessee u/s 68 of the Act. The Ld. DR also drew our attention to paras 4.2 and 4.3 of the order of the Ld. CIT(A) and it was mentioned that the appeal was decided on two sets of written submissions already filed. The relevant paragraphs of the order of the Ld. CIT(A) are extracted as under:

“4.2 Appellant vehemently assailed the decision taken by the AO. In the written submission dated 21.06.2017, the A/R stated that impression given by the AO that cash book was prepared on afterthought was totally wrong. AO's contention that sales of Rs.67,00,043/- was unsustainable, is totally wrong. Cash Book was there and Memos were also available. Assessee was not obliged to maintain complete details of his customers. There were

substantial sales on 29.07.2013 because that was nearing the Muslim (who constituted large per cent of population of Karimganj) Festival of Jamal-ul-vida' which fell on 02.08.2013. Assuming even that the sales shown in cash book were bogus, assessee had already disclosed a sum of Rs.73 lakhs on account of cash found. A/R also stated that the stock taking during survey was not done by technically competent people. The survey team which took the stock had no technical knowledge in valuation of jewellery. The stock valuation was wrong and that assessee denied the existence of excess stock valued at Rs.75,00,000/-. An affidavit dated 13.08.2013 deposed by Shri. Dulal Krishna Paul, father of assessee was filed. In the affidavit, it was reiterated that stock taking during survey u/s. 133A was inaccurate as the same was done by people not expert in the field. The stock was arbitrarily valued and that he was coerced into signing the same. Assessee also filed another submission wherein it was stated that the valuation of jewellery did not result in accurate figure as the same was taken by unqualified people. He also stated that he never admitted income of Rs.75 lakhs on account of excess stock.

4.3 I have carefully considered the matter. Assessee is very vehement in claiming that the turned income of Rs.87,96,788/- included cash disclosure of Rs.73,00,000/- which was found with him and seized by the Department. I find no reason to disagree with the point put forth by the assessee. After all, cash of Rs.73,00,000/- was found in his possession and assessee stated that he had disclosed the same in his return. But this is without discounting the fact of the excess stock being found during the course of survey and appellant disclosing a sum of Rs.75,00,000/- on account of such discrepancy. The AO, as aforesaid, had taken the view that returned income of Rs.87,96,788/- comprised of disclosure of Rs.75,00,000/-. However, the AO had added a sum of Rs.67,00,043/- on account of cash while assessee is claiming that he disclosed Rs.73,00,000/- on account of cash. Accepting assessee's claim that disclosure of Rs.73,00,000/- on account of cash would lead to enhancement of income if the discrepancy in stock to the tune of Rs.75,00,000/- was not explained properly with supporting facts and figures. In view of this, the following notice dated 08.09.2017 was issued to assessee.

"A sum of Rs 73,25,000/- was found in your person at Kolkatta Airport on 30.07.2013 out of which Rs.73,00,000/- was seized by the Department. Further, during the course of survey u/s 133A of the Act at your business premises on 31.07.2013, stock discrepancies were detected due to which you had disclosed Rs. 75,00,000/- as undisclosed income.

2. In your return of income filed for the year, total income of Rs.87, 96,788/-, including undisclosed income was shown. During the course of assessment proceeding, you claimed that the disclosed income was out of cash found from your possession. However, the AO took the view that the returned income of Rs.87,96,788/- included income of Rs. 75,00,000/- which was disclosed due to stock discrepancy. Besides that, AO added Rs.67,00,043/- to the income on account of unaccounted cash.

3. In the ground of appeal as well as in subsequent submission, you have stated that the disclosed income was out of cash found in your possession



and that further addition of Rs.67,00,043/- was not called for. If this line of argument is accepted the stock discrepancy of Rs. 75,00,000/- remained unexplained. Accepting your claim that the disclosure made in the return of income was out of cash found will lead to addition of Rs. 75,00,000/- on account of stock discrepancy. This will result into enhancement of addition from Rs.67,00,043/- to Rs. 75,00,000/-

4. You are given opportunity to explain reason as to why your income should not be enhanced accordingly as you have claimed that disclosure was out of cash found from your possession.

5. Your explanation should reach me within 30 days of receipt of this letter by you.

4.3.1 In response to notice issued, assessee filed adjournment letter dated 24.10.2017. Thereafter, on 01.12.2017, the case was fixed for hearing on 09.01.2018. There was an adjournment application. The case was fixed again for hearing on 14.02.2018. There was no compliance. Appeal is decided based on two sets of written submissions already filed.

4.3.2 After accepting assessee's contention that returned income consisted of cash disclosure of Rs.73,00,000/-, residual issue to be decided is regarding stock discrepancy of Rs.75,00,000/-. On the date of survey, stock as per records was less than physical valuation of stock by as much as Rs. 75,00,000/-. Subsequent to the date of survey, assessee disclosed Rs.75,00,000/- represented by undisclosed stock. The stock statement was signed by the persons in control of business on the date of survey. The correctness of the statement is being assailed on the ground that stock Valuation was not done by technically competent and approved valuer. But the same was done by assessee's staff and Departmental Officers not well-versed with technicality of jewellery valuation. An affidavit had been filed in this regard. But assessee had not come out with any factual details regarding the incorrectness of valuation done during survey. Jewellery items were found during survey. Their weights and values were given to the survey party by those in control of the business of assessee on that particular day. Assessee had not given any instance of any particular item of jewellery whose weight and value had been overstated. Assessee also had not come out with evidence to show that any item of jewellery had been inventorised twice. Assessee waxed eloquently about his cash book being in order. If the books of accounts and other records were properly maintained, there is no reason why assessee is unable to come out with factual details regarding incorrectness of valuation done during survey. In this kind of situation, mere argument that stocks were taken wrongly will not suffice. Similarly, filing of affidavit alone is not sufficient to undo the factual findings noted down on the day of survey. Assessee has to come out with facts and figures. In the present case, survey was conducted on 31.03.2013. Assessee gave his statement on 12.08.2013. Assessment was completed on 30.12.2016. During the interregnum, assessee had failed to prove with factual details that survey finding was wrong. Assessee, if he was maintaining records properly, must be having figures of sales and purchases. He must be having the details of stock available with him. If records were proper and correct," there is no

reason why the assessee cannot repel the contents of survey findings with facts and figures. It is also seen that assessee had disclosed Rs.75,00,000 some days after the survey action. This lends further credence to the view that the survey finding is correct after all. Considering the above discussion, the survey finding and disclosure based on that cannot be discarded in absence of compelling contrary facts. Unless assessee himself come out with full reconciliation of stock position on the date of survey. I have no reason to disbelieve the finding of survey party. Therefore, the three grounds are dismissed. Income is enhanced by (Rs.75,00,000-Rs.67,00,043) Rs.7,99,957/-.

Appeal is dismissed.”

7. We have heard the Ld. DR. Although the assessee has taken 5 grounds of appeal but ground nos. 1, 2 & 3 relate to confirmation of addition by the Ld. CIT(A) at Rs.67,00,043/- and ground no. 4 relates to enhancement of income at Rs.7,99,957/- by the Ld. CIT(A) while ground No. 5 is general in nature and does not require any separate adjudication.

7.1 It is evident that the assessee sought adjournment in response to the show cause notice dated 08.09.2017 issued for enhancement of income by the Ld. CIT(A) in response to which an adjournment letter dated 24.10.2017 was filed. The case was again fixed on 01.12.2017 for hearing on 09.01.2018 and there was an adjournment application again. The case was fixed again for hearing on 14.02.2018 and there was no compliance. Accordingly, the enhancement has been made without considering the assessee's submission in this regard.

8. We have gone through the facts of the case and the submissions made before the Ld. CIT(A) were examined. The assessee has filed copy of audited account and audited balance sheet before the Tribunal and it is observed from a perusal of the same that a sum of Rs. 87,96,787.12/- has been shown as the net profit for the financial year 2013-14 relevant for the AY 2014-15 and on page 31 of the paper book



filed, a sum of Rs. 75,00,000/- is being shown as the stock disclosed during survey. Thus, the assessee himself has disclosed the excess stock found during the course of the survey, which fact is also appearing at page 32 of the paper book at para 3(a) in the Audit Report u/s 44AB of the Act. The date of survey is incorrectly mentioned as 31.03.2013 but the survey had actually taken place on 31.07.2013. Thus, the assessee himself has included the excess stock as his income in the audit report filed and which has also been included in the net profit of Rs. 87,96,788/- worked out on page 31 of the paper book. The sales are shown at Rs. 4,46,61,329/- which also include the sales of Rs. 67,00,043/- which are treated as unexplained and added as unexplained cash credit by the Ld. AO; however, the income from the same has not been excluded from the income computed by the assessee nor the purchases corresponding to the sales have been disturbed. In case the purchases are not disturbed, but the sales are treated as bogus, the same would go to increase the closing stock of the assessee and, therefore, would cover part of the excess stock disclosed during the survey, which adjustment has not been done. The copy of statement recorded at the NSCBI Airport was requested, which has not been provided as per the statement made by the assessee. The assessee was found to be in possession of cash of Rs. 73.25 lakh out of which Rs. 73,00,000/- was seized and the stock of Rs. 75,00,000/- has been considered for enhancement of the income. Thus, there appears to be incorrect appreciation of facts as both the sales as well as the closing stock shown by the assessee in the profit and loss account have been considered for upholding the addition of Rs. 67,00,043/- made by the Ld. AO which has been further enhanced by Rs.7,99,957/- by the Ld. CIT(A) in the absence of any reply received from the assessee. Since the



enhancement of income has been carried out without considering the submission of the assessee and apparently the cash sales have been included as part of the total sales and have also been added u/s 68 of the Act, therefore, the treatment given to the transactions by the Ld. AO does not appear to be in consonance with the accounting principles. As the sales were treated as unexplained cash credit, they ought to have been reduced from the sales shown in the profit and loss account and the profit and loss account should have been recast to arrive at the total income of the assessee. Hence, after considering the totality of facts and circumstances of the case, the order of the Ld. CIT(A) is set aside with the above observations and the Ld. CIT(A) is directed to examine the profit and loss account and provide another opportunity to the assessee to make his submission on the income enhanced, which shall be considered before making any enhancement or upholding the addition made by the Ld. AO. The assessee had included the excess stock as part of his income and at the same time has denied the disclosure on account of excess stock made. The assessee shall be at liberty to make all submissions in respect of the relief claimed and the Ld. CIT(A) shall decide the appeal de novo after granting a reasonable opportunity of being heard to the assessee as well as to the Ld. AO as per Rule 46A of the Rules.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28th January, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Dated: 28.01.2025

Bidhan (P.S.)

Sd/-

[Rakesh Mishra]

Accountant Member



Copy of the order forwarded to:

1. **Sri Picklu Paul, C/o. P.P. Jewellers, Station Road, Karimganj, Assam, 788710.**
2. **Assistant Commissioner of Income Tax, Circle-Silchar.**
3. CIT(A)-Shillong.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata