

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "F" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 1130/Mum/2024
Assessment Year : 2017-18

JMM Fisheries, Plot No. 57/58, Market Yard, Sahakar Nagar, Raigad Bazar, Panvel, Navi Mumbai PAN : AAMFJ7912Q	vs.	Asst. Commissioner of Income Tax, 6 th Floor, Road No. 16-Z, Ashar I.T. Park, Waghle Industrial Estate, Thane Maharashtra
(Appellant)		(Respondent)

For Assessee :	Shri Rajeev Khandelwal & Shri Aakash Kumar
For Revenue :	Shri Ashish Kumar Heliwal, CIT-DR

Date of Hearing :	19-12-2024
Date of Pronouncement :	28-01-2025

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.31-01-2024 passed by the Ld. Commissioner of Income Tax (Appeals), Pune-11 [Ld.CIT(A)] and it relates to AY.2017-18. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition of Rs. 1.21 crores made by the AO, stating that it has un-recorded sales.

2. The facts relating to the issue are discussed in brief. The assessee is a partnership firm and is engaged in the business of trading in sea food items. It belongs to Mhatre Group. This group was subjected to search operation u/s 132 of the Act on 20-09-2017 and the assessee was also covered in the search action. Consequently, the present assessment order has been passed by the AO u/s 143(3) r.w.s. 153A of the Act.

3. During the course of search operations, certain materials showing the sale of prawns by the assessee were found. The dispute herein relates to the sales made to two of its customers, viz., M/s Mrunmayee Enterprises and M/s Rafiq Naik Exports P Ltd. The sales made to these two concerns were shown as Rs.3,18,54,717/- and Rs.2,68,84,602/- respectively in the seized documents. However, in the books of accounts, the sales made to these two parties were shown as Rs.2,21,07,002/- and Rs.2,45,00,000/- respectively. Hence there was difference of Rs.97,47,715/- and Rs.23,84,602/- respectively, which was considered by the AO as unaccounted sales. Accordingly, the AO proposed to assess both the difference amounts mentioned above as income of the assessee.

3.1. The assessee submitted that the sea foods, being perishable items, are accounted as sales only, only if their quality is accepted and payments are made by the customers. Accordingly, it was contended that the quantity and amount shown in the bills could not be considered as sales of the assessee. The difference may represent spoiled stuffs. Accordingly, it was contended that no addition on account of alleged unaccounted sales should be made. Further, it was submitted that the assessee had voluntarily surrendered a sum of Rs.23,84,602/- in the return of income filed consequent to the search operations. The assessee sought set off of the above said amount against the additions, if any that may be made by the AO. The AO did not accept both the contentions of the assessee.

Accordingly, he assessed the difference in sales of Rs.97,47,715/- and Rs.23,84,602/- respectively pertaining to M/s Mrunmayee Enterprises and M/s Rafiq Naik Exports P Ltd as income of the assessee.

4. Before the Ld CIT(A), the assessee reiterated both the above said contentions. However, they were rejected by Ld CIT(A). The assessee also contended that the AO was not justified in assessing the entire amount of sales and he should have assessed only the profit element involved in the alleged difference in sales. The Ld CIT(A), however, rejected the said contentions also on the ground that the assessee did not point out from seized material that the corresponding expenditure was also not accounted. Aggrieved, the assessee has filed this appeal.

5. The Ld A.R submitted that major portion of the alleged suppression of sales have been accounted in the books of accounts on the basis of receipt of cash. The difference, if any, represents spoiled goods for which the assessee will not receive any money at all. Accordingly, he submitted that both the additions made by the AO should be deleted. He further submitted that, if at all any addition is warranted, then the profit element alone should be added. He further prayed that the telescoping benefit for the amount already surrendered by the assessee should be given.

6. On the contrary, the Ld D.R supported the order passed by the Ld CIT(A).

7. We heard rival contentions and perused the record. We notice that the assessee has surrendered a sum of Rs.23,64,602/- as additional income in the return of income filed after the search operations. Further, we notice that the seized documents are abstract/loose documents containing details of purchase and sales relating to certain parties. The ledger accounts furnished by the assessee would show that the sales have

been accounted for in round figures. For example, a perusal of ledger account of Mrunmayee Enterprises placed at page 30 of the paper book would show that all the sales are in round figures. Ledger account placed at page 32 is related to cash sales made to M/s Murunmayee enterprises. All the sales are in round figures only. Similar is the case with the ledger account of Rafiq Naik Exports P Ltd. All these ledger accounts would support the contention of the assessee that the sales are accounted on the basis of quantity of goods accepted by the buyers and not on the basis of goods shipped to the buyer. The prawns, being perishable items, had to be thrown as garbage, if they are spoiled. This is the peculiar feature and prevailing trade practice in the case of fish trading activities. As discussed earlier, there is no surety in this trade that the assessee could realise the entire sales value of goods shipped to the customers. We notice that this submission of the assessee has not been disproved by the AO, i.e., he did not conduct any enquiry with any of the parties in order to find out as to whether the above said explanations of the assessee are correct or not. In our view, the AO should not have rejected the above said explanations without bringing on record any other contrary material. Hence the entries made in the abstract/loose documents seized during the course of search, in our view, could not be considered as real sales, i.e., it only represents the quantity of goods shipped along with the value to the respective customers.

8. We have noticed that the assessee has already declared a sum of Rs.23,82,602/- as additional income. We also notice that the assessee has furnished a detailed reply, vide its letter dated 20-05-2019 filed before the AO, wherein the details of noting made in the documents have been fully explained. What we find is that the AO has not considered the peculiar feature of the fish trading, i.e., the perishable nature of the prawns and hence he has proceeded to make addition towards alleged suppressed

sales. Accordingly, we are of the view that the addition of Rs.1,21,32,317/- made by the AO on the basis of abstract loose documents is not justified. Accordingly, we set aside the order passed by the Ld CIT(A) on this issue and direct the AO to delete the above said addition.

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

Order pronounced in the open court on 28-01-2025

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 28-01-2025

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr.CIT concerned
4.	The D.R. ITAT, Mumbai
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai