

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3617/Del./2013
(ASSESSMENT YEAR : 2001-02)**

ACIT, Circle, vs. Shri Ramesh Chand,
Rewari. Prop. M/s. Ramesh Chand Prem Chand,
New Mandi, Narnaul,
Distt. Mahendergarh – 123 001 (Haryana)

(PAN : AAVOC6510A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate and
Shri P.K. Kamal

REVENUE BY : Shri F.R. Meena, Senior DR

Date of Hearing : 26.07.2016

Date of Order : 30.08.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Assistant Commissioner of Income-tax, Circle, Rewari (hereinafter referred to as 'the revenue') by filing the present appeal sought to set aside the impugned order dated 22.03.2013 passed by the Commissioner of Income-tax (Appeals), Rohtak qua the assessment year 2001-02 on the grounds inter alia that :-

“ On the fact and in circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.5,65,05,698/- & Rs.15,60,079/- made on account of peak investment and estimated profit.

On the fact and in circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.60,000/- on account telephone expenses.

On the fact and in circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.66,500/- on account of sale tax penalty made by the Assessing Officer.

That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.”

2. This is second round of litigation because the assessment was initially completed by the Assessing Officer by assessing total income at Rs.5,83,20,210/- on 30.03.2004 and appeal preferred by assessee against the assessment order stands dismissed. However, in an appeal before the Appellate Tribunal, the matter was restored to the file of CIT (A) for fresh adjudication after providing an opportunity of being heard to the assessee.

3. Briefly stated the facts of this case are : the assessee is into the business of trading of Sarson (Mustard), Gur Shakar (Jaggery) and commission on food grains etc. in the name and style of M/s. Ramesh Chand Prem Chand, filed return of income on 30.10.2001 declaring total income of Rs.39,990/-. During assessment proceedings, it has come on record from the statement of one Shri

Kanti Parkash that he has purchased Sarson (Mustard) from Shri Ramesh Chand, Proprietor of M/s. Ramesh Chand Prem Chand i.e. assessee in this case for Rs.4,96,573/- as per the telephone discussion on telephone no.50864 and Shri Ramesh Chand also supplied sarson to Kanti Parkash in the name of (i) M/s. Santosh Kumar Vijay Kumar, Prop. Shri Ghanshyam, Nai Mandi Narnaul of Rs.4,28,852/-, (ii) M/s. Rattan Lal Ravinder Kumar, Prop. Shri Vikram Singh, Nai Mandi, Narnaul of Rs.7,11,100/- and (iii) M/s. Sat Narain Dinesh Kumar, Prop. Shri Rohtas Kumar, Nai Mandi, Narnaul of Rs.3,63,540/-, as per the telephone discussions. Kanti Parkash furnished copy of sale bills account of these parties from his books of account along with transport bills, detail of Demand Drafts sent for making payment in the names of these parties. The AO noticed that Kanti Parkash sent the payment through Demand Drafts from Bankura. To verify the genuineness of the transaction made by the assessee with aforesaid Kanti Parkash and others as aforesaid, notices were sent to attend personally and furnish proof of filing returns for AY 2001-02, but the notices received back with the reports 'no such firms exist at the given address'. Then information was called from the State Bank of Patiala (for short 'SBOP'), Nai Mandi Branch, Narnaul in respect of the assessee i.e. M/s. Ramesh Chand Prem Chand and M/s. Santosh Kumar Vijay

Kumar, Prop. Shri Ghanshyam and from Oriental Bank of Commerce (for short 'OBC'), Narnaul in respect of M/s. Rattan Lal Ravinder Kumar, Prop. Shri Vikram Singh and M/s. Sat Narain Dinesh Kumar, Prop. Shri Rohtas Kumar and M/s. Gobind Ram Sat Narain, Prop. Shri Satbir Singh, Nai Mandi, Narnaul. However, from the bank statement, it has come on record that Shri Ghanshyam is having old account no.1950 (new account no.10500606629) with SBOP, Narnaul, Shri Rohtas Kumar is having current account no.1353 with OBC, Narnaul and Shri Vikram Singh is having current account no.1439 with OBC, Narnaul which was closed on 31.03.2001 and account no.1936 with SBOP, Nai Mandi Branch, Narnaul and Shri Satbir Singh was having account no.1349 with OBC, Narnaul which has been closed in March, 2001. Assessee vide his statement recorded on 04.02.2004 refused to make any transaction of sarson (Mustard) with Kanti Parkash during the year under consideration but when he was confronted with detail of sales as per bills, transport bilties and demand drafts sent by Kanti Parkash, he failed to furnish any explanation. Thus, the AO inferred that assessee has accepted said transaction and assessee has nothing to say in the matter.

4. AO further found that the aforesaid four concerns are bogus firms of the assessee. It transpires from the bank record that peak

investment as well as gross turnover has not been recorded in the books of account and consequently, show-cause notice was given to which no response was filed by the assessee.

5. AO noticed from the counterfoils of the withdrawal forms submitted to SBOP, Narnaul from the account of M/s. Santosh Kumar, Vijay Kumar, Prop. Shri Ghanshyam, enquiries made from SBOP, Narnaul which stated that some more cheques issued by M/s. Santosh Kumar Vijay Kumar, Prop. Shri Ghanshyam and payments received by Prem and Pawan, brothers of Shri Ramesh Chand, Prop. M/s. Ramesh Chand Prem Chand. It is noticed by AO from the account opening form of M/s.Gobind Ram Sat Narain in OBC, Narnaul that introducer of this account was one Shri Ravinder Kumar, Prop. M/s. Hari Ram Ravinder Kumar, Bajaja Bazar, Narnaul to whom summons were issued and his statement was recorded. The aforesaid Shri Ravinder Kumar in his statement and written reply submitted that he has signed the account opening form of M/s.Gobind Ram Sat Narain, Proprietor Shri Satbir Singh as an introducer at the instance of Pawan who is brother of assessee, Shri Ramesh Chand. From the enquiries conducted by the AO, it has come on record that M/s.Gobind Ram Sat Narain, Proprietor Shri Satbir Singh is a non-existent firm and it has also come on record that Shri Satbir Singh works as an employee with

Shri Ramesh Baniya at Narnaul Mandi shop for a salary of Rs.1,000/- per month. So, the AO inferred that these are bogus transactions in the name of M/s.Gobind Ram Sat Narain done by the assessee.

6. AO on the basis of his enquiry came to the conclusion that Shri Rohtas Kumar is residing of Village Azam Nagar, PO Dharsoo, Tehsil Narnaul and his bank account is introduced by one Shri Sushil Kumar, Prop. M/s. Sushil Kumar Dharmender Kumar to whom summons were issued but of no response. From the enquiry conducted by AO through Inspector, it has come out that Shri Rohtas Kumar is an employee of Shri Bishan Baniya and is working in his shop in village Niwaj Nagar for the last 10 – 12 years and he mostly stays at the residence of Shri Bishan Baniya. So, it is concluded by AO that Shri Rohtas Kumar cannot make such huge transaction in the purchase of sarson. So, the AO concluded that aforesaid four firms are bogus concerns of the assessee and the assessee has failed to prove his claim that he has no interest in these firms with any documentary evidence as he failed to produce books of account and also failed to prove that he has no communication with the aforesaid four bogus concerns. So, AO held that the assessee intentionally did not produce the books of account.

7. AO observed that from the copy of bank account no.1927 of SBOP, Narnaul of the assessee, there is a difference of Rs.89,25,145/- in the debit side with respect to the copy of bank account furnished from the books of account and issued the show cause notice to the assessee. AO came to the conclusion that the books of account relied upon by the assessee in the return of income cannot be relied upon and as such invoked the provisions contained under section 145 (3) of the Income-tax Act, 1961 (for short 'the Act') and arrived at the peak amount of 15 days of transaction in the bank account of aforesaid four parties for investment purposes after considering a cycle of 15 days i.e. a period of dispatch from Narnaul to West Bengal, Madhya Pradesh and Maharashtra for sale of sarson and receipt of payment through Demand Drafts which is to the followed effect :-

Sr. No.	Name of the concern	Bank account No.	Peak amount (annex./ Page No.) (Rs.)	Gross turn over (Rs.)
1.	Santosh Kumar Vijay Kumar	60269 SBOP, NNL	1,56,01,434/- (I/I)	4,81,07,271/-
2.	Ramesh Chand Prem Chand	60349 SBOP, NNL	26,80,750/- (II/4)	62,00,683
3.	Ramesh Chand Prem Chand	1927 SBOP, NNL	1,14,20,740/- (V/23)	3,62,70,896/-
4.	Rattan Lal Ravinder Kumar	1439 OBC, NNL	1,61,28,805/- (III/8)	8,96,44,492
	Rattan Lal Ravinder Kumar	1939 SBOP, NNL		
5.	Sat Narain Dinesh Kumar	1353 OBC, NNL	26,56,837/- (IV/13)	64,91,591/-
6.	Govind Ram Sat Narain	1349 OBC, NNL	80,17,132/-	5,01,45,916/-

Total		5,65,05,698	23,68,60,849/-
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Total amount of peak/unrecorded sale			23,68,60,849/-
Less :- Sales declared in the return			01,71,31,367/-
Unrecorded sales			21,97,29,482/-
Gross profit @ 0.71% is taken as shown by the assessee himself in his return of income			15,60,079/-
Taxable peak investment and profit	5,65,05,698/-		

8. AO also made an addition of Rs.60,000/- on account of telephone expenses as the assessee has not debited a single penny on telephone expenses whereas telephone no.250864 was installed in the business premises. AO further disallowed the amount of Rs.66,500/- on account of sales-tax penalty.

9. Assessee carried the matter by challenging the assessment order before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the revenue has come up before the Tribunal by way of filing the present appeal.

10. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

11. Undisputedly, assessee is into the trading of Sarson, Gur Shakar and commission of foodgrains etc. in the name and style of M/s. Ramesh Chand Prem Chand, filed return of income on 30.10.2001 declaring total income at Rs.39,990/-; that AO

proceeded on the ground that four concerns i.e. M/s. Sat Narain Dinesh Kumar, M/s. Santosh Kumar Vijay Kumar, M/s. Rattan Lal Ravinder Kumar and M/s. Gobind Ram Sat Narain, though shown in the document as proprietary business of close and trusted employees of the assessee were actually owned and controlled by the assessee; that book version relied upon by the assessee in the return of income has been rejected by the AO by invoking the provisions u/s 145(3) of the Act; that the AO arrived at the peak amount of 15 days of transaction in the bank account of the aforesaid four parties for investment purposes after considering a cycle of 15 days i.e. a period of transaction of dispatches from Narnaul to West Bengal, M.P. and Maharashtra for sale of sarson and receipt of payment through Demand Drafts. AO worked out the peak investment of the profit as duly explained in the preceding para no.7 at page nos.7 & 8.

12. In the backdrop of the aforesaid facts and circumstances of the case and the record relied upon by the parties to the appeal, the first question arises for determination in this case is:-

“as to whether addition of Rs.5,65,05,698/- and Rs.15,60,079/- made on account of peak investment and estimated profit made by the AO has been wrongly deleted by the CIT (A)?”

13. From the undisputed facts, arguments addressed by the authorized representatives of the parties and documents brought on record, we find no ground to interfere into the findings returned by the ld. CIT (A) for the following reasons :-

- (i) that there was no prima facie material before the AO nor he has collected any such material to arrive at the conclusion that assessee is a benami owner of the aforesaid firms viz. (i) M/s. Santosh Kumar Vijay Kumar; (ii) M/s. Rattan Lal Ravinder Kumar; (iii) M/s. Sat Narain Dinesh Kumar; and (iv) Gobind Ram Sat Narain;
- (ii) that even during the remand proceedings, the AO has failed to lay hand on any such material to substantiate his findings that the assessee is a benami entity running business in the names of aforesaid four firms. So, there is not an iota of evidence that the assessee is benami owner of aforesaid four firms;
- (iii) that the AO has blindly relied upon the enquiry report given by Inspector that Rohtas Kumar, Prop. of M/s. Sat Narain Dinesh Kumar is an employee of one Bishan Baniya engaged in similar business as that of assessee but has not preferred to record the statement

of Rohtas Kumar himself whose bank account no.1353 of OBC, Narnaul was opened at the introduction of Sushil Kumar, so in these circumstances, it cannot be said that M/s. Sat Narain Dinesh Kumar is the benami business of the assessee;

- (iv) that CIT (A) has rightly scrutinized the statements of Ghanshyam and Vikram Singh recorded by the AO and came to the conclusion on the basis of inherent consistencies that these are not the statement voluntarily made by them rather they have merely put their signatures without knowing their contents;
- (v) that there is not an iota of evidence on record to prove as to from where the assessee has made the purchases of mustard seed to the tune of tens of crores of rupees. AO has not preferred to record statement of any of the traders from the local markets to substantiate the allegation made against the assessee;
- (vi) that the AO made an addition of all the credit entries in the bank of the four firms without verifying the details of transactions in each of the bank account;

- (vii) that the AO has also failed to explain as to how and on what grounds, he has resorted to addition of peak investment on 15 days cycle;
- (viii) that when the very existence of aforesaid four firms being benami ownership of assessee has not been established making an addition of peak investment of 15 days cycle is without any basis;
- (ix) that when the assessee has himself admitted bank account no.60349 in SBOP, Narnaul in the books of account showing turnover of Rs.62,00,683/-, there is no question of adding the peak investment of this bank account of Rs.26,80,750/- does not arise;
- (x) that so far as account no.1927 in SBOP, Narnaul is concerned, the same is opened in the name of assessee but the transaction in the said account pertains to his brothers, Shri Pawan Kumar and Shri Mukesh Kumar. But at the same time, the assessee has given revised calculation and by applying the GP rate of 0.71%, already accepted by the AO, the amount comes to Rs.1,79,915/-;
- (xi) that the AO heavily relied upon the statement of Kanti Parkash who has stated that he has been doing

business with Shri Ramesh Chand, the assessee, in the name of three bogus concerns namely (i) M/s. Santosh Kumar Vijay Kumar to the tune of Rs.4,28,852/-; (ii) M/s. Rattan Lal Ravinder Kumar to the tune of Rs.7,11,100/-; and (iii) M/s. Sat Narain Dines Kumar to the tune of Rs.3,63,540/- on the basis of telephonic conversation from time to time. But strangely enough, there was nothing on the file that aforesaid Kanti Parkash was conducting said business through or at the instance of the assessee;

- (xii) that the revenue has failed to demonstrate that the assessee is a benami/ostensible owner of the aforesaid four concerns by collecting the material that as to when and in whose name these concerns have been got registered and as to what is their status with sale-tax department and with market committee rather built up the entire case on the basis of suspicion during assessment as well as during remand proceedings;
- (xiii) that though the AO has based the assessment order on the basis of statement of Kanti Parkash but assessee has not been provided with an opportunity to cross examine Kanti Parkash which is violation of rule of

natural justice and as such the statement of Kanti Parkash cannot be relied upon to sustain the addition;

- (xiv) that the AO declared the aforesaid four firms as bogus concerns merely on the ground that the assessee failed to prove that he has no interest in these details with any documentary evidence, but strangely enough this fact was to be proved by the AO not the assessee who is not to prove the negative;
- (xv) that when the enquiries conducted by AO itself disclosed that the bank accounts of the aforesaid alleged four benamidars of the assessee were being operated by Shri Prem Kumar, Shri Pawan Kumar and Shri Mukesh Kumar, all brothers of assessee who were independently assessed to income-tax with ITO, Ward No.1, Narnaul, the question of making addition on the basis of bank accounts of aforesaid benamidars in the name of the assessee does not arise. If at all the addition was to be made it has to be made in the name of the aforesaid persons', who operated the said accounts;
- (xvi) that the AO was at liberty to collect the complete details regarding alleged transactions from the sales-

tax authorities, market committee records and parties from whom the mustard seeds were purchased by the assessee for onward sale to different persons but he has not preferred to do so;

(xvii) that on the basis of insufficient evidence and merely on the basis of suspicion, conjectures and surmises addition of peak investment and estimated profits from the aforesaid alleged benami concerns is not sustainable, hence rightly deleted by the CIT (A).

14. In view of what has been discussed above, question framed is answered against the appellant/revenue and findings returned by the CIT (A) are hereby affirmed.

15. So far as question of deleting of addition of Rs.60,000/- of telephone expenses by the Id. CIT (A) is concerned, this addition has been made by the AO on the ground that the assessee failed to furnish any such details of the telephone bills and no expenditure has been incurred for telephone account as per P&L account. But we are of the considered view that when the AO has himself in para 5 of the assessment order observed that the assessee is a reputed trader of sarson into the trading business in many states like West Bengal, M.P., Punjab etc. and his transactions run into crores as per trading account filed with the return of income, the

telephone expenses at the rate of Rs.5,000/- per month total amounting to Rs.60,000/- are the business expenses as has been rightly held by the CIT (A). Moreover, AO himself accepted the same as business expenses during appellate proceedings before the CIT (A), so the addition has been rightly deleted by the CIT (A).

16. So far as addition of Rs.66,500/- on account of sales-tax penalty made by the AO on the ground that this amount has not been claimed in the P&L account but separately shown in the balance sheet is concerned, when the AO has not disputed the fact that the penalty of Rs.66,500/- has been paid by the assessee to the sales-tax department, error on the part of the assessee not to claim the same in the P&L account cannot debar him from seeking deduction thereof. So, the Id. CIT (A) has rightly held that no disallowance of Rs.66,500/- can be made by the AO rather allowed the same.

17. In view of what has been discussed above, we find no illegality or perversity in the findings returned by the Id. CIT (A), hence present appeal filed by the revenue is hereby dismissed.

Order pronounced in open court on this 30th day of August, 2016.

**Sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 30th day of August, 2016/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Rohtak.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.