

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **118, 119, 120, 121, 122 & 123/CHNY/2021**

निर्धारण वर्ष /Assessment Years: 2013-14, 2014-15, 2015-16, 2016-17,  
2017-18 & 2018-19

**M/s. Fathimuthu Amma Mills  
Limited,**  
69-70, Kalakad Road,  
Soorankudi,  
Nanguneri – 627 108.  
**PAN : AABCM 2302D**  
(अपीलार्थी/Appellant)

**The ACIT,**  
v. Central Circle – 1,  
Madurai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri B. Ramakrishnan, FCA  
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 24.01.2022

घोषणा की तारीख/Date of Pronouncement : 31.01.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

These appeals by the assessee are arising out of the common order of Commissioner of Income Tax (Appeals)-19, Chennai in Appeal Reference Nos.CIT(A), Chennai-19/10829, 10838, 10853, 10864, 10875 & 10901/2019-20, vide order dated 29.03.2021. The assessment was framed by the ACIT, Central Circle -1,

Madurai for the assessment years 2013-14 to 2017-18 vide even orders date 24.12.2019 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') and for assessment year 2018-19 vide order dated 24.12.2019 u/s.143(3) of the Act.

2. The first common issue in these six appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of Rs.42 lakhs in each of the years on account of alleged unaccounted proceeds out of waste cotton sales u/s.69A of the Act. For this issue, the assessee has raised identically worded grounds in all six assessment years. Even the facts are exactly identical in all these years. Hence, will take up the grounds and facts from AY 2018-19 in ITA No.123/Chny/2021 and will decide the issue. The relevant grounds raised reads as under:-

1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.
2. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition u/s.69A of the Act of Rs.42,00,000/- towards alleged unaccounted proceeds out of waste cotton sales.
3. The Learned Commissioner of Income Tax (Appeals) failed to acknowledge the fact that there was no corroborative evidence to support the AO's contention that the proceeds from sale of waste cotton were partially unaccounted.

3. Brief facts are that the assessee is a limited company and is a part of Seyadu group of companies. A search & seizure action u/s.132 of the Act was carried out on the assessee group on 28.06.2017. According to the AO, on the basis of material evidences gathered during the course of search, notice u/s.147 of the Act was issued in the assessee's case from AYs 2013-14 to 2018-19. Subsequently, assessee filed return of income and assessment proceedings were started u/s.143(2) of the Act. The first issue is as regards to unaccounted sale of waste cotton. The AO noted that during the course of search operations on the assessee's premises it was found that various types of cotton waste is generated during the process of comber waste, flat strips, blow room droppings, sweeping waste, cellar waste, lickerne, fan waste, hard waste etc. Out of these, comber waste, flat strips and micro dust are sold separately and the rest are sold under the head "Waste Cotton – Others". The rate for waste cotton is fixed by Shri Jahir Hussain, DGM. The sale of comber waste, flat strips and micro dust are recorded in the books of accounts properly. The AO noted that proper invoices are raised and all the remittances are received from the parties through RTGS only. As regards to the sale of "waste cotton-others", the sale bills are raised only for 50% of the total value for which payments are made by the parties

through RTGS. The balance 50% of sale value is received from the parties by cash which is not accounted in the books of accounts. The AO noticed that in this manner, MSL effected unaccounted sale of cotton waste to the tune of Rs.3.5 lakhs every month. The AO in his assessment order noted that during the course of search, a sworn statement of Shri B. Anandha Rajan, Cotton Clerk was recorded, which was confirmed by Shri S. Thirumalai Kumar, AGM (Admin) on 30.06.2017. The AO in his assessment order has reproduced the relevant portion of the statement of Shri S. Thirumalai Kumar, AGM (Admin), which is being extracted again for the sake of clarity:-

“During the process of conversion of the cotton raw material into the yarn, some percentage of cotton waste occurs. On an average 20% of cotton waste occurred during the process and 2% of invisible waste is considered. There are various types of cotton waste generated during the process such as comber waste, flat strips, blow room droppings, sweeping waste, cellar waste, lickerne, fan waste, hard waste etc. Out of these, comber waste, flat strips and micro dust are sold separately and the rest are sold under the head “Waste Cotton – Others”. The rate for waste cotton is fixed by Shri Jahir Hussain, DGM. The sale of comber waste, flat strips and micro dust are recorded in the books of accounts properly. Proper invoices are raised and all the remittances are received from the parties through RTGS only. As regards to the sale of “waste cotton-others”, the sale bills are raised only for 50% of the total value for which payments are made by the parties through RTGS. The balance 50% of sale value is received from the parties by cash which is not accounted in the books of accounts.”

The AO on the basis of above statement noted that a statement u/s.132(4) of the Act cannot be retracted in the normal course and it can be used as evidence in the assessment. The assessee replied that the sale proceeds from waste cotton have duly and fully been accounted for in the books of accounts and the sale proceeds were received only through banking channel and no cash sale is effected by the assessee company. It was contented that the statement by Shri S. Thirumalai Kumar, AGM (Admin) is retracted and even the AO could not brought on record any incriminating material or seized material to make this addition of unaccounted sale of waste cotton for an amount of Rs.42 lakhs u/s.69 of the Act. But the AO made this addition. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) noted that the deposition given by Shri S. Thirumalai Kumar, AGM (Admin) is a valuable piece of evidence although retracted that too which was not retracted in real sense, even the presumption casted as per the provisions of section 292C of the Act, have not been rebutted by the assessee and hence statement or deposition made by Shri S. Thirumalai Kumar, AGM (Admin) constitute tangible material and live link for making addition. Hence, he confirmed the action of the AO making

addition of unaccounted sales of cotton waste for all these assessment years. Aggrieved assessee is in appeal before the Tribunal.

5. Before us, the Id.AR for the assessee took us through the assessment order and order of CIT(A). The Id.AR stated that the AO adopted the average monthly sale on account of waste cotton at Rs.3.5 lakhs on the basis of statement recorded from Cotton Clerk Shri B. Anandha Rajan and Shri S. Thirumalai Kumar, AGM (Admin) on 29.06.2017 & 30.06.2017 respectively. Apart from this, the Id.AR stated that there is no incriminating material or no seized material found during the course of search and further, there is no unaccounted cash except a sum of Rs.6,36,572/- which remains unaccounted after the order of CIT(A). The AO has quantified the unaccounted sale of waste cotton at Rs.42 lakhs in each of the six assessment years. The Id.AR argued that merely on the statement of employees i.e., cotton clerk Shri B. Anandha Rajan & AGM (Admn) Shri S. Thirumali Kumar, no addition can be made without supporting evidence. For this, he relied on the CBDT instruction Circular F.No.286/2/2003-IT (inv) dated 10.03.2003 and 18.12.2014. He also relied on the decision of Hon'ble Madras High Court in the case of CIT vs. P.V. Kalyanasundaram [2006]

155 Taxman 454. He further relied on the decision of the Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait vs. CIT, 37 ITR 151. He also argued that the proportion of cotton waste generated upon the total sales made during the relevant assessment year is at par with the industry standards and the rate adopted by the assessee is at par with the then prevailing market rate for sale of cotton waste which has not been doubted or disputed by the AO. According to him, the AO has not brought on record any corroborative material and even during the course of search not a single piece of material evidence / document to support the allegation of sale of waste cotton at 50% of sale value was supported or found. In view of these arguments, the Id.AR stated that the AO as well as the CIT(A) have erred in making and confirming addition just on the basis of suspicion, conjectures and surmises.

6. Apart from argument on merits, the Id.AR argued that the AO has made addition of unaccounted sale of cotton waste by making estimation u/s.69A of the Act. He took us through the assessment order and shown us that the addition is made as unaccounted income of the assessee u/s.69A of the Act and he read out the relevant provision of section 69A of the Act. He stated that the

addition u/s.69A of the Act can be made only in respect to the article or asset where the assessee is found to be the owner i.e., of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of accounts and further the assessee offers no explanation about the nature and source of acquisition of the same or the explanation offered by him is not in the opinion of AO satisfactory, the money or value of the bullion, jewellery or other valuable article is to be added as income of the assessee for the financial year relevant to the assessment year. According to him, the unaccounted sale of waste cotton does not fall under any of the assets mentioned in section 69A of the Act.

7. On the other hand, the Id. Senior DR only relied on the assessment order and that of the CIT(A).

8. We have heard rival contentions and gone through facts and circumstances of the case. We have perused the case records including the Paper-Book filed by the Id.AR for the assessee. We have gone through the case records and noticed that the addition of unaccounted sale of waste cotton is estimated only on the basis of statement of Cotton Clerk Shri B. Anandha Rajan on 29.06.2017



and Shri S. Thirumalai Kumar, AGM (Admin) on 30.06.2017. We have gone through the statement reproduced by the AO in his order and noted that there is no reference to any seized material or any incriminating material used by the Revenue. We have also gone through the orders of the lower authorities including case records and noticed that there is no reference to any seized materials on the basis of which unaccounted sales of cotton waste is estimated. We are conscious of the fact that the CBDT has issued instruction time and again as to how confession of additional income during the course of search & seizure and survey operation is to be added. The relevant Instruction No.286/2/2003-IT (INV. II) reads as under:-

Section 132 of the Income Tax Act, 1961 = Search and Seizure - General  
Confession of additional Income during the course of search & seizure and  
survey operation

**Instruction F.No.286/2/2003-IT(INV.II), Dated 10-3-2003**

Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt

should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders

Further, this notification was again reiterated vide letter F.No.286/98/2018-IT (INV.II) as under:-

Section 132, Read with Section 133A of the Income Tax Act, 1961 - Search & Seizure – Admissions of undisclosed income under coercion/pressure during search/survey

**Letter [F.No.286/98/2013-IT(INV.II)], Dated 18-12-2014**

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.
6. This issues with approval of the Chairperson, CBDT.

From the above notification or instructions issued by CBDT regarding admission of undisclosed income during the course of search & seizure that the same should have been on the basis of gathering of evidence during the course of search & seizure and to strictly avoid obtaining admission of undisclosed income under coercion / undue influence. Even the CBDT has noted the fact that while recording the statement during the course of search & seizure and survey operation, no attempt should be made to obtain confession as to the undisclosed income.

7.1 Further, we noted that the Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait, *supra* has held as under:-

“on no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicion, conjectures or surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by the court.”

Similarly, the Hon'ble Madras High Court in the case of P V Kalyanasundaram, *supra* has held that

“the addition made by the Assessing Officer merely relying upon statement of seller that he had received higher amount as sale consideration as against disclosed in registered sale deed, without conducting any independent enquiry relating to value of property purchased by assessee is incorrect.”

7.2 As noted above, the factual situation is very clear that there is no incriminating material for making any estimation of unaccounted sale of waste cotton despite search was conducted. Even no substantial assets or cash was found from the assessee to support the claim of the Revenue. It seems that the total unaccounted cash found during the course of search was only Rs.26,36,572/-, out of which Rs.20 lakhs belong to Shri Sadiq and it has been accepted by the Settlement Commission. The balance amount Rs.6,36,572/- remains after the order of CIT(A). This cash cannot be equated with the quantum of addition made by the AO and confirmed by the CIT(A) at Rs.42 lakhs in each of these six assessment years. Hence, we have no hesitation in stating that the addition made by the AO and confirmed by CIT(A) is just mere on suspicion, conjectures and surmises without any evidence.

7.3 As regards to assumption of jurisdiction for making addition u/s.69A of the Act, on account of unaccounted sale of cotton waste, we noted from the facts of the case and as per the facts

recorded by the AO as well as the CIT(A) the addition is made just on estimation basis being alleged unaccounted sale proportion of cotton waste generated upon the total sales made during the subject year. We noted that the amount determined by the AO as unaccounted sale of cotton waste is without any basis, without any corroborative documentary evidence or any evidence found from the premises of the assessee during search & seizure operation. In the given facts, we are of the view that once there is no money, bullion, jewellery or other valuable article is found from the procession of the assessee during the course of search or there is no evidence seized or found or corroborated with the alleged unaccounted sale of cotton waste, no addition can be made by invoking provisions of section 69A of the Act. Hence, on this legal issue also, addition is to be deleted.

7.4 Hence, we delete the addition. We reverse the orders of the lower authorities i.e., the AO and of the CIT(A) and allow this issue of assessee's appeal. Similar are the facts in the assessment years 2013-14 to 2017-18 in ITA Nos. 118, 119, 120, 121 & 122/Chny/2021. Hence the same is deleted.

8. The next issue in ITA 123/Chny/2021 for AY 2013-14 is as regards to the order of CIT(A) confirming the addition of Rs.6,36,572/- already declared as income in the application filed before Settlement Commission in the hands of M/s. Seyadu Beedi Company. For this, assessee has raised following Ground No.5:-

“5. The Learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the said amount of Rs.6,36,572/- has already been declared as income in the application filed before the Hon’ble Settlement Commission in the hands of M/s. Seyadu Beedi Company, in which firm the managing director of the appellant – Mr. Sadip is a partner.”

9. At the outset, the Id.AR for the assessee as well as the Id. Senior DR fairly agreed that the matter can be restored back to the file of the AO for verification and adjudication, whether this cash is declared by the assessee before Settlement Commission as income in the hands of M/s. Seyadu Beedi Company and in case, this is accepted by Settlement Commission, the same can be deleted.

10. After hearing both the sides, we are of the view that let this issue be restored back to the file of the AO for verification. This issue of the assessee’s appeal is set aside and allowed for statistical purpose.

11. In the result, the appeals filed by the assessee in ITA Nos. 118, 119, 120, 121 & 122/Chny/2021 are allowed and ITA No.123/Chny/2021 is partly allowed for statistical purpose as indicated above.

Order pronounced in the open court on 31<sup>st</sup> January, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> January, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |