

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.51/Pat/2020
Assessment Year: 2017-18**

Assistant Commissioner of Income-tax, Central Circle-3, Patna	Vs.	Rishav Dutta B/302, Kewal Mukund Bihari Dham, Sri Krishna Nagar, Patna-800001, Bihar. (PAN: BFYPD0308C)
(Appellant)		(Respondent)

Present for:

Appellant by : Smt. Rinku Singh, CIT, DR
Respondent by : Shri M. Kr. Mashi, CA

Date of Hearing : 09.05.2023
Date of Pronouncement : 06.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), Patna-3, vide Order No. ITBA/APL/S/250/2019-20/102686365 dated 23.03.2020 against the assessment order of ACIT, Central Circle-3, Patna u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 26.12.2019 for AY 2017-18.

2. Grounds raised by the Revenue are reproduced as under:

"I. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred (i) in deleting the additions made by the A.O. of Rs.79,720/- under the head unaccounted cash found and of Rs.6,43,12,861/- under the head unaccounted stock found during the course of survey and (ii) in allowing the disallowance of Rs. 1 50,000/- claimed by the assessee u/s 80C of the I. T. Act:-

(a) by admitting fresh evidences/ documents such as paper book containing books of account and other documents produced before him without providing reasonable opportunity to the A.O. to examine such evidences in violation of Rule-46A of the I. T. Rules, 1962.

(b) by disregarding the fact that the assessee had failed to produce any evidence during the course of assessment proceedings, during the course of survey and post survey enquiry and thus had failed to discharge his onus placed on him as per the Act.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.8,09,41,344/- under the head unexplained cash credit being the difference of total credit entry in the bank account and Gross Sales as per profit and loss account by accepting the contention of the assessee that the difference is due to the VAT/GST collection of Rs. 7,58,79,310/- on total sales of Rs.45,35,51,211/-. But in deleting, the Ld. CIT(A) has disregarded the findings of the A.O. that the assessee has submitted proof of VAT/GST payment of Rs.19,040/- only during the course of assessment proceedings.

3. That the order of the Ld. CIT(A) being erroneous in law and on facts to be vacated and the order of the A.O. be restored.

4. That the applicant craves leave to add, alter, delete, and modify the ground of appeal before the Hon'ble ITAT."

3. Brief facts of the case are that assessee derived business income from his proprietary business in the name and style of M/s. Aashu Enterprises which was involved in the distributorship and wholesale trade of branded tobacco items like Rajnigandha, Tulsi, Marlboro Cigarette and Raga Pan Masala. Assessee filed his return of income on 30.03.2018, reporting a total income of Rs.60,63,300/-. A survey was conducted u/s. 133A of the Act at the business premises of the assessee on 28.11.2016. During the course of survey, certain discrepancies were noted in respect of cash in hand and the stock of goods for which details and explanations were called for by the Ld. AO. Assessee made certain submissions in response to the queries raised by the Ld. AO by filing the written submissions and other letters. Ld. AO also required the assessee to produce books of account for verification of the

submissions made by the assessee. In this respect, Ld. AO noted that assessee had submitted only a typed copy of closing stock statement as on that date. For want of certain documents for substantiating the claims made by the assessee, Ld. AO proceeded to complete the assessment by making additions and assessed the total income at Rs.15,15,47,230/-.

3.1. Aggrieved, assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A), assessee produced the books of account and certain other documents including copy of confirmation letters and income tax returns of other tenants who occupied the business premises of the assessee where the stock was found for which it was claimed that stock found included the stocks of the tenants also. Similarly, in respect of discrepancy in the cash in hand found during the course of survey, Ld. CIT(A) took note of the cash book submitted by the assessee. Considering all these documents, Ld. CIT(A) allowed the claim of the assessee and deleted the addition so made in respect of difference in cash in hand of Rs.79,720/- which was added as unexplained cash and Rs.6,43,12,861/- which was added as unexplained stock, found during the course of survey. Ld. CIT(A) also allowed the claim of deduction made u/s. 80C of the Act of Rs.1,50,000/- upon furnishing of the relevant documents before him which included receipt for payment of premium of Rs. 3 lakh to ICICI Bank.

3.2. In respect of addition made of Rs.8,09,41,344/- under the head unexplained cash credit being difference of total credit entry in the bank and the gross sale as per P&L Account, Ld. CIT(A) by accepting the contention of the assessee that the

difference is amount of VAT/GST collection, deleted the addition so made. Thus, Ld. CIT(A) allowed the appeal of the assessee. Aggrieved by the same, Revenue is in appeal before the Tribunal.

3.3. Before us, Ld. DR has taken a ground that Ld. CIT(A) has admitted certain evidence and documents including books of account which were produced before him without providing reasonable opportunity of being heard to the Ld. AO so as to examine such evidence and the books of account which is in violation of Rule 46A of the Income-tax Rules, 1962 (hereinafter referred to as the "Rules"). Ld. CIT, DR contended that assessee did not discharge his onus and failed to produce the relevant documentary evidence during the course of assessment proceedings because of which additions were made by the Ld. AO in respect of unaccounted cash and stock found during the course of survey as well as claim of deduction made u/s. 80C of the Act.

3.4. Per contra, Ld. Counsel for the assessee submitted that all the necessary details and documents were placed before the Ld. AO in the course of assessment proceedings.

3.5. We have heard rival contentions and carefully perused the material available on record. From the perusal of the order of Ld. CIT(A), it is noted that he has placed reliance on confirmation letters and income-tax returns of the tenants in respect of which it was claimed that their stock was also lying at the business premises where the survey was conducted in order to explain the discrepancy found in the stock in the course of survey. Similarly, in respect of cash found during

the survey, the cash book was furnished before the ld. CIT(A). Also, the documentary evidence for the premium paid to claim deduction u/s. 80C was presented before the Ld. CIT(A). In the interest of justice and fair play, Ld. CIT(A) ought to have given a reasonable opportunity of being heard to the ld. AO so as to examine and verify these documents and records and obtain a remand report before disposing of the appeal by giving relief to the assessee. Considering the present set of facts, we find it proper to remit the matter contained in ground no. 1 to the file of Ld. CIT(A) to adjudicate on the issue afresh after giving reasonable opportunity of being heard to the Ld. AO by obtaining a remand report in respect of the documents and records furnished by the assessee. We also direct that assessee be given opportunity to furnish his rejoinder on the remand report, if he so desires. Accordingly, ground no. 1 taken by the Revenue is allowed for statistical purposes.

4. Ground no. 2 is in respect of addition made by the Ld. AO towards difference in the total credit entry in the bank account and the gross sales as reported by the assessee in the P&L Account which is on account of VAT/GST collection, as claimed by the assessee.

4.1 In this respect, assessee claimed that he has accounted for the sales and purchase under the exclusive method of accounting. Assessee submitted that he has booked sales excluding the tax amount of VAT/GST and thus has credited only sale amount to the P&L Account whereas the taxes collected in respect of sales has been directly booked as liability in the Balance Sheet. Similar has been the accounting

in respect of purchases made by the assessee for which the taxes paid have been booked as asset in the balance sheet as "Input Tax Credits". Based on this accounting methodology, assessee has reported total sales of Rs.45,35,51,211/- for the year. Against this, Ld. AO has noted that the total credit entries/deposits during the year in the two bank accounts of the assessee namely, ICICI Bank and Canara Bank, came to Rs.53,46,82,595/-. Thus, the difference between the total credit and the total sales of Rs.8,11,31,384/- was treated as out of books. Ld. AO did not find favour with the submissions made by the assessee and made the addition of Rs.8,09,41,344/- after giving credit of Rs.1,95,040/- towards challans produced for payment of VAT/GST.

4.2. Before us, Ld. Counsel referred to the elaborate details of VAT returns as well as details of output VAT and the input tax. He submitted that in the VAT returns filed by the assessee, there is higher input tax credit than the output VAT and, therefore, assessee was not required to make the VAT payment. Ld. Counsel further stated that total VAT amount is Rs.7,58,79,310/- on total turnover of Rs.45,35,51,211/-. Thus, the possible credit summation in the accounts is Rs.52,94,30,521/-. Against this, total credit summation as per the books of account is Rs.53,20,15,115/-. Thus, Ld. Counsel asserted that the addition made by the Ld. AO is under wrong notion of facts on record.

4.3. Ld. CIT, DR in this respect submitted that effective from AY 2017-18, income chargeable under the head "Profit & Gains of business or profession" has to be computed by filing the

Income Computation and Disclosure Standard (ICDS) with either cash or mercantile system accounting regularly employed by the assessee. It was further stated that Sec. 145A prescribes that for the purpose of determining income chargeable under the head “Profits and Gains for business or profession”, u/s. 145A(ii) the valuation of purchase and sale of goods or services and of inventory is required to be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee, to bring the goods or services to the place of its location and condition as on the date of valuation. She referred to ICDS-IV relating to “Revenue Recognition” wherein this ICDS deals with basis for recognition of revenue, inter alia, for sale of goods which states that –

3. In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.

4. Revenue shall be recognised when there is reasonable certainty of its ultimate collection.

5. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.”

4.4. The definition of revenue as contained in ICDS-IV for the purpose of recognition is defined as under:

(a) “Revenue” is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a

person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration."

4.5. It was asserted that Ld. CIT(A) while giving relief to the assessee by deleting the addition has not taken into cognizance the provisions of section 145 read with section 145A(ii) and ICDS IV relating to revenue recognition.

5. We have heard the rival contentions and perused the material available on record. From the perusal of the order of Ld. CIT(A), we note that assessee has elaborately explained his case by explaining the methodology of accounting adopted in respect of sales and VAT in his books of account. Ld. CIT(A) has given his finding after considering the submissions made by the assessee and allowed the relief. However, we note that cognizance of section 145 read with section 145A(ii) and relevant ICDS IV for revenue recognition has not been taken into consideration which have become applicable from AY 2017-18, the year under consideration before us i.e. AY 2017-18. Therefore, in the interest of justice and fair play, finding force in the submissions made by Sr. DR, we remit the matter back to the file of Ld. CIT(A) to adjudicate afresh on this issue by taking into consideration the provisions of section 145 read with section 145A(ii) and relevant ICDS IV. Needless to say that both the parties i.e. Ld. AO and the assessee be given reasonable opportunity of being heard to make their respective submissions. Accordingly, ground no. 2 raised by the revenue is allowed for statistical purposes.

6. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open Court on 6th June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 6th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), Patna-3, Patna
 4. CIT,
 5. DR, ITAT, Patna Bench, Patna
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata