

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2489/Chny/2016

निर्धारण वर्ष / Assessment Year : 2013-14

&

आयकर अपील सं./ITA No.2569/Chny/2017

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Surabi Bullion,
98, Vairam Street,
Coimbatore – 1.

v.

The Deputy Commissioner of
Income Tax,
Central – 1,
Coimbatore.

PAN : ABRFS 7669 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by : Smt. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 15.02.2018

घोषणा की तारीख/Date of Pronouncement : 03.05.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

I.T.A. No.2489/Chny/2016 is directed against the order of the Principal Commissioner of Income Tax, Central-2, Chennai, dated 15.07.2016 under Section 263 of the Income-tax Act, 1961 (in short 'the Act'). Consequent to the order of the Principal

Commissioner, the Assessing Officer passed an order on 13.02.2017. The assessee filed an appeal before the CIT(Appeals) and the CIT(Appeals) confirmed the addition made by the Assessing Officer against which, the assessee filed appeal in I.T.A. No.2569/Chny/2017. Therefore, we heard both the appeals of the assessee together and disposing of the same by this common order.

2. For the sake of convenience, first let's take I.T.A. No.2489/Chny/2016.

3. Shri D. Anand, the Ld counsel for the assessee, submitted that there was a search in the premises of the partners of the assessee on 24.09.2012. According to the Ld. counsel, during the course of search operation, cash was found and seized. The partners of the assessee-firm admitted that the cash found was income of the firm from the business. After reconciliation, according to the Ld. counsel, the Assessing Officer made addition of ₹11,39,930/-. However, the Principal Commissioner found that the order of the Assessing Officer was erroneous and prejudicial to the interests of Revenue. According to the Ld. counsel, the order of the

Assessing Officer was passed after considering all the material documents and reconciliation statement filed by the assessee. Therefore, it is neither erroneous nor prejudicial to the interests of Revenue.

4. Referring to the judgments of Apex Court in CIT v. Max India Limited (2007) 295 ITR 282 and in Malabar Industries Co. Ltd. v. CIT (2000) 243 ITR 83, the Ld.counsel submitted that when two views are possible, the Assessing Officer has taken one of the possible views. The Principal Commissioner cannot say that the view taken by the Assessing Officer is erroneous and prejudicial to the interests of Revenue. According to the Ld. counsel, the assessee has no other source of income other than business, therefore, the cash found during the course of search operation was generated only from the business and not from other sources.

5. Shri D. Anand, the Ld.counsel for the assessee further submitted that there was fluctuation in the price of gold in the international market. The rates of gold would vary several times in the course of business. According to the Ld. counsel, the stock admitted by the assessee as on 31.03.2011 has to be taken as

opening stock as on 01.04.2012. Therefore, according to the Ld. counsel, the order of the Assessing Officer is not erroneous. Moreover, no prejudice is caused to the Revenue, therefore, the Principal Commissioner is not correct in revising the order of the Assessing Officer in exercise of his jurisdictional power under Section 263 of the Act.

6. On the contrary, Smt. Ruby George, CIT, the Ld. Departmental Representative, pointed out that the original assessment was completed under Section 143(3) of the Act on 31.07.2014. According to the Ld. D.R., the partners of the assessee-firm admitted an unaccounted income to the extent the cash was found during the course of search operation. When the assessee admitted through its partners that the entire unaccounted cash found during the course of search operation was outside its books of account, according to the Ld. D.R., it has not offered any income from business which was carried on as per the books of account. The Assessing Officer has simply adopted the difference between the income returned by the assessee and the cash found during the course of search operation. According to the Ld. D.R., the Assessing Officer has not taken any pain to ascertain the profit

earned by the assessee in the course of business as per the books of account. According to the Ld. D.R., what was assessed by the Assessing Officer is only the income generated by the assessee outside the books, therefore, the income generated as per the books also needs to be assessed for taxation. Since the Assessing Officer has not taken any step to assess the income generated as per the books, according to the Ld. D.R., the Principal Commissioner has rightly found that the order of the Assessing Officer is not only erroneous but also prejudicial to the interests of Revenue.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was search operation in the premises of the partners of the assessee and cash was found and seized. The assessee returned income. However, the entire cash was not disclosed in the return of income, therefore, the Assessing Officer assessed the difference between the cash found during the course of search operation and the income returned by the assessee in the return of income to the extent of ₹11,39,930/-. The Principal Commissioner found that what was disclosed by the assessee and assessed by the Assessing

Officer is in respect of the unaccounted income generated outside the books of account. Therefore, the Principal Commissioner found that the Assessing Officer has not made any proper enquiry to find out the income generated by the assessee from the business carried on as per the books of account. The Principal Commissioner also found that the unaccounted income admitted by the assessee during the course of search operation cannot be considered to be part of book profit for the purpose of computing partners' remuneration under Section 40(b)(v) of the Act. Therefore, the Principal Commissioner has rightly exercised his jurisdiction under Section 263 of the Act.

8. As rightly submitted by the Ld. Departmental Representative, the Assessing Officer assessed the difference of ₹11,39,930/- from the cash found during the course of search operation and the income disclosed by the assessee. The Assessing Officer has not made any enquiry to find out the profit or income generated in the course of business as per the books of account. Therefore, this Tribunal is of the considered opinion that there is an error in the order of the Assessing Officer which is prejudicial to the interests of Revenue. Apart from the undisclosed income found during the

course of search operation in the form of cash, the assessee carried on the business as per the books. Therefore, the income / profit generated from the business carried on by the assessee as per books also needs to be disclosed apart from the unaccounted income found and admitted during the course of search operation. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

9. In the result, I.T.A. No.2489/Chny/2016 is dismissed.

10. Now coming to the assessee's appeal against the order of the CIT(Appeals).

11. Shri D. Anand, the Ld.counsel for the assessee, submitted that the Assessing Officer has not found any defect in the books of account. According to the Ld. counsel, the assessee has disclosed gross profit of ₹1,37,36,083/- with G.P. ratio of 0.36% till 22.09.2011. In the post search period, i.e. from 22.09.2011 to 31.03.2012, the assessee has declared a loss of ₹75,80,388/- as per the books of account. According to the Ld. counsel, the Assessing Officer completed the assessment by ignoring the loss as per the books of account and estimated the gross profit at 0.17%.

The Assessing Officer has not rejected the books of account at any point of time despite the fact that the assessee maintained regular books of account. Moreover, according to the Ld. counsel, no defect was found by the Assessing Officer in the books. On appeal by the assessee, according to the Ld. counsel, the CIT(Appeals) ignored the fact that there was no defect in the assessee's books of account maintained in the regular course of business. He estimated the profit at 0.12% and reduced the gross profit for the post search period to ₹71,83,368/-. According to the Ld. counsel, the CIT(Appeals) also deleted the interest levied by the Assessing Officer under Section 234B of the Act. Against that, the Revenue has not preferred any appeal.

12. Shri D. Anand, the Ld.counsel for the assessee further submitted that it is not in dispute that the assessee maintains books of account in the regular course of its business. The fact is that the books maintained by the assessee in the regular course of business were not rejected by the Assessing Officer at any point of time. Moreover, according to the Ld. counsel, no defect was pointed out by the Assessing Officer in the books maintained by the assessee in the regular course of business. The Assessing Officer as well as

the CIT(Appeals) ignored the loss declared by the assessee and estimated the profit at 0.17% by the Assessing Officer and 0.12% by the CIT(Appeals). According to the Ld. counsel, during the post-search period, the assessee suffered a net loss of ₹11,44,413/-. However, the Assessing Officer rejected the same by estimating the gross profit at 0.17%. Since the books of account maintained by the assessee were not rejected and no defect was pointed out by the Assessing Officer, according to the Ld. counsel, the Assessing Officer is not justified in estimating the profit for the purpose of ignoring the loss claimed during the post-search period.

13. We have considered the rival submissions on either side and perused the relevant material available on record. The CIT(Appeals) found that the Assessing Officer estimated gross profit at 0.17% without any comparison. Equally, the CIT(Appeals) found that the assessee could not substantiate the claim of low gross profit. Therefore, he estimated the gross profit at 0.12%. The fact remains that the assessee maintained the books of account in its regular course of business and the books were not rejected by the Assessing Officer. Moreover, no error was also pointed out. The Assessing Officer as well as the CIT(Appeals) were under the

impression that in the bullion trade, there cannot be any loss. The gold rates are under fluctuation every day. Therefore, nobody can expect an assessee to earn profit in the business. This Tribunal is of the considered opinion that when the books of account were not rejected by the Assessing Officer, which were maintained by the assessee in the regular course of its business, there may not be any necessity for the Assessing Officer to estimate the profit. The estimation of profit would arise for consideration only when the books of account were not maintained properly and the same were rejected by the Assessing Officer in the course of assessment proceeding. Since the books of account were not rejected, this Tribunal is of the considered opinion that the estimation of profit may not be justified. Accordingly, orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.

14. In the result, appeal of the assessee in I.T.A. No.2489/Chny/2016 is dismissed. However, the appeal in I.T.A. No.2569/Chny/2017 stands allowed.

Order pronounced on 3rd May, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 3rd May, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18 Chennai-34
4. Principal CIT-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.

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