

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No.212/Ind/2023
Assessment Year:2018-19

Shri Naresh Chandra Kalwani, C/o: Rikhabchand Naresh Chand Kalwani, Main Road, Seoni (Appellant/Assessee)	बनाम/ Vs.	Pr. Commissioner of Income-tax - 1, Bhopal (Respondent/Revenue)
PAN: ACIPK6581A		
Assessee by	Shri Manoj Fadnis, CA& AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.01.2024	
Date of Pronouncement	15.02.2024	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 28.03.2023 passed by learned Principal Commissioner of Income-Tax-1, Bhopal ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 05.03.2021 passed by learned National e-assessment Centre, Delhi ["AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2018-19, the

assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee-individualis engaged in the business of selling gold and silver ornaments in a proprietorship concerned named "M/s Rikhabchand Nareshchand Kalwani" and also the business of money-lending. For the relevant AY 2018-19, the assessee filed return of income which was subjected to scrutiny-assessment and the AO completed assessment u/s 143(3) of the Act vide order dated 05.03.2021. In the return so filed, the assessee declared an additional income of Rs. 94,90,585/- on account of excess-stock of gold and silver jewellery of Rs. 69,52,314/- and Rs. 25,38,271/- respectively, surrendered by assessee during a survey u/s 133A conducted by authorities upon assessee during the relevant previous year. The assessee declared this additional income as regular business income and paid normal tax as applicable. While completing assessment, the AO accepted assessee's declaration without making any change. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 20.12.2022 and finally passed revision-order dated 28.03.2023. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee carried us to Para No. 4 and 5 of revision-order and pointed out that the PCIT has precisely conducted revisionary proceeding on the footing that the additional income of Rs. 94,90,585/- on account of excess-stock attracted section 69/69A read with section 115BBE of the Act but the AO has failed to do proper enquiry on this issue during assessment-proceeding and thus the AO has not applied his mind due to which the assessment-order is erroneous-cum-prejudicial to the interest of revenue. The PCIT has also relied upon the decision of ITAT, Indore in **Chandan Garments Private Limited Vs. PCIT, ITA No. 125/Ind/2022 dated 02.12.2022** wherein PCIT's revision-order u/s 263 passed in that case on identical issue was upheld. The PCIT has also noted that since the section 263 has been amended and Explanation 2(a) as reproduced below had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“Explanation 2 – “For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -

(a) The order is passed without making inquiries or verification which should have been made;

(b) to (d) ... ”

4. Having explained the aforesaid background, Ld. AR firstly carried us to Paper-Book-I filed by assessee. He carried us to Page No. 13-14 of Paper-Book where the AO raised specific queries to assessee vide Q.No. 8, 9, 11, 12 and 13 of the statutory-notice issued u/s 142(1) dated 30.01.2021 qua the

excess-stock found/additional income surrendered by assessee during survey as also the money-lending business carried on by assessee. He carried us to next Page No. 15-16 of the reply-letter dated 15.02.2021 submitted by assessee in response to the aforesaid notice wherein vide Point No. 8, 9, 11, 12 and 13, the assessee submitted explanation to the queries raised by AO. Thus, Ld. AR contended, the AO has made specific queries to assessee concerning the issue raised by PCIT and the assessee has also filed explanation, which is very much evident from the documents forming part of the assessment-record available with department. Therefore, this is not a case of "no enquiry" as alleged by Ld. PCIT.

5. Then, Ld. AR carried us to Para No. 5 to 14 of assessment-order to demonstrate that the AO has discussed at length the details of the quantities and values of excess stock; how the difference of Rs. 94,90,585/- was ascertained; how the surrender was made by assessee during survey; and how the assessee has dealt this income in accounts and declared in return of income. The AO has specifically noted that the assessee has offered income for taxation under the head "*Income from business and profession*" and thereafter concluded this way "*Thus, assessee has disclosed the income as admitted during survey proceedings.*" Ld. AR contended that the vehement analysis made by AO in assessment-order itself shows that the AO has paid due consideration to the impugned issue.

6. Ld. AR next submitted that the reliance of Ld. PCIT on the order of ITAT, Indore in ***Chandan Garments (supra)*** is totally mis-placed for the

simple reason that the facts of that case are absolutely different and having no match with the facts of assessee. To show this, Ld. AR firstly carried us to Para No. 8 and 9 of the order of ITAT in **Chandan Garments (supra)** which read as under:

“8. It is noteworthy that the impugned incomes have been admitted by assessee during the course of survey and also offered as such in the return of income, therefore the issue becomes simpler for us for the explicit reason that we need to focus to the statements made by assessee during survey proceeding. Ld. DR carried us to the copy of statements placed in the Paper Book and drew our attention to the following questions raised by survey-team to the assessee and the replies given:

Page No. 5 of the Statement - Page No. 19 of the Paper-Book:

प्रश्न-आज दिनांक 19/09/2016, खुशाल मोहिते कांप्लेक्स पर अवस्थित व्यवसायिक प्रतिष्ठान पर सर्वे की कार्यवाही के दौरान, आपके रूम के adjacent (बगल) वाले रूम में, जिसमें सामान्य तौर पर आपका लडका श्री संदीप जैन बैठते हैं, जिसका भौतिक सत्यापन किया गया, जिसके उपरांत कुल रु. 10,18,653/- की रकम पायी गयी, जिस रकम को आपके द्वारा चंदन गारमेंट प्रा.लि.से संबंधित बताया गयी। कृपया इस रकम का स्रोत स्पष्ट करें।

उत्तर- मैं आपको Chandan Garment Pvt. Ltd. की cash book दिनांक 19/09/2016 को प्रस्तुत कर रहा हूँ जिसके अनुसार cash का balance रु. 97,193/- आ रहा, अंतर की राशि कुल रुपये 9,21,460/- (10,18,653 - 97,193) आता है। अतः इस अंतर की राशि को मैं स्पष्ट करने में असमर्थ हूँ। अतः इस अंतर की राशि रु. 9,21,460/- अपनी कंपनी चंदन गारमेंट प्रा.लि. की वर्तमान वित्त वर्ष 2016-17, कर निर्धारण वर्ष 2017-18 के अतिरिक्त स्रोतों से अर्जित आय आय मानते हुए नियमित आय के अलावा आयकर कराधान हेतु स्वेच्छा से समर्पित करता हूँ और उपरोक्त राशि पर देय कर नियमानुसार भरने का वचन देता हूँ।

Page No. 8 of the Statement - Page No. 22 of the Paper-Book:

प्रश्न- आज दिनांक को की गई सर्वेक्षण की कार्यवाही के दौरान Chandan Garment Pvt.Ltd. से संबंधित stock जोकि 100-10 पोलो ग्राउंड, इंदौर पर अवस्थित factory पर उपलब्ध स्टॉक का भौतिक सत्यापन किया गया है। जिसकी

inventory आपको दिखाया जा रहा है। इस inventory के अनुसार उपलब्ध stock की कुल value रु. 90,84,243/- है जबकि आपके द्वारा प्रस्तुत Trading A/c के अनुसार स्टॉक की राशि रु. 89,16,210/- आती है। कृपया अंतर की राशि रु. 1,68,030/- को स्पष्ट करें।

उत्तर – इस अंतर की राशि कुल रुपये 1,68,030/- को स्पष्ट करने में असमर्थ हूँ। अतः इस राशि को मैं Chandan Garment Pvt. Ltd के मद में अपने नियमित आय के अलावा Undisclosed income के तौर पर घोषित करता हूँ। इस राशि कुल रुपये 1,68,030/- को चालू वित्त वर्ष 2016-17 तक निर्धारण वर्ष 2017-18 के लिए करारोपण हेतु घोषित करता हूँ तथा साथ ही वचन देता हूँ के इस राशि पर नियमानुसार देय कर जमाकर दूंगा।

Thus, in these statements, the assessee has categorically admitted twin-aspects, viz. (i) unable to explain the excess-cash / excess-stock; and (ii) the excess-cash / excess-stock is from "additional sources" or "undisclosed income". On a careful examination of statements, we nowhere find that the assessee has whispered any voice that the impugned incomes were earned from business. In fact, this is the precise reason that the Ld. PCIT has also made following conclusion and passed revision-order:

"4.1 Thus, it is clear from the aforesaid statement that the surrender on account of excess cash as well as excess stock has been made out of unexplained sources which was never disclosed to the department. Nowhere the assessee submitted that this suppressed income is out of business income. Not only that it has also been clearly stated in the statement that no pressure etc. was applied for recording his statement. Therefore, the submission of the assessee that excess cash and excess stock are nothing but out of business income is factually incorrect and therefore, the same cannot be accepted."

9. Now we proceed to check whether the Statement of assessee fits in the clutches of section 69 / 69A or not.

Section 69

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Section 69A

“69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”

Thus, section 69 / 69A is applicable if three conditions are satisfied, viz. (i) the assessee has made investment / is found to be owner of any money; (ii) such investment / money is not recorded in the books of account maintained for any source of income; and (iii) the assessee offers no explanation about the nature and source of investment / money. Reverting back to the Statement of assessee, we observe that all three conditions are clearly satisfied, viz. (i) the assessee was found to have investment in excess stock of Rs. 1,68,030/- and owner of excess-cash of Rs. 9,21,460/-; (ii) the investment / cash was not recorded in the books of account of assessee; and (iii) the assessee has clearly admitted the twin-aspects as narrated earlier from which it is manifest that the assessee offered no explanation regarding nature and source thereof. Thus, it is quite clear that all ingredients of section 69 / 69A are satisfied.”

Thus, Ld. AR submitted, in the case of **Chandan Garments (supra)**, the assessee himself accepted in statements that the excess-stock was from “additional sources” or “undisclosed income”. Further, the assessee nowhere in the statements whispered any voice that the excess-stock was earned from business.

Having shown thus, the Ld. AR carried us to Page No. 4-12 of the Paper-Book where a copy of the statements of assessee recorded during survey is filed. Ld. AR drew our specific attention to Q.No. 4 raised by authorities and reply given by assessee which reads as under:

“प्रश्न 4 - आपके द्वारा प्रस्तुत व्यापार खाते के अनुसार आज दिनांक को आपकी संस्थान में सोना जेवर का स्टॉक 312.477 ग्राम एवं चांदी जेवर का स्टॉक 46785.00 ग्राम है । जबकि विभाग द्वारा किये गये भौतिक सत्यापन के उपरांत आपकी संस्थान में सोना जेवर स्टॉक 3073.600 ग्राम एवं चांदी जेवर स्टॉक

131677.00 ग्राम उपलब्ध पाया गया। उपरोक्तानुसार सोना जेवर के स्टॉक में पाया गया 2761.123 ग्राम के अंतर एवं चांदी जेवर के स्टॉक में पाया गया 84892.000 के अंतर के बारे में आपका क्या कहना है।

उत्तर- महोदय उपरोक्तानुसार सोना जेवर एवं चांदी जेवर के स्टॉक में पाये गये अंतर क्रमशः 2761.123 ग्राम एवं 84892.000 ग्राम की कुल कीमत रु. 94,90,585/- की राशि को मैं चालू वित्तीय वर्ष की नियमित आय के अलावा मेरे द्वारा अर्जित अतिरिक्त आय के रूप में विभाग के समक्ष कराधान हेतु समर्पित करता हूँ। मैं उपरोक्तानुसार समर्पित की गई आय रु. 94,90,585/- (रु. चौरान्धे लाख नब्बे हजार पांच सौ पिच्चासी मात्र) पर नियमानुसार देय कर का भुगतान निश्चित समयावधि में कर दूंगा। महोदय मेरी संस्थान में गिरवी का कार्य पुश्तैनी है जो कि मुझे विरासत में 10 वर्ष पूर्व प्राप्त हुआ है। विगत कई वर्ष पूर्व मेरे द्वारा गिरवी के रूप में रखे गये सोना-चांदी आभूषणों को गिरवी रखने वाले व्यक्तियों ने आभूषणों की कीमत से अधिक राशि हो जाने के कारण उठाया नहीं था, जिन्हें मेरे द्वारा स्टॉक में शामिल कर लिया गया था।”

Analyzing above, Ld. AR submitted that when the authorities made a pointed question to assessee *qua* the excess-stock, the assessee replied that he carries ancestral business of money-lending wherein the gold and silver ornaments pledged by borrowers but not released by them, had been included in the inventory. Thus, the source of excess jewellery is traceable to the ornaments pledged by customers in money-lending business and forfeited by assessee. This source, as can be seen, is instantly explained by assessee in response to the question raised by survey-authorities. Ld. AR submitted that the assessee has explained the additional income as related to business and it is not a case that the assessee has failed to explain the source or the assessee has admitted that the excess-stock was earned from ‘additional sources’. Thus, there is no parity at all in the facts of **Chandan Garments (supra)** and assessee. Ld. AR went on submitting that the aforesaid reply given by assessee to Q.No. 4 is also supported from all

returns and financial statements of earlier years filed by assessee to Income-tax Department wherein the assessee has declared the transactions of money-lending business. Ld. AR has filed a separate Paper-Book-II containing such documents. We re-produce below the Index of Paper-Book which gives a bird's eye view of such documents relating to AY 2013-14 to 2018-19:

Shri Naresh Chand Kalwani, Seoni vs. PCIT-I, Bhopal
ITA No.212/Ind/2023 - AY 2018-19

Shri Naresh Chandra Kalwani vs Principal Commissioner of Income Tax-1

Appeal No.- ITA 212/IND/2023

Date of Hearing: 20th December 2023

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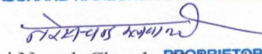
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Certificate

This is to certify that the documents at serial no. 7 to 12 above were before the Id. Assessing Officer/Id. Principal Commissioner of Income Tax and that no new evidence has been filed.

RIKHABCHAND NARESHCHAND KALWANI.

Shri Naresh Chandra Kalwani **PROPRIETOR**

Referring to some of the documents on test-check basis, Ld. AR demonstrated as under:

- (i) Page 35, 36 of Paper-Book for AY 2013-14 - The assessee filed a separate Trading and P&L A/c of money-lending business showing

interest receipt of Rs. 5,34,534/-, business expenses of 3,04,110/- including a specific item of Rs. 100/- as fee for renewal of money lending license and net profit of Rs. 2,30,423/-. In Schedule "F" to Balance-Sheet, the assessee declared 'Sundry Debtors of Girwi (i.e. money lending) Business' at Rs. 29,35,718/-.

- (ii) Page 41 of Paper-Book for AY 2014-15 – The assessee declared income from money-lending business at Rs. 1,96,302/- and 'Sundry Debtors of Girwi (i.e. money-lending) Business' at Rs. 37,24,318/-.
- (iii) Likewise the assessee declared continuously for AY 2015-16 to 2018-19.

7. Thereafter, Ld. AR relied upon following decisions of ITAT, Indore and Hon'ble Rajasthan High Court wherein the excess-stock related to business carried on by assessee has been accepted as regular business income and not attracting section 69/69A read with section 115BBE:

- (i) ITAT Indore in Shri Premdeep Rajput Vs. ACIT (2023) 10 ITJ Online 239, ITA No. 4/Ind/2023 order dated 25.08.2023
- (ii) ITAT Indore in ACIT Vs. Shri Anoop Neema, ITA No. 5/Ind/2020 order dated 06.01.2022.
- (iii) ITAT Indore in M/s Brijmohan Das Devi Prasad Vs. ACIT, ITA No. 428/Ind/2022 order dated 17.07.2023.

(iv) Hon'ble Rajasthan High Court in PCIT Vs. Bajarang Traders (2017) 86 taxmann.com 295 (Rajasthan)

8. Lastly, Ld. AR relied upon the decision of Hon'ble apex court in *Malabar Industrial Co. Vs. CIT (2000) 243 ITR 83 (SC)* where it has been held that if the AO has taken one of the two possible views, the order passed by AO cannot be said to be erroneous.

9. With aforesaid submissions, Ld. AR contended that in the present case of assessee, the PCIT has wrongly invoked section 263 which was not warranted at all. Therefore, the order passed by PCIT is liable to be quashed.

10. Ld. DR for revenue invited our attention to the very same reply given by assessee in response to Q.No. 4 of statements and submitted that the assessee has offered the surrendered income as 'additional income', therefore the impugned income attracts section 69/69A. He further submitted that there must be some record to show as to whom the jewellery belonged but the assessee has not produced any such record. He submitted that the case laws relied upon by Ld. AR are those wherein the section 69/69A/115BBE was invoked by AO himself in assessment and then the assessee challenged AO's action whereas in the present case of assessee, the AO himself did not invoke section 69/69A/115BBE and that is why the PCIT had to resort to revisionary action u/s 263. Therefore, the case laws relied by Ld. AR are not applicable. Ld. DR submitted that the action of Ld. PCIT is very much in accordance with the mandate of section 263 and must be upheld.

11. In rejoinder, Ld. AR submitted that the reply given by assessee in response to Q.No. 4 must be read fully and carefully. The assessee has certainly made surrender and offered the same as 'additional income' and also declared additional income in the return filed, there is no doubt about it. But it should not be missed that the assessee also explained in his reply that the impugned excess-stock in the shape of jewellery belonged to the ancestral business of money-lending carried on by assessee. Ld. AR submitted that the assessee has categorically stated so in the last sentence of reply to Q.No. 4. Further, the factum of carrying money-lending business is already on record of department which is very much evident from the transactions of business declared by assessee throughout in returns and financial statements filed to department. So far as case-laws are concerned, Ld. AR submitted that it is not a point as to whether the AO invoked section 115BBE or not, the essential point is that the ITAT, Indore and Hon'ble Rajasthan have categorically held that the excess-stock explained by assessee as relatable to regular business carried on by assessee cannot attract section 69/69A/115BBE. Therefore, in the light of those decisions, the excess-stock explained and proved by assessee in present case as relatable to money-lending business, cannot attract deeming provisions of section 69/69A/115BBE and the AO has rightly not invoked those sections.

12. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. On a careful consideration, we firstly find that

during the course of assessment-proceeding, there were specific queries raised by AO with regard to the excess-stock/additional income identified during survey and the assessee also filed reply to AO. To this extent, there cannot be any dispute or rebuttal by revenue. Going further to the assessment-order, it is discernible that the AO has made a vehement discussion qua excess-stock in Para No. 5 to 14 of assessment-order and also taken cognizance of the fact that the assessee has offered income under the head "Income from business and profession". On a careful consideration of Q.No. 4 put by survey-team to assessee and the reply given by assessee, we find that the assessee straightway explained the source of jewellery forming part of excess-stock, which is borrowers of money-lending business. It is further noteworthy that the assessee has been regularly declaring the financial transactions, revenue, expenses, net profit and sundry debtors of money-lending business to department year after year. The assessee is also holding a money-lending licence and obtained renewal of license from concerned authorities. Moreover, it is also a valid contention of Ld. AR that even if there are two possible views and the AO has taken one of them, the order of AO cannot be said to be erroneous as held by Hon'ble Supreme Court in **Malabar Industrial Co. (supra)**. We also find that in the judicial rulings of ITAT, Indore and Hon'ble Rajasthan High Court referred by Ld. AR, it has been held that the excess-stock explained by assessee as relatable to business cannot attract section 69/69A/115BBE. In the light of those rulings, the AO has rightly assessed the income at normal rates of tax, hence there is no loss of revenue to department and consequently the order

passed by AO is not prejudicial to the interest of revenue. Ld. AR for assessee has also successfully explained the distinguishing factor due to which the decision in **Chandan Garments (supra)** relied by Ld. PCIT is not applicable to assessee's case. After considering entire conspectus of the case, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by AO. The assessee succeeds in this appeal.

13. Resultantly, this appeal of assessee is allowed.

Order pronounced in open court on 15.02.2024
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Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 15.02.2024.

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore