

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6174/Del/2016 : Asstt. Year: 2012-13

Income Tax Officer, Ward -41(4), New Delhi -110002	Vs	Smt. Keshar Devi, C-44/1, 1 st Floor, Lawrence Road, Industrial Area, New Delhi-110035
(APPELLANT)		(RESPONDENT)
PAN No. AHQPD4996D		

Assessee by : Ms. Rano Jain, Adv.

Ms. Mansi Jain, CA

Revenue by : Sh. Sanjay Kumar, Sr. DR

Date of Hearing: 18.10.2023

Date of Pronouncement: 12.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-14, New Delhi dated 07.09.2016.

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and circumstances of the case & in law, the Ld. CIT(A) is not justified in deleting the trading addition of Rs.25,57,22,850/-without appreciating the findings of the AO submitted through remand report that assessee could not give satisfactory reply in respect of consignment sales & purchase and make payments in cash to parties, other than farmers which clearly contradicted to provision of section 40A(3) of the Act read with Rule 6DD of the Income Tax Rules as also ignoring the judgment of the Hon'ble Delhi High Court in the case of CIT Vs M/s Jansmpark Advertising and ...in ITA No.525/214 held "The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals) having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the addition made."

3. The assessee has filed income tax return online for AY 2012-13 on 18.09.2012 declaring taxable income of Rs. 3,60,555/-. The assessee was running business under the name and style of M/s Grah Lakshmi Trading Co. having office at C-44/1, 1st Lawrence Road Industrial Area, New Delhi-110035 involved in Trading in Food Grains items and commission Agents.

4. During the assessment proceedings, the assessee submitted list of parties from whom he has made sales and purchases out of which certain parties were selected by the AO and notices u/s 133(6) of the Act dated 20.02.2015 were issued to the parties. As per the Assessing officer the assessee has declared sale of Rs.66,57,42,270/- but on perusal of the ledger sales declared by the assessee was Rs.92,14,65,125/- which consist of local sales of Rs.71,46,79,944/- and central sales of Rs 20,67,85,181/-. Hence, the AO observed that the assessee has not declared sales of Rs. 25,57,22,855/- remained unverifiable. Accordingly, addition of Rs. 25,57,22,855/- was made in the hand of assessee.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition made by the AO.

6. Aggrieved with the order of the Id. CIT(A), the Revenue filed appeal before us.

7. Before us, during the arguments, the Id. DR has taken up through the Assessment Order page no. 1 to 5.

8. For the sake of ready reference, the relevant part of the Assessment Order is reproduced below:

"Reply of assessee:

On the fixed date of hearing neither assessee nor A. R. appeared nor submitted details alongwith supporting evidence.

Finding of A.O.

Since, the assessee has not submitted support reply alongwith supporting evince, which clearly show that assessee has nothing to reconcile the same. Keeping in view of above facts the assessee has declared less purchase in trading account of Rs.25,57,22,855/-. Moreover, on the perusal of ledger no such reduced amount of Rs. 25,57,22,855/- is recorded in the books of account of assessee in the individual ledger account of parties from it was actually purchased nor the name of parties. Further it is added that this amount of sales is also recorded in sale account of assessee and total of which comes to Rs.92,14,65,125/- as declared in trading account of Rs.66,57,42,270/-. Keeping in view of above facts it is very much clear that the assessee has not declared the sale of Rs.25,57,22,855/-. On the other hand if the assessee reduction be relied than it should have been added in the purchase of than the purchase of assessee was increased upto amount of Rs.25,57,22,855/-. In this connection it is pertinent to point out here that the assessee has given list of sale and purchase of parties as discussed at Query no.1 which was changed by the assessee and new list of sale and purchase of parties which is also suspected.

After considering all the facts as narrated above in details it is very much clear that books of account of assessee is not give the correct

picture of assessee's business and it is a possibility that the assessee may have involve in giving bogus sale purchases.

Keeping in view of the facts addition of Rs.25,57,22,855/- is being made in the hand of assessee on account of sales were not declared in trading account as detected during the assessment proceedings.

Keeping in view of the facts it is very much clear the assessee has deliberately reduced the sale of Rs. 25,57,22,855/-from his sale account merely passing entry in central sale and local sale as purchase without giving name and address of the parties from whom it was purchased and this amount was also not included in the purchase of the assessee. Hence it is very much clear the assessee has submitted inaccurate particulars of his business transactions and concealed the taxable amount of Rs.25,57,22,855/- In view of the above facts it is fit case for initiation of penalty u/s/271(1)(c)."

9. The Id. AR relied on the order of the Id. CIT(A) and argued that the Id. CIT(A) has given relief after examination of the facts and after obtaining the remand report from the Assessing Officer and pleaded that the order of the Id. CIT(A) be affirmed.

10. Heard the arguments of both the parties and perused the material available on record.

11. The only issue to be adjudicated in this case is whether the addition of Rs.25,57,22,855/- made by the Assessing Officer on account of difference between sales declared in trading account and books of accounts is correct on the facts of the case or not.

12. The assessee submitted that in addition to own trading the assessee was also doing consignment sales and purchases. The sales register submitted during the assessment proceeding

shows total sales. As per Income Tax Law, the consignment sales cannot be shown in trading account, as the sales has been made on other's behalf. The assessee was getting commission on consignment sales which is shown in the audited profit and loss account. It was argued that the AO has not appreciated the submission submitted by the assessee submitted during the assessment proceedings and has made the additions of consignment sales. We have perused the details of trading & consignment sales which are as under:

Reconciliation of sales:

Own Trading sales as per audited

Profit and loss account	Rs. 66,57,42,270
Add: Consignment sales	<u>Rs. 25,57,22,855</u>
Total Sales	<u>Rs. 92,14,65,125</u>

13. The ledger of consignment sales and copies of VAT/CST returns and audited balance sheet. The assessee has not shown consignment sales and purchases in the profit and loss account instead shown commission received on consignment sales as income. As per normal accounting practice and accounting standard consignment sales is not included in the turnover of the assessee. The goods received on consignment basis belongs to consigner and assessee was entitled for commission thereon. The difference of Rs. 25,57,22,855/- added by the AO is nothing but consignment sales transferred from sales account to consignments sales (purchase for sale) on which commission has been shown by the assessee. The whole commission has been accounted for and shown in the profit and loss account. Separate ledger of the consignment sale has been submitted

during the assessment proceedings to the AO and before the Id. CIT(A) and also in the paper book. The Id. CIT(A) called remand report from the AO held that on perusal of records and written submissions it is observed that it is the history of the assessee that she was running business under the name and style of M/s Grah Lakshmi Trading Company at C-44/1, 1st Lawrence Road Industrial Area, New Delhi-110035 which is involved in Trading in Food Grains items and commission Agents in these items i.e. she is engaged in the trading as well as consignment sales in food grains. The Id. CIT(A) has also categorically held that it is a fact on record that the same AO has accepted the trading results shown by the assessee. The trading as well as consignment sales in food grains have been accepted and no addition has been made in the earlier and subsequent years. In other words the AO has accepted that the assessee is doing consignment sales also. We have also gone through the ledger of the consignment sales and find that the commission earned and thereof has been duly reflected in the P&L account and hence, we decline to interfere with the order of the Id. CIT(A).

14. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 12/01/2024.

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 12/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR