

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No. 2458/Bang/2019
Assessment year : 2013-14

The Deputy Commissioner of Income Tax, Central Circle 1, Mangaluru.	Vs.	Smt. Shabana Sharief, Prop. M/s. Golden Supari Traders, D.No.20-1-713, Sabeena Complex, Azizuddin Road, Bunder, Mangalore – 575 001. PAN: AKTPS 3681C
APPELLANT		RESPONDENT

Appellant by	:	Shri Elamurugu, G., Jt. CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri Srinivas Kamath, CA

Date of hearing	:	31.08.2021
Date of Pronouncement	:	03.09.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order of CIT(Appeals)-2, Panaji dated 26.9.2019 for the assessment year 2013-14 on the following grounds:-

- “1. The order of the Ld.CIT(A) is opposed to law and facts of the case.
2. The LD.CIT(A) erred in not appreciating the application of provisions of section 292C of IT Act to the evidence.

3. The Ld. CIT(A) erred in not appreciating the fact that the unaccounted purchases also attract provision of Sec.69B as it is an investment in stock in trade.
4. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.”

2. The facts of the case are that the assessee is the proprietor of Golden Supari Traders, Azizuddin Road, Bunder, Mangalore. Original return of income was filed by the assessee u/s. 139(1) on 30/09/2013 disclosing a taxable income of Rs.15,43,790/-. The return was processed u/s. 143(1) of the Income-tax Act on 15.01.2014. There was a search action in the case of assessee u/s. 132 of the Income-tax Act, 1961 [the Act] on 24.11.2015 at her residential premises and a survey was conducted on the same day at her business premises. Notice u/s. 153A of the Act was issued on 23.9.2016. The assessee filed return of income on 27.10.2016 declaring income of Rs.1,54,37,790. The income from business was admitted u/s. 44AD of the Act.

3. In the course of assessment, the AO inter alia made the addition of Rs.2,14,90,104 as income from other sources in view of undisclosed investments. The AO recorded there were trade receivables as on 31.3.2012 as compiled from pocket diaries which were not reflected in the regular books of account. The income attributable to this undisclosed assets were brought to tax as unexplained income attributable to the trade receivables for AY 2013-14. Against this, the assessee went in appeal before the CIT(Appeals).

4. The CIT(Appeals) observed that AO is not justified in bring the entire undisclosed turnover of Rs.2,14,90,104 and he ought to have taxed only the profit element. Since the amount of receivables are from sales of arecanut which could be termed as turnover of the assessee, therefore he

directed the AO to estimate the income @ 5% of Rs.2,14,90,104 being sales turnover of the assessee. Against this, revenue is in appeal before us.

5. We have heard both the parties and perused the material on record. In this case, there was a search in the case of assessee on 24.11.2015 at the residential premises situated at D.No.35-2-256, Imtiyaz Manzil, Karmbar Bajpe and also business premises of M/s. Golden Supari Traders at 20-1-713, Sabeena Complex, Azizuddin Road, Bunder, Mangalore. Also survey was conducted at business premises on the same day. Consequent to the search, search party found pocket diaries which contained receivables as below:-

Total	Receivables (Op Bal)	COLLECTION	SALE	Total Receivables
FY 2012-13				21490104
FY 2013-14	21490104	86799537	89395185	2595648
FY 2014-15	19472649	108025741	101066069	-6959672
FY 2015-16	7381135	11172342	9801703	539573
Total		205997620	200262957	17665653

6. On these receipts, the AO made addition of Rs.2,14,90,104 in the assessment year under consideration as undisclosed income. However, the CIT(A) after hearing the Id. AR of the assessee observed that it is undisclosed turnover of the assessee, the entire turnover cannot be considered as undisclosed income of assessee. The estimate must be reasonable, fair and honest. Turnover includes purchase cost, labour cost and other costs and gross profit. Only the profit can be termed as income of the assessee. According to him, the AO considering the entire

receivables of Rs.2,14,90,104 is not correct. He has given direction to the AO to estimate income @ 5% of this turnover.

7. Now the contention of the Id. DR is that as per the provisions of section 292C of the Act, there is a presumption that documents etc. found during the search action u/s. 132 as well as survey u/s. 133A of the Act are that documents belongs to the assessee from whose possession and control it was found. The second presumption is that the contents of such documents are true. The third presumption is that signature and handwriting shall be taken to be of that person from whom documents are found. As such, according to the Id. DR, the entire turnover has to be considered as unexplained investment u/s. 69B of the Act and the CIT(A) was not justified in estimating income @ 5% of the turnover i.e., Rs.2,14,90,104.

8. The question before us is how to deal with the presumption u/s. 292C of the Act in this case. There is no dispute that the CIT(A) has not at all held that the seized material found in the form of pocket diaries does not belong to the assessee. He considered the pocket diaries found during the course of search action as belonging to the assessee. He also considered the contents mentioned in the pocket diaries as true. He observed that it reflects the undisclosed turnover of the assessee. However, he has given a finding that the entire turnover mentioned in the pocket diaries in its entirety cannot be considered as undisclosed income of the assessee and turnover includes purchase cost, labour cost, other costs and gross profit and he estimated only the net profit of that turnover @ 5% and directed the AO accordingly. In our opinion, even after applying the presumptions u/s. 292C of the Act to the facts of the present case, there was no adequate material to conclude that the transaction recorded in the seized documents are total undisclosed income of assessee which remained unexplained. The other aspect of the matter is that presumptions u/s. 292C are

rebuttable presumptions and they do not lead to conclusive evidence. The assessee has right to rebut the presumption. In the present case, since the assessee has not rebutted the presumption, the CIT(A) has given a direction to estimate the income on the turnover @ 5% as income of the assessee. In our opinion, in view of the inadequate material to suggest that the entire turnover is income of the assessee, to be reasonable and fair, the CIT(A) estimated income @ 5% of the turnover. We do not find any infirmity in the findings of the CIT(A) on this issue. More so, similar issue came up for consideration in assessee's own case in ITA No.2629/Bang/2019 for AY 2014-15 and the Tribunal vide consolidated order dated 22.3.2021 in para 7.2 held as follows:-

“7.2 We have already discussed this issue in earlier part of this order while adjudicating in ITA Nos.2628 to 2631/Bang/2019 for the Assessment Years 2013- 14, 2014-15, 2015-16 and 2016-17 in the case of Smt. Shabana Shareef observing that any unexplained deposits in the Bank accounts, it should be considered as business receipts and income at 2% has to be assessed as undisclosed income of the assessee by placing reliance on the judgement of *M.A. Siddique Vs. DCIT* cited supra. Accordingly, we direct the Assessing Officer to consider only 2% of this cash deposit of Rs.2,61,00,100 as undisclosed income of the assessee. This ground of appeal of assessee is allowed and that of Revenue is dismissed.”

9. The above order of the Tribunal was passed by following the earlier order of the Tribunal in *M.A. Siddique Vs. DCIT in ITA Nos.62 to 66/Bang/2020 Dt.14.08.2020* wherein the Tribunal considered the business of Supari and observed that in the case of unaccounted sales no bill is issued and therefore no customer will pay taxes and levies which will result into higher profit to the seller. The Tribunal adopted the profit rate of 2% in the case of Supari business.

10. The above order is squarely applicable to the facts of the case. Being so, the entire transaction recorded in the seized material at Rs.2,14,90,104 cannot be considered as income of assessee u/s. 69B. Therefore, we are inclined to confirm the order of CIT(Appeals) on estimation of income @ 5% of the turnover. In view of the above discussion, we dismiss the grounds of the revenue.

11. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on this 3rd day of September, 2021.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 3rd September, 2021.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.