IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.4319/DEL/2017
[Assessment Year: 2013-14]

ITO, Ward-2, Narnaul, Near Mahavir Chowk, Mahendergarh Road, Haryana	Sh. Ramesh Chand, M/s Bhaktawar Mal Bhawani Sahay, Nai Mandi, Narnaul, Haryana.
	PAN-AANCP5095N
Revenue	Assessee

Revenue by	Sh. Shiv Swaroop Singh, Sr.DR
Assessee by	Sh. Deepak Agarwal, Adv.

Date of Hearing	**28.07.2021**
Date of Pronouncement	**14.10.2021**

ORDER

PER R.K. PANDA, AM,

This appeal filed by the Revenue is directed against the order dated 25.04.2017 of the learned CIT(A), Rohatak, relating to Assessment Year 2013-14.

2. Facts of the case, in brief, are that the assessee is an individual and deals in trading of Fertilisers (Urea, DAP), Seeds, Pesticides, etc under the name and style of proprietorship concern namely M/s Bakhtawar Mal Bhawani Sahay at Narnaul, Haryana. He filed his return of income on 26.09.2013 declaring total income of Rs.5,54,700/-. During the course of assessment proceedings, the AO noted that the assessee has availed cash credit facility from Punjab National Bank, Court Road, Narnaul. He issued notice u/s 133(6) of the Act to the bank for furnishing details regarding stock/assets hypothecated by the assessee for obtaining loans/CC limits and to supply the stock statement submitted to the bank. It was informed by the bank that the stock belonging to the assessee were hypothecated/charged to the bank. Copies of the stock statement for Financial Year 2012-13 were also furnished. Perusal of the stock statement submitted by the assessee to the bank revealed that stock (item wise) on 28.02.2013 was declared at Rs.2,34,50,000/- and it was duly verified by the bank. On the basis of information of sale and purchases

provided by the assessee, the stock as on 31.03.2013 was calculated by taking into consideration the stock declared by assessee to bank as on 28.02.2013. The AO accordingly determined the difference of stock on the value of stock given to the bank and as per books of accounts as on 31.03.2013 at Rs.2,19,65,351/-, the details of which are as under :

Name of Product	**Stock as on 28.02.2013 as per bank stock statement**	**Purchases from 01.03.2013 to 31.03.2013**	**Sales from 01.03.2013 to 31.03.2013**	**Effective stock as on 31.03.2013 (2+3-4)**	**As per Balance Sheet as on 31.03.2013**	**Difference**
1	**2**	**3**	**4**	**5**	**6**	**7**
DAP Khad	72,00,000	58,02,915	73.536	1,29,29,379	31,28,060	98,01,319
MOP ' (Potash)	29,10,000	-	13,000	28,97,000	9,88,160	20,30,679
Urea	13,50,000	92,34,616	8,61,336	97,23,280	10,80,750	86,42,530
SSP(Super Phosphate)	8,00,000	-	-	8,00,000	5,88,774	2,11,226
Pesticides	25,00,000	3,08,200	1,88,339	26,19,861	23,31,684	2,88,177
Phospates Khad	17,40,000	3,17,900	-	14,22,100	4,30,680	9,91,420
					Total	**2,19,65,351**

3. He, therefore, confronted the same to the assessee. The assessee replied that purchases during the year continued in every month and stock was transferred through delivery challan from the railway platform. At the time of receipt of goods, the bills are not received and as

such the entries in purchases could not be made at the time of receipt of stock. It was submitted that all the payments of goods were made through bank account and all the payments are verifiable from the regular books of accounts.

3.1. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. Relying on the decisions of Hon'ble Punjab & Haryana High Court in the case of Smt. Shakuntla Thukral vs., CIT vide ITA No.302 of 2013 and B.T. Steels Ltd. vs CIT, reported in (2011) 196 Taxmann 362 (P & H) and various other decisions, the Assessing Officer made addition of Rs.2,19,65,351/- to the total income of the assessee.

4. Similarly, from perusal of the information furnished by the bank in response to notice under section 133(6), the A.O. noted that the assessee has shown cash in hand as on 28.02.2013 at Rs.9,50,000/- whereas as per books of account the cash in hand was shown at Rs.18,54,506/-. He, therefore, asked the assessee to explain the difference of Rs.9,04,506/-. The assessee explained that the cash in hand is duly recorded in cash

book and whatever amounts shown by the bank is by their own and books of accounts are duly audited by the CA. However, the Assessing Officer did not accept the arguments advanced by the assessee and made addition of Rs.9,04,506/-.

5. The Assessing Officer during the course of assessment proceeding further noted that the assessee has made withdrawal of Rs.1,12,010/- only for house hold expenses. The drawings shown by the assessee according to the A.O. is very low keeping in view the rising prices day by day and considering the minimum expenses required for sustaining the family. He, therefore, asked the assessee to explain as to why the household drawings of Rs.30,000/- per month should not be considered for keeping his life style and status in the society enjoyed. It was explained by the assessee that expenses shown at Rs.1,12,010/- is sufficient for self, wife and two children. However, the Assessing Officer did not accept the explanation of the assessee. Considering the estimated value of expenditure at Rs.30,000/- per month, the Assessing Officer made addition

of Rs.2,47,990/- to the total income of the assessee on account of household withdrawals. Thus the Assessing Officer determined the total income at Rs.2,36,72,550/-.

6. Before the learned CIT(A), the assessee challenged all the three additions. So far as the addition on account of difference of stock value of Rs.2,19,65,361/-is concerned, it was argued that the assessee was dealing in government controlled items like fertilizers and chemicals and the same are subject to physical verification by the agriculture department. At the time of receipt of goods the bills are not received and as such the entries in purchase account could not be made at the time of receipt of stock. The bulk of purchases entered from 01.03.2013 to 31.03.2013 were on account of goods purchased from September 2012 to February 2013. Thus, the same were added twice i.e. once in stock statement submitted to the bank and again in purchases calculated by the Assessing Officer from 01.03.2013 to 31.03.2013. The photocopy of stock statement submitted to bank for 31.03.2013 was brought to the notice of the Ld. CIT(A), according to which, the closing

stock as on 31.03.2013 was Rs.1,65,19,425.81ps which tallies with the figure of closing stock as on 31.03.2013. The copy of audited trading, Profit & Loss A/c along with balance sheet as on 31.03.2013 was also filed before him. It was argued that as on 28.02.2013 the books of accounts were not completed and the assessee was required by the bank, to furnish the stock statement to continue his bank facility and as such the assessee furnished the stock statement as on 28.02.2013 wholly on estimate basis. The following facts were brought to the notice of Ld. CIT(A).

a. Bill of purchases from Spetember-12 to February-13 were entered in purchase A/c on 30.03.2013 and this fact has been mentioned by the AO at page 4 of the assessment order under appeal.

b. So far as cash in hand as on 28.02.2013 was shown to bank at Rs.950000/- as against actual cash in hand of Rs.1854506/- is concerned, it was argued that the assessee was needed to show higher amount of stock and cash, but the assessee had shown less cash in hand. It goes to prove that statement to bank was filed as per convenience and not actual as per books of accounts.

c. The books of accounts are duly audited by the chartered accountant as required u/s 44AB of the act and those books of accounts has been accepted by the AO.

d. The AO has not rejected the books of accounts but has made the addition of Rs. 2,19,65,351/-.

e. Inspite of the fact that cash in hand shown to the bank was lesser than the actual cash even than the AO has made separate addition of difference of cash in hand.

f. The GP rate during the year is better than the previous year which is accepted by the AO.

g. The value of stock furnished to the bank as on 31.03.2013 tallies with stock as per books of accounts. The AO was to assess the income for the full year.

7. It was further submitted that the various decisions relied by the Assessing Officer are not applicable to the facts of the present case.

7.1. Based on the arguments advanced by the assessee, the learned CIT(A) deleted the addition of Rs.2,19,65,351/- by observing as under:-

> "I have considered the submissions and facts placed before me along with judgments cited by the appellant as well as relied by the AO. The facts of the case relied by the AO cannot be followed in the case of the appellant as differentiated by the appellant herein above. The case of the appellant is fully covered by the judgment of jurisdictional High Court of P&H in the case of CIT v. Sidhu Rice and General Mills, (2006) reported at 281 ITR 428 and judgment of Hon'ble Madras High Court in the case of Commissioner Of Income-Tax vs N. Swamy reported at 241 ITR 363. The addition made by the AO is not based on any valid evidence. The AO cannot be assumed to make addition only on the basis of statement furnished to third party i.e. bank as the same is without any substantial valid evidence of having undisclosed income. Thus, the addition of Rs. 2,19,65,351/- made by the AO is hereby deleted. ***This ground of appeal is allowed."***

8. So far as the addition of Rs.9,04,506/- on account of difference in cash is concerned, it was argued that no businessman can have cash in hand in exact multiple of thousands which goes to prove the statement to bank was furnished on estimate basis and not on actual

basis. The statement was furnished to bank only on estimate basis to keep continue the bank facility and that too wholly in the interest of business otherwise there would have been adverse effect on the business because bank would not give further bank facility to the appellant and it is very difficult for the appellant to manage such huge funds if bank stops it's facility to the assessee.

8.1. Based on the argument advanced by the assessee, the learned CIT(A) deleted the addition by observing as under:-

> "I have considered the submission made by the appellant since, there is no valid basis of making the addition further, the alleged difference will also cannot be said to be undisclosed income. Therefore I delete the addition of Rs. 9,04,506/- made by the AO. ***This ground of appeal is allowed."***

9. So far as the addition of Rs.2,47,990/- on account of low house hold expenses is concerned, it was argued that during the year under appeal the assessee had withdrawn a sum of Rs.112010/- towards house hold expenses. The family consists of self and wife only. Both the sons are earning separately and residing in Pune and

Chandigarh. The family resides in their own house for which no rent is to be paid. The family owns ancestral agriculture land of about 10 acres and income from agriculture was also used for meeting house hold expenses. Thus, the house hold expenses shown by the assessee at Rs.112010/- is more than sufficient considering the size of family of the assessee. It was argued that the AO has made the addition of Rs.2,47,990/- only on suspicion and estimate basis. For the proposition that *"No addition on estimate basis can be made merely on suspicion"* the assessee relied on the following decisions :

1. Order of ITAT Delhi Bench in the case of ITO vs Aranjit Singh reported at 28 Indian Taxation Reports page 73.

2. ITO vs Palvinder Singh Bhatia reported in 31 Indian Taxation Reports page 335 (ITAT Jodhpur).

9.1. Based on the arguments advanced by the assessee, the learned CIT(A) deleted the addition by observing as under :

Keeping in view the size and standard of living of the family and place of residence in a small city as well as the factual position, as explained above, no addition on A/c of alleged low H/H expenses is warranted. In view of above your good self is prayed to please delete the addition of Rs. 247990/- made by the AO.

In view of the submissions made by the appellant and considering that the family resides in their own house in a small city, I do not see any justification in making such an addition and I delete the same. ***This ground of appeal is allowed.***

10. Aggrieved with such order of the learned CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,19,65,361/- on account of difference of stock value as per the bank stock statement and as per the books of accounts as on 31.03.2013 as observation of CIT(A) cannot be relied upon that any statement of facts furnished by the assessee to the bank, whose assets are at stake, cannot be taken as true.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 9,04,506/- on account of difference in cash in hand as the statement furnished to bank and as per the cash book of the assessee as it is wrong from the part of CIT(A) to observe that it was purely on estimate basis while it was taken on the basis of statement of the assessee itself given to the bank.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,47,990/-/- on account of low house hold withdrawals on the facts of increasing inflation rate on every service and goods required for standard of living maintained by the assessee."

11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. So far as ground of appeal number.1 is concerned, the same relates to the order of Ld. CIT(A) in deleting the addition of Rs.2,19,65,361/- made by the A.O. on account of difference of stock value as per the bank statement and as per the books of account as on 31.03.2013. We find the Ld. CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. We find an identical issue had come up before the Tribunal in assessee's own case in the immediately succeeding A.Y. 2014-2015 and the Tribunal vide ITA.No.2980/Del./2019 order dated 01.08.2019 has observed as under :

"11. I have considered the rival submissions. It is not in dispute that assessee maintained books of accounts which are duly audited. The AO has not pointed out any specific defect in maintenance of the books of account by the assessee. The books of accounts by the assessee have not

been rejected by the AO. It is also admitted fact that the turnover and GP ratio is better in assessment year under appeal as compared to preceding assessment year. The AO made the addition because the stock statement submitted to the bank on 28.02.2014 shows excess stock in this statement. The authorities below have heavily relied upon the information provided by the Punjab National Bank vide letter dated 28.11.2016, copy of which is reproduced in the impugned order. In this reply the bank has stated that due to renovation of the branch the file containing stock statement of assessment year under appeal is not traceable at present. However, as per banking practice whenever the party submitted stock statement same is checked/verified by the bank officials. It would, therefore, show that the stock statement submitted by the assessee to the bank was not produced before the AO. The bank has merely explained their general practice for verifying the stock statement. However, what happened in the case of the assessee has not been clarified by the bank. Thus, the authorities below merely relied upon the general practice of the bank instead of verifying the actual fact of the case of the assessee. The assessee submitted that as on the closing of the financial year the closing stock was of Rs. 1,88,17,001/- which is also reported to the bank on the same date which is also certified by the bank (PB-11). It would, therefore, show that the stock statement tally with the stock statement submitted to the bank at the end of the financial year on 31.03.2014. The assessee, therefore, rightly contended that the stock statement submitted on 28.02.2014 prior to close of the financial year was on estimate basis and not on actual basis. The assessee also rightly contended that since assessee deals in controlled items like fertilizer and chemicals, therefore, it is subject to physical verification by Agriculture Department. No enquiries have been done by the AO from the concerned Agriculture Department with regard to discrepancy in the stock. It may also be noted here that in the preceding AY 2013-14 the similar addition was deleted by the Ld. CIT(A) following the judgment of the Hon'ble Punjab & Haryana High Court in the case of Sidhu Rice & General Mills (supra). Therefore, Ld. CIT(A) should not have taken a *contrary view in assessment year under appeal. The decisions relied upon by Ld. Counsel for assessee squarely applied to the facts and circumstances of the case. The issue is, therefore, covered by these decisions in favour of the assessee. It is well settled law that Revenue authorities are bound to follow the rule of consistency. In view of the above, I am of the view that the addition is wholly unjustified. I, accordingly, set aside the orders of authorities below and delete the entire addition.*

12. Ground no. 1 of appeal of assessee is allowed."

11.1. Since the facts of the instant case are identical to the facts already decided by the Tribunal in assessee's own case in the immediately succeeding assessment year, therefore, respectfully following the order of the Tribunal in assessee's own case, we uphold the order of the Ld. CIT(A) on this issue and the ground of appeal number.1 raised by the Revenue on this issue is dismissed.

12. So far as ground of appeal number.2 is concerned, the same relates to order of the Ld. CIT(A) in deleting the addition of Rs.9,04,506/- made by the A.O. on account of difference in cash statement given to the bank and as per books of account.

12.1. We have heard both the sides on this issue and perused the record. We find the A.O. in the instant case made an addition of Rs.9,50,000/- being the difference between the cash balance given to the bank and the figure appearing in the books of account. I find the Ld. CIT(A) deleted the addition on the ground that addition made by the A.O. is not based on any valid evidence and merely based on the statement given to the bank which is a third party evidence. While doing so, he has relied upon the decision of the jurisdictional High Court of Punjab and Haryana in the case of Commissioner of Income Tax vs., Sidhu Rice and General Mills reported at [2006] 281 ITR 428 and the decision of Hon'ble Madras High Court in the case of Commissioner of Income Tax vs., N. Swamy reported at 241 ITR 363. The reason given by the Ld. CIT(A) while deleting the addition has already been reproduced in the preceding paragraph. Since the Ld. CIT(A) while deleting the addition has relied upon the decision of the jurisdictional High Court in the case of Commissioner of Income Tax vs., Sidhu Rice and General Mills (supra), therefore, in the absence of any contrary material brought to our notice against the decision of the Hon'ble jurisdictional High Court relied upon by the Ld. CIT(A), we do not find any infirmity in his order deleting the addition. Accordingly, ground of appeal number 2 raised by the Revenue is dismissed.

13. Ground of appeal number.3 by the Revenue relates to the order of the Ld. CIT(A) in deleting the addition of Rs.2.47.990/- made by the A.O. on account of low house hold withdrawals.

13.1. After hearing both the sides, we find the A.O. in the instant case made an addition of Rs.2,47,990/- on the ground that the withdrawal of Rs.1,12,010/- shown by the assessee towards house hold expenses is very low keeping in view the rising of price day by day and the minimum expenses required for sustaining the family. We find the Ld. CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph.

13.2. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. We find an identical issue had come up before the Tribunal in assessee's own case in the succeeding A.Y. 2014-2015 and the Tribunal vide ITA.No.2980/Del./2019 order dated 01.08.2019 has decided the identical issue and the ground raised by the Revenue was dismissed. The relevant observation of the Tribunal at para-17 of the order reads as under :

"17. I have considered the rival submissions and do not find any justification to sustain the addition. It is not in dispute that family of the assessee consists of self and his wife only. The assessee resides in his own house and has sufficient ancestral agricultural land. The assessee has agricultural income also. The AO has not brought any evidence on record to justify the estimate of household expenses in a sum of Rs. 20,000/- per month. The AO did not doubt the explanation given by the assessee that household expenses withdrawn by the assessee and agricultural income are sufficient to maintain the family. It may also be noted here that in preceding AY 2013-14 Ld. CIT(A) considered the same issue in the appellate order dated 25.04.2017 and on identical facts deleted the addition on account of enhancing the household expenses. The Ld. CIT(A) noted in the appellate order that during assessment year under appeal i.e. 2013-14 assessee had withdrawn a sum of Rs. 1,12,010/-. The further addition made by the AO was deleted as against household expenses of AY 2013-14, there is a substantial increase in household expenses withdrawn by assessee in assessment year under appeal. The Ld. CIT(A), therefore, should not have taken a contrary view in assessment year under appeal. The addition is made merely on estimate basis. Therefore, same is liable to be deleted."

13.3. As stated earlier, the family of the assessee consists of self and his wife and the two children are earning separately and are residing in Pune and Chandigarh respectively. The assessee also owns ancestral agricultural land of about 10 acres and the income from agriculture is also used for meeting the house hold expenses. Apart from the above, the assessee is staying in his own house in a small town. Therefore, in the absence of any evidence before the A.O. to show that the assessee has incurred any extravagant expenditure for maintaining a lavish life style or has performed any marriage function etc., estimating the addition on presumption and surmises, in our opinion, is not sustainable in Law. In view of the above discussion and respectfully following the decision of the Tribunal in assessee's own case in the succeeding assessment year, we uphold the order of the Ld. CIT(A) on this issue and dismiss the ground of appeal no 3 by the Revenue on this issue.

14. In the result, the appeal filed by the Revenue is dismissed.

Order was pronounced in the open court on 14.10.2021.

Sd/-	**Sd/-**
[SUCHITRA KAMBLE]	**[R.K.PANDA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Delhi; Dated : 14.10.2021.

Shekhar, Sr. P.S / **VBP/-**

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi