

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and डॉ. ए. एल. सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

आयकर अपील संख्या / I.T.A No. 1680/Kol/2014
निर्धारण वर्ष / Assessment Year: 2005-06

Income-tax Officer, Wd-28(1), Kolkata (अपीलार्थी/Appellant)	Vs.	Shri Supran Chaudhury (PAN:ACPPC7011G) (प्रत्यर्थी/Respondent)
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Date of Hearing	27.03.2017
Date of Pronouncement	09.06.2017
For the Appellant/ अपीलार्थी	Shri Saurabh Kumar, Addl. CIT, DR.
For the Respondent/ प्रत्यर्थी	Shri Miraj D. Shah, AR

आदेश/ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-XIV, Kolkata dated 25.03.2014 for AY 2005-06.

2. The sole issue raised by the revenue is against the deletion of addition of Rs.1,35,65,506/- (It is pointed out that the figure is erroneous it should be Rs.1,04,05,506/-). Brief facts of the case as noted by the Ld. CIT(A) is that the AO has passed an ex parte order u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”). According to AO, another company which is doing the same business M/s. Talwar Enterprises has shown higher net profit so, he made an addition of Rs.1,23,035/- being the difference in the profit rate of the assessee when compared to that of the turnover of M/s. Talwar Enterprises. The AO also noted that the assessee had purchased raw hide and skin from outstation parties and the notices issued to them for verification came back unserved on them. The AO also noted that the notices issued to parties supplying chemical and freight vendors were also

returned unserved and as such the AO held that the transaction of Rs.1,35,65,506/- could not be verified since notices could not be served on them and, therefore, he came to the conclusion that the said transactions are bogus and he added the entire purchase amount shown by the assessee to the total income of the assessee. Thereafter the assessee moved section 154 application before the AO who was pleased to correct the figure from Rs.1,35,65,506/- to Rs.1,04,05,560/- by an order dated 02.03.2012. Aggrieved by the aforesaid addition, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to allow the appeal and ordered deletion of the addition. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is before us.

3. We have heard rival submissions and gone through facts and circumstances of the case. We note that the Ld. CIT(A) while passing the impugned order has examined the assessment order, the remand report, the submission of the assessee, paper books, the relevant case laws, the past assessment orders of the assessee and the profit trend of the assessee before passing the impugned order. The assessee is engaged in export as well as sale of leather and leather goods. During the relevant assessment year the assessee had a turnover of Rs.255.95 lacs and he disclosed a gross profit of Rs.44.73 lacs, which comes to 17.48%. The Ld. CIT(A) appreciated that the audited accounts give the details of opening stock, purchase, production and closing stock of hide and skin both for domestic and export division. The Ld. CIT(A) also found that the details include the number of pieces and value of the hide and skin. The Ld. CIT(A) has noted that the accounts of the assessee are audited and the quantitative details are on record. The Ld. CIT(A) has also noted that the assessee had filed the copies of the bills, way bills which are duly verified by the West Bengal Sales tax challan, freight bills, purchase bills of chemicals etc. It has been taken note by the Ld. CIT(A) that during the assessment proceedings the AO issued notices to the parties and out of fourteen notices issued only two returned unserved and thus twelve notices were neither returned nor any reply was received. The AO has made the addition of Rs.1,35,65,506/- (which figure has been reduced to Rs.1,04,05,560/- by the AO u/s. 154 of the Act), on the sole reason that the notices issued u/s. 133(6) of the Act were returned back and so, he concluded that the purchases were all bogus. It is elementary that without purchases there

could not have been any sales. The AO has accepted the sale figures so, therefore, question of rejecting the purchases simply because some notices were returned back cannot be the sole reason to make the addition. It is to be kept in mind that the amount of sales by itself cannot represent the income of the assessee. The sale only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales. It is not the case of the AO that investment by way of incurring the cost in acquiring the goods which has been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact, the question whether the entire sum of purchase cannot be treated as income in the relevant assessment year. The assessee had a turnover of Rs.255.95 lacs and has disclosed a gross profit of Rs.44.73 lacs. For the purpose of earning this income the assessee has to certainly make some expenditure. The assessee has exported and supplied the goods after incurring certain cost cannot be rejected only because the sellers did not respond to the notices of the AO. The Ld. CIT(A) has taken note of the fact that in the FY 2003-04 the assessee had a gross margin of 19.37%; in FY 2004-05 the assessee has a gross margin of 17.48% and in FY 2005-06 the assessee has a gross margin of 16.82%. The Ld. CIT(A) also took note of the fact that in AY 2006-07 the assessment was completed under scrutiny u/s. 143(3) of the Act and the AO accepted the trading results. The Ld. CIT(A) also took note of the scrutiny assessment in the succeeding year wherein the gross margin of 16.82% was accepted by the department. We note that after the impugned addition of Rs.1.35 cr. was made by the AO, the net profit rate comes to more than 50% which is per se very high and cannot stand to logic and reason. The assessee had produced the documents necessary to prove that the assessee has purchased the goods from the sellers and the AO has not found any fault in the evidence produced by the assessee to substantiate his claim. Only because the notices could not be served in the first round and the additions were made treating the entire purchase as bogus whereas during remand proceeding the AO accepted the fact that out of fourteen notices only two could not be served. Taking into consideration the relevant evidence furnished by the assessee, the addition has been rightly deleted by the Ld. CIT(A) and we do not find any

infirmary in the order impugned before us and so, we are reluctant to interfere in the order of the Ld. CIT(A) and therefore, the appeal of the revenue is dismissed.

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

Order is Pronounced in the open Court on 09.06.2017.

Sd/-

(Dr. A. L. Saini)

(**डॉ. ए. एल. सैनी**)

Accountant Member

Sd/-

(Aby. T. Varkey)

(**ऐ. टी. वर्की**)

Judicial Member

Dated : 9th June, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-28(1), Kolkata.
2. Respondent – Shri Supran Chaudhury, 48/53, Swiss Park, Kolkata-700 033.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Senior Private Secretary.