

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री विकास  
अवस्थी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**  
**SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

आयकर अपील सं./ **I.T.A. No.1685/Mds/2014**  
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Income Tax Officer,  
Ward I(2)  
**Tirunelveli.**

M/s. Mani & Co,  
Vs No.56/48, East Car Street,  
Sankarankoil,  
**Tirunelveli District.**

(अपीलार्थी/Appellant)

[PAN : AAIFM7671D]  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Smt. P. Radha Krishnan, IRS. JCIT.  
प्रत्यर्थी की ओर से / Respondent by : Shri. G. Baskar, Advocate

सुनवाई की तारीख/Date of hearing : 19.01.2015.  
घोषणा की तारीख /Date of Pronouncement : 23.01.2015.

**आदेश / O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER**

The revenue has filed this appeal challenging the order dated 28.03.2014 passed by Ld. Commissioner of Income Tax (Appeals)-I, Madurai and it relates to the assessment year 2010-11. The Revenue is aggrieved by the decision of learned Commissioner of Income Tax (Appeals) in deleting the addition of "gross profit on suppressed sales".

2. The facts relating to the above said issue are stated in brief. The assessee is a partnership firm and is engaged in the business of manufacturing and sale of Edible Oil. The Department carried out a survey operation u/s. 133A of the Act at the business premises of the assessee on 03.03.2010. During the course of survey, a computer printout disclosing month wise sales from April, 2009 to October, 2009 was found out. The Assessing Officer noticed that the sales noted down in the computer sheet was higher than the sales recorded in the books of accounts. It was further stated that partnership firm was closed on 31.12.2009. Accordingly, the Assessing Officer proceeded to compute the sales amount for the period from 1.4.2009 to 31.12.2009 and also computed the suppressed sales as under:-

April , 2009	₹.	1,04,33,258
May, 2009	₹.	84,77,424
June, 2009	₹.	70,71,663.45
July, 2009	₹.	72,96,218
August, 2009	₹.	62,87,205
September, 2009	₹.	61,76,494.50
October, 2009	₹.	59,79,784
<b>Total as per the assessee's report</b>	<b>₹.</b>	<b>5,17,22,046</b>
November, 2009(As per Sales tax report)	₹.	13,27,174
December, 2009 (As per Sales tax report)	₹.	43,64,913
<b>Total</b>	<b>₹.</b>	<b>5,74,14,133</b>
<b>Less: Admitted in the return</b>	<b>₹.</b>	<b>1,86,41,430</b>
<b>Sales suppression</b>	<b>₹.</b>	<b>3,87,72,703</b>

The assessing officer adopted the sales figures for the period from April, 2009 to October, 2009 from the Computer print out. The sales pertaining to November, 2009 and December, 2009 was taken from the books of the assessee. Accordingly, the Assessing Officer arrived at the sales figure for the period from 1.4.2009 to 31.12.2009 at ₹ 5,74,14,133/-. Since the assessee had disclosed sales at ₹1,86,41,430/- for the above said period in the books of account, the Assessing Officer treated the difference between the above said two figures amounting to ₹3,87,72,703/- as Suppressed Sales. The assessee had declared the gross profit rate of 22.75% in the books of accounts. Adjusting the same rate of gross profit, the Assessing Officer estimated the profit on suppressed sales at ₹ 88,20,790/- (22.75% of ₹3,87,72,703/-) and assessed the same as income of the assessee.

3. In the appellate proceedings, the learned Commissioner of Income Tax (Appeals) deleted the above said addition with the following observations:-

7. "Entire addition, which is very substantial, is based on a single piece of document found at the time of survey wherein some sales figure is mentioned. Assessing Officer's reasoning and justification, in the assessment order, for concluding that Appellant has resorted unaccounted sales is very cryptic, to say the least. The Appellant was arguing, both at the time of survey and during the assessment that the sales figures are only for the purpose of applying for a Bank loan. If Appellant was indulging in sales outside the books, as is being held by the Assessing Officer, some other related evidences like should have been found at the time of survey. Unaccounted sales are out of unaccounted manufacturing which requires

unaccounted purchase of raw materials. Normally unaccounted sales and unaccounted manufacturing always have some trail about the unaccounted business activity like debtors/creditors, cash transactions details etc., Since a survey was conducted in Appellants premises some of these are expected to be found out should there is unaccounted business activity.

No evidence was found with regard to any of the above due to which the Assessing Officer conclusion of unaccounted business activity seems to be without basis. Since Appellant is a manufacturer the machinery installed by the appellant should have the capacity to produce sales volume estimated by the Assessing Officer. Appellant has argued that the machinery has no such capacity to manufacture the sales volume arrived at by the Assessing Officer, which should have been rebutted by the Assessing Officer.

7.1 The addition depends upon the rule of evidence. The responsibility that there is unaccounted business activity which is resulting in unaccounted income, as is being held by the Assessing Officer, is always on the department. This fact must be established through reasonably irrefutable evidences. Except one piece of paper, no other evidence is brought on record by the Assessing Officer to prove that there is unaccounted business activity.

7.2 As seen from the above discussion, the only basis of addition is just a computer printout showing sales for 7 months. The burden is on the Assessing Officer to prove conclusively that the contents of the document are correct through corroborative evidences. The undisclosed income is to be computed by the Assessing Officer on the basis of the available material on record. It should not and cannot be based on conjectures and surmises. The material considered by the Assessing Officer for making the additions is a document containing the sales which was explained all along the Appellant that it was prepared for the purpose of Bank loan and has no link to the books of accounts or the actual business activity. The Assessing Officer has not rebutted these arguments at all, which is mandatory. Assessing Officer just brushed aside the Appellants arguments. There was a survey u/s. 133A and the Assessing Officer is not able to unearth any other document or material or any form of corroborative material to show that the Appellant suppressed sales by 3.7 Cr. The Department cannot draw inference on the basis of suspicion, conjectures and surmises. Suspicion however strong, (here it is far from being strong) cannot take place of evidence in support of the finding of the Assessing Officer. The Assessing Officer should act in a judicial manner, proceed with judicial spirit and come to a judicial conclusion. The Assessing Officer is required to act fairly as a reasonable person and not arbitrarily and capriciously. The assessment made should have enough material and it should stand on its own legs. All these elements are totally lacking here.

7.3 In the absence of corroborative material or any form of circumstantial evidence to show that there are unaccounted sales the addition made is considered arbitrary and hence deleted.

Aggrieved, the revenue has filed this appeal before us.

4. The Ld D.R submitted that the computer printout disclosing the details of sales was found from the business premises of the assessee. He further submitted that the assessee did not disown the same, but explained the same to be a statement for availing bank loan. The Ld D.R submitted that the survey took place at the business premises of the assessee on 03.03.2010 and the computer printout related to the period from April, 2009 to September, 2009. Hence, as on the date of survey, there was no necessity for the assessee to project the sales pertaining to the expired months. He further submitted that the projections are generally made in round figures, where as the sales noted down in the computer printout was in odd figures and hence the Assessing Officer has safely taken the view that the same represents actual sales.

5. On the contrary, the Ld A.R submitted the department officials did not find any other material like unaccounted purchases, unaccounted sales, excess/shortage of stock, debtors ledger, creditors ledger relating to the same etc., at the time of Survey operations. He further submitted that the sales tax assessment was also completed by

accepting the book results and they did not find fault with the books of accounts of the assessee. He further submitted that the assessing officer has accepted the sales reported by the assessee for the months of November and December. The Ld A.R drew our attention to the assessment order and submitted that the assessee has been consistently stating that the computer printout relate to projected sales prepared for bank purposes.

6. We heard the rival contentions and perused the record. We notice that the impugned addition has been made solely on the basis of a computer printout found at the time of survey. According to the Assessing Officer, the same was available on the computer system and a print out of the same was taken out on 06.11.2009. The sales figures noted therein pertained to the period from April 2009 to October, 2009. Hence, the Ld D.R contended that there will not be any necessity of projecting sales pertaining to past months. Thus, it is seen that the explanation of the assessee does not suit the situation. At the same time, it is also a fact that the survey official did not stumble upon any excess/shortage stock, unaccounted purchases, unaccounted sales etc at the time of survey operation. However, before us, both the parties failed to furnish a copy of the computer printout, on the basis of which the impugned addition has been made.

7. We further notice that the Ld CIT(Appeals) has expressed the view that the burden to prove the contents of the document is placed upon the Assessing Officer. (see. Para 7.2 of CIT(Appeals)'s order). The said observations are against the provisions of sec. 292C of the Act, wherein it is provided that the documents impounded at the time of survey u/s 133A of the Act may be presumed to be true. In that case, the burden is placed upon the assessee to rebut the said presumption. At the time of hearing, the Ld A.R was specifically asked as to whether the assessee was able to prove his submissions that the computer printout relate to the projected sales prepared for bank purposes by producing the documents filed with the bank, the Ld A.R submitted that he is not having those details.

8. Under these set of facts, we are of the view that the Ld CIT(Appeals) was not justified in deleting the addition by placing burden upon the Assessing Officer. In our considered opinion, the burden to show that the contents of the said document are not true is placed upon the assessee. Hence the order of Ld CIT(Appeals) gets vitiated in view of the provisions of sec. 292C of the Act. It is also not clear as to whether the impugned computer printout is a report generated out of the computer system or it was mere a printout of some document prepared under word or excel format. The

consequence of both types shall be different. Hence, we notice that the Assessing Officer has also made the impugned addition in a mechanical manner. Accordingly, we are of the view that this issue requires fresh examination at the end of the Ld CIT(Appeals). Accordingly, we set aside the order of Ld CIT(Appeals) and restore the matter to his file with the direction to examine this issue afresh by affording necessary opportunity of being heard to the assessee. If the assessee furnishes any new explanation or evidence, the Ld CIT(Appeals) may confront the same to the Assessing Officer by calling for a remand report and then decide the issue in accordance with the law.

9. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Order pronounced on the 23rd day of January, 2015, at Chennai.

Sd/-  
(विकास अवस्थी)  
(VIKAS AWASTHY) न्यायिक  
सदस्य /JUDICIAL MEMBER

Sd/-  
(बी.आर. बास्करन)  
(B.R. BASKARAN)  
लेखा सदस्य/ ACCOUNTANT MEMBER

दिनांक/Dated:23.01.2015.

**K.V**

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2. प्रत्यर्थी/  
Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT  
5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

