

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

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 786/Del/2013 : Asstt. Year : 2003-04

The Basti Sugar Mills Co. Ltd., 207, Essel House, 10, Asaf Ali Road, Delhi	Vs	Income Tax Officer, Ward-16(3), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AA ACT0490Q		

**Assessee by : Sh. K. V. S. R. Krishna, CA &
Sh. N. K. Garg, Adv.**

Revenue by : Sh. Umesh Chand Dubey, Sr. DR

Date of Hearing : 31.05.2017

Date of Pronouncement : 31.05.2017

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 31.10.2012 of ld. CIT(A)-XII, New Delhi.

2. Following grounds have been raised in this appeal:

"1. The Ld. CIT (A) has erred in confirming the addition of Rs.2,41,64,988/- made by the AO alleging difference in stock of Sugar as per books and as per confirmation by the Central Bank of India, Basti (U.P.). The alleged difference in stocks as per the books and as per the letter of the bank is only on surmises and conjecture without any evidence and should be deleted.

2. The Ld. CIT (A) as well as the assessing officer has failed to appreciate that the stocks as reflected

in the books of accounts of the assessee is duly supported by RG-I Form of Excise Records. Further, it was also submitted that the entire production of sugar is duly supported by the Central Excise Records which shows the entire sugar stock produced by the company during the season. The accounts are duly audited by the statutory auditors certifying the quantitative details. All these positive evidences are brushed aside as no evidence. Therefore, also the addition made of Rs.2,41,64,988/- ignoring the positive evidence filed by the assessee should be deleted.

3. It is further contended that alleged addition of Rs. 2,41,64,988/- is simply based on the bankers statement without rejecting assessee's books, accepting the trading results is wrong and bad in law, erroneous and deserves to be deleted.

4. The above grounds are independent and without prejudice to one another.

5. The appellant prays that he may be allowed to add, amend, alter or forgo any of the grounds at the time of hearing.”

3. From the above grounds, it is gathered that only grievance of the assessee in this appeal relates to the confirmation of addition of Rs.2,41,64,988/- made by the AO on account of difference in stock of sugar as per books of account and as per confirmation by the Central bank of India, Basti (U.P.).

4. Facts of the case in brief are that the assessee filed the return of income on 31.10.2003 declaring Nil income after adjusting brought forward loss of Rs.6,29,57,914/-, which was processed on 10.05.2005 u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) and assessment was completed at Nil income after adjusting brought forward loss of Rs.7,00,66,514/-. Thereafter, the case was reopened and the AO made the addition of Rs.2,41,64,988/- by observing as under:

“Since the assessee has not been able to establish that the quantity of stock reported to the bank was not the correct quantity available with it as on 31.03.2003, it is held that the higher stock reported to the bank represents the correct quantity of stock available with the assessee at the close of the year. Since the department had for AY 1999-00 treated the stock as per bank statement to be correct and held the stock statement given to bank on 31.03.99 as correct closing stock. Therefore to adopt consistency the stock shown in bank records shall be treated as the actual stock of the assessee. Thus the opening stock of the assessee would be 477778 bags of sugar of one quintal in each bag. Whereas the closing stock would be the stock given to the bank on 31.03.2003 i.e. 298506 bags full of sugar of quintal each. The assessee in his balance sheet has shown opening stock to be 354697 bags and closing stock to be 184031 bags. Thus the opening stock in the books is less by 93081 quintal than the actual physical stock pledge with the bank. Whereas the closing stock in the books is less by

114475 quintals than the actual physical stock pledged with the bank. Thus there is a net variance of 21394 bags of sugar i.e. such quantity has been produced and not reflected in the books of the assessee The closing stock of 184031 bags has been valued at Rs 2078.67 lacs (in the audit report submitted by the assessee). Therefore value of 21394 bags comes out to Rs 24164988/-. This amount shall be treated as its unaccounted income for the year on account of stock shown in the books.”

(Addition: Rs.2,41,64,988)

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition made by the AO by observing as under:

“Keeping in view the above facts that stock was pledged with the bank in other words the pledged means actual stock is with the bank, now assessee cannot take plea that for obtaining higher cash credit limit it has shown higher stock with the bank than shown in the books of accounts. If the assessee had hypothecated its stock to the bank than the facts would have been different as hypothecate is on estimate basis not actual. Hence addition made by the Assessing Officer amounting to Rs.2,41,64,988/- on account of stock difference between the books of accounts and the bank is hereby confirmed.”

6. Now the assessee is in appeal. The Id. Counsel for the assessee at the very outset stated that this issue is squarely covered by the earlier decision of the ITAT dated

30.11.2010 in ITA No. 3803/Del/2008 for the assessment year 1999-2000 which has been followed in the later decision dated 26.10.2012 in ITA Nos. 4342 to 4344/Del/2010 for the assessment years 2000-01 to 2002-03 (copy of the said orders were furnished which are placed on record).

7. In his rival submissions the ld. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO made the addition on the basis that a similar addition has been made for the assessment year 1999-2000 which is evident from his observations as mentioned in the assessment order dated 22.11.2010. The said order relating to the assessment year 1999-2000 traveled up to the ITAT wherein the issue was restored to the ld. CIT(A) by observing in para 11 of the order dated 30.11.2010 in ITA No. 3803/Del/2008 as under:

"11. We have carefully considered the rival submissions in the light of the material placed before us. The arguments submitted by the Ld. DR

have force as it is a case of pledge of stock by the assessee to the bank where the bank takes possession of the stock pledged with it and after verifying the stock the bank grants the limit to the assessee upto which the assessee can borrow the funds from the bank. It is not a case of simple hypothecation where goods remain in the possession of the assessee. Therefore, the burden is on the assessee to prove that what was stated in the stock statement submitted to the bank was not correct and what is existing in the books is the real state of affairs. It is a matter of fact and is to be verified after making proper verification not only from the record of the assessee, but also by examining the bank officials, etc. to ascertain the truth. In the present case, it is the main case of Ld. AR that in the stock statement submitted to the bank as on 31st March, 1998 and 31st March, 1999, the opening stock relating to season 1996-97 had remained the same and which only is the reason for difference in the stock submitted to bank and stock existing in the books of account. However, it is seen that the copy of stock statement submitted by the assessee as on 31st March, 1998 is not even signed by the assessee whereas the initials of bank godown keeper are existing. Therefore, presently, as the said statement is not a certified statement, evidentiary value cannot be attached to that statement unless it is got verified from the bank. It has already been mentioned that to state that the said stock was not pledged to the bank is also a fact to be established by the assessee and, in the process, the bank officials should also be examined that whether they can sanction any credit limit without the existence of the stock. Ld.

AR has placed heavy reliance on the excise records also. The bank statement and excise records both are official records and unless verifications are made with respect thereto, no specific finding can be recorded. Therefore, in the interest of justice, we restore this issue to the file of CIT (A) with a direction to give the assessee a reasonable opportunity of hearing and to produce the evidence to show that what is stated in the stock statement submitted to the bank was not correct and what is stated in the account books is correct. Even at the cost of repetition we may observe that the onus shall lie upon the assessee to prove as according to sworn statement submitted to bank, the assessee has submitted the quantity of stock on the strength of which it has drawn the money from the bank. With these observations, the matter is restored back to the file of CIT (A) for re-adjudication of the issue as per directions given in the above part of this order.”

9. The aforesaid order has been followed by the ITAT in the assessment years 2000-01 to 2002-03 in ITA Nos. 4342 to 4344/Del/2010 vide order dated 26.10.2012, in assessee's own case. Since, the facts for the year under consideration are similar to the facts involved in the aforesaid referred to cases. So respectfully following the aforesaid orders, the impugned order is set aside and the matter is restored back to the file of the Id. CIT(A) to be adjudicated as has been directed in the aforesaid orders for the assessment years 1999-2000 to 2002-03.

10. In the result, the of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 31/05/2017)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 31/05/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR