

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 452/Mds/2016

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Sri Ganapathy Silks,
C/o PASS ASSOCIATES,
No.90, Armenian Street, 4th floor,
"ORIENT CHAMBERS",
Chennai - 600 001.

v. The Assistant Commissioner of
Income Tax,
Central Circle – III,
Madurai.

PAN : AADFS 6190 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 05.05.2016

घोषणा की तारीख/Date of Pronouncement : 22.07.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 19, Chennai, dated 17.12.2015 and pertains to the assessment year 2008-09.

2. Shri D. Anand, the Ld.counsel for the assessee, submitted that the assessee, partnership firm, engaged in the business of retail textile in Coimbatore and Sankarankoil. There was search operation at the residential premises of the partners of the assessee and also in the godown at Coimbatore. There was simultaneous survey under Section 133A of the Income-tax Act, 1961 (in short 'the Act') in other business premises at Sankarankoil and Coimbatore on the same day. During the course of search and survey operation, the Revenue authorities found excess stock at Coimbatore and Sankarankoil. The Assessing Officer, in fact, found excess stock at Sankarankoil which was valued at ₹63,72,427/-. Similarly, the Assessing Officer found unaccounted investment at Coimbatore at ₹90,46,580/-. The Ld.counsel submitted that the assessee is maintaining books of account regularly and also maintaining the accounts in Vastra Software. In Vastra Software, there are some duplication of entries which resulted that the accounts are not proper. When this was demonstrated before the Assessing Officer, the Assessing Officer accepted the plea of the assessee and found that Vastra Software does not reflect the correct stock position. However, the Assessing Officer found the difference between the book value and the physical inventory taken

on the date of search, has to be treated as unaccounted investment in the stock. According to the Ld. counsel, in the textile business, the design and fashion are changing day by day. Therefore, if the assessee could not sell the product in the year in which it was purchased, the same has to be sold at a discounted price in the subsequent years. The damaged piece of the goods has to be discounted while taking inventory by the Revenue authorities. The Revenue authorities completed the physical inventory in hurried manner within 24 hours. According to the Ld. counsel, the Revenue authorities could not take the physical inventory within a period of 24 hours.

3. The Ld.counsel for the assessee further submitted that while taking inventory of stock, the Assessing Officer arrived at the value of stock by taking the tagged price of the stock and thereafter adjusted the gross profit declared by the assessee and gave a meagre discount of 2.78% on account of dead stock, and the assessee claimed before the Assessing Officer that discount for dead stock will be more than 10%. This was not considered either by the Assessing Officer or CIT(Appeals). The Ld.counsel further submitted that it is a common practice in textile business that goods

purchased on wholesale need to be examined with regard to physical damage to goods and obsolete stocks. The damaged goods and obsolete stock would normally be sold in kilograms which results in huge losses to the assessee. Huge discounts are also given during festival season and to the regular customers of the assessee. These discounts and the discounts given during festival season were not taken into consideration by the Revenue authorities while taking the physical inventory. Referring to the order of the CIT(Appeals), the Ld.counsel pointed out that the CIT(Appeals) has taken the unaccounted stock at Sankankoil at ₹40,33,282/- as against ₹63,72,427/-. According to the Ld. counsel, the CIT(Appeals) ought to have deleted the entire addition made by the Assessing Officer.

4. Referring to the order of the CIT(Appeals), more particularly at pages 13 and 14, the Ld.counsel for the assessee submitted that the CIT(Appeals) has taken the gross profit margin at 14.87% and determined the investment in the unaccounted stock at ₹40,33,282/- Referring to the allowance for dead stock, the Ld.counsel submitted that the CIT(Appeals), after reproducing the remand report said to be filed by the Assessing Officer, rejected the claim of the assessee

for allowing 10% allowance for dead stock. According to the Ld. counsel, the CIT(Appeals) ought to have allowed dead stock to the extent of 10% as claimed by the assessee. Moreover, the discount that may be given by the assessee also needs to be taken into consideration while considering the gross profit.

5. Referring to the addition made with regard to Coimbatore branch, the Ld.counsel for the assessee submitted that the addition was made by the Assessing Officer to the extent of ₹90,46,580/-. The CIT(Appeals), after considering the arithmetic error committed by the Assessing Officer, found that the actual difference was only ₹26,74,766/-. Here also, allowance for dead stock was not given and the Assessing Officer failed to give discounts to the items which remain unsold for more than one year. Therefore, according to the Ld. counsel, the CIT(Appeals) ought to have deleted the entire addition towards the so-called unaccounted investment in the stock.

6. Coming to the inflated purchases to the extent of ₹2,73,97,185/-, the Ld.counsel for the assessee submitted that the assessee explained before the Assessing Officer that textile materials are purchased in the shandy market throughout the country. Textiles, handloom and powerloom products were

purchased from shandy market. No bills were available in all these transaction. Therefore, the same was routed through an entity known as M/s Narayana Agencies created by the assessee. According to the Ld. counsel, the Assessing Officer disallowed the claim of the assessee on the ground that Narayana Agencies is a non-existing entity. According to the Ld. counsel, Narayana Agencies was established by the assessee for the purpose of routing the sundry purchases made in shandy market. The Ld.counsel further submitted that one M/s Yogesh Trading Company at Delhi purchased textile goods in shandy market in northern India for the assessee. The same was routed through Narayana Agencies. Referring to the copies of City Union Bank statements of account maintained at Coimbatore, the Ld.counsel submitted that the payment was made to Yogesh Trading Company through banking channel. In fact, ₹1,52,56,423/- was paid through banking channel to M/s Yogesh Trading Company. In fact, M/s Yogesh Trading Company confirmed the payment made by the assessee on behalf of M/s Narayana Agencies. A copy of this letter is available at page 9 of the paper-book. This was omitted to be considered by the Assessing Officer. The existence of M/s Yogesh Trading Company at Delhi is not in dispute. The payment made by

the assessee through banking channel to M/s Yogesh Trading Company is also not in dispute. M/s Yogesh Trading Company in fact confirmed that the goods were dispatched to the assessee through M/s Narayana Agencies. The payment was received from the assessee on behalf of Narayana Agencies. These material facts cannot be disputed by the Revenue merely because some of the employees were available in the premises of Narayana Agencies during the visit of the officers. The Ld.counsel further submitted that on the date of search, the outstanding amount payable to M/s Yogesh Trading Company was ₹28,44,740/-. According to the Ld. counsel, this amount has to be reduced from the shandy purchase of ₹2,73,54,211/-. Moreover, the assessee was given discount of ₹26,86,875/-. If the outstanding amount of ₹28,44,740/-, the payments made through banking channel to M/s Yogesh Trading Company to the extent of ₹1,52,56,423/- and discounts of ₹26,86,875 were taken into consideration, it can be safely concluded that ₹2,07,88,038/- cannot be construed as unaccounted investment. Therefore, the unaccounted investment, if any, could be only to the extent of ₹65,66,173/-. In view of the above, according to the Ld. counsel, the addition made by the Assessing Officer to the extent of ₹2,73,97,185/- towards inflated

purchase cannot stand. According to the Ld. counsel, the addition made by the Assessing Officer as confirmed by the CIT(Appeals) cannot stand in the eye of law.

7. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that during the course of search operation, the Revenue authorities admittedly found excess physical stock of textiles at Sankarankoil and Coimbatore. In respect of Sankarankoil, the Assessing Officer found unaccounted investment in the stock to the extent of ₹63,72,427/-. The CIT(Appeals) by accepting the claim of the assessee restricted the unaccounted investment to the extent of ₹40,33,282/-. Similarly, for Coimbatore, the investment in unaccounted stock was restricted to ₹26,74,756/- as against the addition made by the Assessing Officer to the extent of ₹90,46,580/-. Referring to the claim of allowance for dead stock at the rate of 10%, the Ld. D.R. submitted that the CIT(Appeals) found that this claim of dead stock or slow moving stock should be made while valuing the stock for the purpose of preparing statement in the end of the financial year and, such a claim cannot be made at this stage. Referring to the Coimbatore Branch, the CIT(Appeals) found that the branch itself was opened 1-1/2 years ago, therefore,

there cannot be any dead stock. According to the Ld. D.R., this observation of the CIT(Appeals) cannot be brushed aside.

8. Coming to the inflated purchase to the extent of ₹2,73,97,185/-, the Ld. D.R. submitted that during the search operation, a bill book in the name of Narayana Agencies was found. In the investigation it revealed that no such Narayana Agencies was in the given address. All the transactions of purchase were routed through the non-existing Narayana Agencies. When the Inspector of Income-tax visited the so-called premises of Narayana Agencies, some of the employees of the assessee were there and no such business concern was existing, therefore, the assessee created a non-existing entity for inflating the purchase. Similarly, in respect of M/s Yogesh Trading Company at Delhi through whom the assessee claimed that Narayana Agencies arranged purchases, it was also found that M/s Yogesh Trading Company had no business connection with Narayana Agencies. Referring to page 18 of impugned order of the CIT(Appeals), the Ld. D.R. submitted that M/s Yogesh Trading Company by their letter dated 31.12.2009 clarified that they have no business dealing either with Narayana Agencies or with the assessee. In view of this, according to the Ld.

D.R., the Assessing Officer has rightly found that the assessee has inflated the purchase to the extent of ₹2,73,97,185/-. In fact, a remand report was called for and the Assessing Officer after examining the material available on record found that the assessee was giving contradictory statements from the date of search till the remand proceeding, therefore, there is no merit in the claim of the assessee.

9. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly there was a search in the premises of the assessee and a simultaneous survey was also initiated under Section 133A of the Act. During the course of search and survey operation, the Revenue authorities found excess stock of ₹63,72,427/- at Sankarankoil Branch of the assessee. This excess stock was assessed as unaccounted investment in the stock by the Assessing Officer. The CIT(Appeals), after verifying the material available on record, found that there was arithmetic error in computing the unaccounted investment in the stock by the Assessing Officer and accordingly, restricted the addition to the extent of ₹40,33,282/- in respect of Sankarankoil Branch as against the addition of ₹63,72,427/-.

Similarly, in respect of Coimbatore Branch, the CIT(Appeals) restricted the addition to the extent of ₹26,74,766/- as against the addition made by the Assessing Officer at ₹90,46,580/-. The CIT(Appeals) further rejected the claim of dead stock to the extent of 10%. Referring to Coimbatore Branch, the CIT(Appeals) found that the Branch itself was opened 1-1/2 years ago. Therefore, there may not be any dead stock. While considering the value of the stock in the textile retail business, the changing fashion and design cannot be ignored by the Revenue authorities. It is common knowledge that fashion and design are changing day by day. If the assessee could not sell the product within a year, the same would remain unsold in the next year. Therefore, the value of such unsold stock may be much less than the cost price. It is well settled principles of law that the closing stock has to be valued either at cost price or market price whichever is less. When the market price is less than the cost price in view of the fact it remained unsold, the same cannot be ignored by the Revenue authorities. Some of the textile shops are estimating the market price at 25% of cost while valuing the closing stock of the earlier year. If the same goods remain unsold in the second year, some of the textile shops estimate the value at 50% of the cost, considering the same as the

dead stock. In the case before us, the assessee claims only 10% on dead stock. Moreover, when the textile goods are purchased on whole sale, the inherent defect in the goods cannot be totally ruled out. Therefore, this Tribunal is of the considered opinion that claiming 10% of the stock as dead stock is very reasonable in the line of textile business. Therefore, the CIT(Appeals) is not justified in disallowing the claim of the assessee.

10. Similarly, coming to Coimbatore Branch, the claim of the assessee was disallowed only on the ground that the Branch was opened 1-1/2 years ago before the date of search. The fact remains that when the stock remained unsold for more than one year, the value would be considerably reduced because of change in design and fashion. Moreover, the inherent defect while purchasing the goods on whole sale cannot be ruled out. Therefore, claiming 10% allowance by the assessee towards dead stock is very reasonable in the line of textile business. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has to allow dead stock allowance at the rate of 10% as claimed by the assessee on the estimated unaccounted investment in the stock. Accordingly, the orders of the authorities below are modified

and the Assessing Officer is directed to allow 10% discount on the unaccounted investment of the stock determined by the CIT(Appeals).

11. Now coming to inflated purchase to the extent of ₹2,73,97,185/-. The assessee claims that these are all textiles, handloom and powerloom products purchased from shandy market. The purchases made in the shandy market are routed through an entity created by the assessee, namely, M/s Narayana Agencies. This Narayana Agencies is nothing but an entity for routing the shandy products. The Assessing Officer found that the Narayana Agencies was not in existence. The fact remains that M/s Yogesh Trading Company routed the products purchased in shandy market through Narayana Agencies, to the assessee. M/s Yogesh Trading Company, by their letter dated 31.12.2009, clarified that they have no business dealing either with Narayana Agencies or with the assessee from its inception till date. The copy of confirmation letter dated 15.12.2009 from M/s Yogesh Trading Company, available at page 9 of the paper-book, shows that the very same M/s Yogesh Trading Company received payment from the assessee-partnership firm on behalf of Narayana Agencies for the goods supplied by

them. This confirmation letter was apparently ignored by both the authorities below. Moreover, some of the textile products like powerloom, etc. are sold in an unregulated market in the country. These products were purchased by the assessee through M/s Yogesh Trading Company from an unregulated market and was routed through Narayana Agencies. Therefore, there is an arrangement between M/s Yogesh Trading Company and the assessee-partnership firm for routing the products purchased in the shandy market through the so-called Narayana Agencies. The fact remains that M/s Yogesh Trading Company received payment for the goods supplied to the assessee through Narayana Agencies by cheques and the same is reflected in the bank statement filed by the assessee, a copy of which is available on record. The payment was cleared through banking channel. If there was no connection between the assessee and M/s Yogesh Trading Company as mentioned in the letter dated 31.12.2009, it is not known why the said M/s Yogesh Trading Company received money from the assessee-company by way of cheque drawn on City Union Bank. The very fact that the money was paid through City Union Bank to M/s Yogesh Trading Company establishes its business connection, therefore, the claim of the assessee that they have purchased the

products in shandy market through M/s Yogesh Trading Company cannot be totally rejected. Out of the total shandy purchases of ₹2,73,97,185/-, the outstanding amount as on the date of search was ₹28,44,740/-. This is not in dispute. Furthermore, the details of the banking transactions as per the statement filed by the assessee from City Union Bank clearly establishes the payment to the extent of ₹1,52,56,423/-. Therefore, the payment made through banking channel to Yogesh Trading Company cannot be treated as unaccounted investment in the stock. Furthermore, discounts were offered to the extent of ₹26,86,875/-. This is obvious from the material found during the course of search operation. After discount, the amount outstanding was to the extent of ₹28,44,740/- and the money paid through banking channel was to the extent of ₹1,52,56,423/-. Therefore, the undisclosed investment would be ₹65,66,173/-. After taking into consideration the confirmation letter from M/s Yogesh Trading Company dated 15.12.2009 and 14.06.2014 and the payment made through banking channel, this Tribunal is of the considered opinion that at the best, the addition can be sustained only to the extent of ₹65,66,173/-. In other words, the addition to the extent of ₹65,66,173/- could be treated as undisclosed investment. Accordingly, the orders of the authorities

below are modified and the addition made by the Assessing Officer to the extent of ₹65,66,173/- is sustained.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 22nd July, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 22nd July, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-19, Chennai-34
4. Principal CIT, Central-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.