

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

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 3490/Del/2014 : Asstt. Year : 2002-03

Income Tax Officer, Ward-6(2), New Delhi	Vs	M/s Manorama Steels Pvt. Ltd., A-56, G.T.K. Industrial Area, Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM5428K		

CO No. 97/Del/2015 : Asstt. Year : 2002-03

M/s Manorama Steels Pvt. Ltd., A-56, G.T.K. Industrial Area, Delhi	Vs	Income Tax Officer, Ward-6(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM5428K		

**Assessee by : Sh. R. K. Singhal, CA
Revenue by : Sh. Rajesh Kumar, Sr. DR**

Date of Hearing : 24.05.2017	Date of Pronouncement : 30.06.2017
-------------------------------------	---

ORDER

Per N. K. Saini, AM:

The appeal by the department and the Cross Objection by the assessee are directed against the order dated 26.03.2014 passed by the Id. CIT(A)-IX, New Delhi.

2. In the departmental appeal following grounds have been raised:

“1. Whether in the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs.

39,97,058/- made by AO as excess stock found during the survey and voluntarily surrendered by the assessee during the survey proceedings.

2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in not appreciating that during the course of survey and assessment proceedings the assessee failed to produce the relevant/supporting documents or given any satisfactory compliance against surrendered excess stock.

3. Whether on the facts and circumstances of the case & in law, the Ld CIT(A) erred in not appreciating that the survey u/s 133A was conducted by the department on assessee company and the survey team found excess stock of Rs. 39,97,058/- which the assessee claimed to have made purchases from the parties on the date of survey whereas notice issued to these parties during remand proceedings were remained uncomplied with.

4. That the order of the learned CIT (APPEALS) is erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.

6. That the appellant craves leave to add, alter, amend or forgo any ground(s)'of appeal raised above at the time of hearing.”

3. The facts of the case in brief are that the assessee was engaged in trading and manufacturing of Steel Utensils and a survey u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as the Act) was

carried out on 21.03.2002. During the course of survey, the statements of the Director and the Accountant of the assessee company were recorded and the books of account were identified. The physical inventory of the stock was prepared and valued at Rs.57,00,224/- while as per the books of account, the stock position was prepared and valued at Rs.16,70,015/-. In this manner, the stock was found physically in excess by Rs.40,30,209/-. Cash was also found in excess by Rs.4,34,224/-. The assessee surrendered a sum of Rs.45,10,443/-, on which due tax payable at Rs.16,10,228/- was worked out. The assessee handed over three post dated cheque for the said tax liability. Later on, the assessee vide letter dated 08.04.2002 requested that the cheques amounting to Rs.16,10,228/- towards tax liability delivered to the survey party should not be presented for payment. The assessee also pointed out, certain discrepancies in stock inventory drawn by survey party vide letter dated 08.04.2002 and the assessee did not agree for the excess stock as well as excess cash in hand. The assessee furnished the return of income on 22.10.2002 declaring an income of Rs.15,43,390/- which was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny. The AO made the addition of Rs.44,77,293/- by observing as under:

“The submissions of the assessee company has been considered could not explain why the cash amounting to Rs 6,00,000/- withdrawn on 20.03.2002 from the Standard Chartered Bank was not recorded in the books of

accounts of the assessee company and why it was not kept in business premises, how assessee company now can substantiate its contention that the said cash belong to it in absence of evidence, it is a case, where cash was found not recorded in the books of account, then how assessee company can substantiate contention that the said cash belong to it in absence, it is a case where cash was found not recorded in the books of account of the assessee company then how assessee company can claim that excess cash found is the same cash, which was allegedly withdrawn from the bank in particular. In view of categorical admission made by the Director of the assessee company is statement recorded on during the course of survey on 21.03.02 and offering the same for taxation as additional income. In view of the admission of the assessee company through its Director Sh. Yogesh Mittal during the survey in respect of discrepancy of cash found and cash as per books of account i.e. Rs 480234/- the contention of the assessee company cannot be accepted now as it is after thought. If the contention of the assessee has any force then assessee company could have explained at the time of survey itself would not have offered to surrender the amount of Rs 480234/- being discrepancy in cash and would have not tendered cheques towards the tax liability.

Similarly the contention of the assessee company with regard to excess stock and admission by way of statement of the director of the assessee company who surrendered at the time of survey and issued cheques towards tax liability in respect of aforesaid additional income i.e. excess stock cannot be accepted now. as it is clearly a case of after thought and therefore addition amounting to Rs.3997058/- in respect of surrendered excess stock found

during the course of survey is made in item No. 64 & 80 of inventory of stock and assessee contention is not accepted as it is not a calculation mistake and at this point of time this cannot be verified. Additional income both in respect of excess stock and excess cash found Rs. 3997059/- + 480234/- at the time of survey addition of Rs. 4477293/- made to the returned income.

With these remarks the income of the assessee company is computed as under:

<i>Income as per returned filed</i>	<i>1543390/-</i>
<i>Add.</i>	
<i>Amount surrendered as addition income in respect of excess stock and of Rs.3997058/- and excess cash found during the course of survey Rs.480234/-</i>	<u><i>4477293/-</i></u>
<i>Taxable Income</i>	<i>6020683/-</i>

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who accepted the explanation of the assessee regarding the excess cash found during the survey and deleted the addition of Rs.4,80,234/-. However, the addition on account of excess stock of Rs.39,97,058/- was confirmed. Against the said order, the department and the assessee preferred their respective appeal before the ITAT in ITA No. 889/Del/2006 and 1078/Del/2006 respectively wherein vide order dated 27.07.2007, the decision of the Id. CIT(A) regarding deletion of addition made on account of excess cash of Rs.4,80,234/-

was upheld and the issue relating to confirmation of addition on account of excess stock of Rs.39,97,058/- was restored back to the file of the Id. CIT(A) for deciding the issue afresh after making due inquiry with regard to the alleged purchases made by the assessee which were found to be not entered in the books of account at the time of survey. Accordingly, the Id. CIT(A) proceeded and the assessee submitted before him as under:

"The Assessee Company is engaged in trading and manufacturing of stainless steel utensils. A survey u/s 133 A of the Income Tax Act, 1961 was conducted by the Income Tax Department on 21.03.02. The stock inventory was prepared by the survey party and the stock was valued by them at Rs.57,00,224/- . The Survey party also prepared stock valuation as per stock sheet mentioned in Para 1 (E) above, which was valued at Rs. 16,70,015/- the assessee was confronted with the difference of Rs. 40,30,209/- and the time given to assessee was limited to maximum of 15-20 minutes since the stock print was taken on 22nd and the survey was concluded at 12.40 a.m. (As per survey record of A.O.)

The question raised to assessee regarding the stock was "during the course of survey u/s. 133A the physical inventory of stock has been prepared covering all your known premises i.e. A - 58, G.T. Karnal Road Industrial Area Godowns as Safiabad border, Narela and godowns at Barota Haryana, your physical stock found are the value of Rs.57,00,224.16 paisa as per the rates of valuation supplied by you. Your stocks as per your books of a/c kept in the computer as per the stock position prepared and supplied by your accountant are of the

value of Rs.16,70,015.50 paisa. Obviously, your stock has been found physical in excess by Rs.40,30,209/- what you have to say about this discrepancy in your stock".

And the assessee answered to this was "I am not in a position to reconcile the stock position at this moment .In order to buy peace of mind and to avoid unnecessary litigation with the Income Tax Dept, I hereby surrender the amount represented by any excess stock which will be arrived after verifying the physical stock which according to the inventory prepared is Rs. 40,30,209/- as additional Income for tax purposes subject to the condition that no panel action would be taken against me and no prosecution provision would be invoked and no adverse view would be taken at the time of assessment of my voluntary surrender of Income which is being made without any coercion or for any extraneous reasons.

The cash inventory was prepared by the survey team and the physical cash was Rs. 615989/-. The survey team also took print of cash book .In early hours of 22nd March where the last entry was written up to 15th March 2002 and cash balance as on 15th March as per such cash book was 135,755.67 the assessee was again confronted with the difference of 480234/- and was asked to explain it in whatever time was available between taking of print of cash Book, recording of Statement, raising question about stock and conclusion of survey i.e. 12.40 a.m.

On 22nd March 2004 (Survey record) the question raised to assessee regarding the cash was "your cash balance position has been obtained from your Accountant who has made it from the figures fed in your computer as per this, your cash balance as on date as per your books of A/c.

should be of Rs.1,35,755/-. An inventory of cash found in your office premises possession has been prepared which puts the figures of cash physically found in your possession at Rs.6,75,989/- clearly, your cash has been found in excess by Rs. 4,80,234/- what would you say about this discrepancy in the cash availability"?

The answer of the assessee was "At this moment, I find myself unable to reconcile the cash position which in my opinion should be equal to the physical CASH". However I surrender the excess cash, if any for Tax purpose which according to the cash Inventory prepared is Rs.4,80,234/-. Subject to the same conditions as I mentioned for surrender of additional Income in respect of the stock found in excess. I once again pray that I or my company may not be penalized for this voluntary gesture of paying Tax upon the additional Income surrendered on account of discrepancy in the stock as well as in the cash.

The assessee filed its Income Tax Return for relevant assessment year on 22.10.02 declaring total Income of Rs. 15,43,390/- and the assessee received notice u/s 143 (2) fixing the case for hearing on 24.07.03 and then the case went on from 24.07.03 to 25.02.05.

During the course of assessment proceeding the assessee was asked to file various details, and on verification of such details further details & confirmation were asked which were duly filed by the assessee, the assessee also produced the book of accounts.

The A.O accepted calculation errors of 325 Kg valued at Rs 33150/- and refused to examine the evidences filed by the assessee relating to purchases, internal transfers, cash

withdrawals etc. The Assessing Officer vide order dated 21.03.2005 made an addition of Rs 3997058/- on a/c of excess stock and an addition of Rs 480234/- on a/c of excess cash.

Aggrieved by the above said assessment order the assessee preferred an appeal before the learned Commissioner of Income Tax (Appeal) IX.

The learned C.I.T (Appeal) IX had partly allowed the appeal of the assessee. The addition of Rs 480234/- on account of excess cash was deleted by the learned CIT (Appeal) IX. The addition of Rs 3997058/- on account of excess cash was sustained by the learned CIT (Appeal) IX. Aggrieved by the order passed by the learned C.I.T (Appeal) IX the assessee preferred an appeal before the Income Tax Appellate Tribunal, Delhi Bench.

The Hon'ble Income Tax Appellate Tribunal, Delhi Bench has by order dated 27.07.07 allowed the appeal of the assessee. The assessee had taken the following grounds of appeal before the Hon'ble Income Tax Appellate Tribunal, Delhi Bench;

That on the facts and in the circumstances of the case, the learned CIT (Appeals) has erred in fact and in law in confirming the addition of Rs 3997058/- without properly considering the evidence and explanation of the assessee. Further the addition of Rs 3997058/- has been framed on conjectures, surmises and suspicion and is required to be deleted.

That on the facts and in the circumstances of the case, the CIT (Appeals) erred in fact and in law in confirming the

addition of Rs 3997058/- as unexplained excess stock during the course of the survey.

That without prejudice to grounds nos. 1 & 2 on the facts and in the circumstances of the case, the addition of Rs 3997058/- is not valid as the inventory as per return of income includes the inventory taken during the course of the survey under section 133 A of the Income Tax Act, 1961. The addition of Rs 3997058/- without adjusting the profit and loss account as returned has resulted in excess addition of Rs 3997058/- and is required to be deleted.

That on the facts and in the circumstances in case, the interest under section 234 B of the Income Tax Act, 1961 has been wrongly charged and is required to be deleted.

The Hon'ble Tribunal after considering the arguments advanced and relevant evidences filed has restored the matter back to the file of the CIT (Appeal) for deciding the issue afresh.

Since the order passed by the Hon'ble Income Tax Appellate Tribunal, Delhi Bench did not specify as to whether the order had covered ground No. 3 of the appeal filed by the assessee . The assessee seeking a clarification of the same moved a miscellaneous application before the Hon'ble Tribunal. The Hon'ble Tribunal after hearing the arguments advanced by the assessee has held that all grounds of appeal raised by the assessee have been adjudicated and the matter has been restored to the file of the learned CIT (A).

That without prejudice to any other right of the assessee and not accepting the departments stock position but

considering the same, the addition of Rs 39,97,058/- without adjusting the P&L account filed has resulted in double addition . The assessee filed return of income of Rs 15,43,390/- by including therein the closing stock inter alia of stainless steel utensils of 54,895.64 kg , scrap of 31,695.66kgs, Knife 7 dozens, SS Handle 5447 pieces and packing and polishing material aggregate value of which is at Rs 59,32,191.14 as on 31.03.02. The stock as per survey on 21.03.02 is at Rs 55,094.360 kg (on assessment after correction of 325 Kg valued at Rs 33,150 and inclusion of German Bowl at 1.20Kgs) valued at Rs 57,00,224/- as against stock as per books of 55,466.36 kgs on 21.03.02 (after excluding 14256kg for German Bowls wrongly taken as 1.20 kg instead of 120 gms). Thus there is 0 adverse difference in the stock position and the assessment has been wrongly made by making an addition of Rs 39,97,058/-."

It was further submitted that certain purchase bills which were not entered into books of account but the payment were made by account payee cheque.

5. The Id. CIT(A) forwarded the documents furnished by the assessee in support of the reconciliation of difference in stock for proper verification and report. The AO filed the remand report on 24.02.2014 stating that summons u/s 131 of the Act were issued to three parties from whom the assessee had claimed to have made purchases. However, there was no compliance from those parties. The AO asked the assessee to provide the latest address. In response,

it was stated that proprietor of M/s Sai Steel Industries has closed down his business in financial year 2003-04 itself and the assessee did not have link for last few years with M/s JP Steel Industries and the current address was not available in respect of Sh. Laxmi Vijay Strips Pvt. Ltd., the party provided certain documents stating that the transactions were held in financial year 2001-02 and due to large time gap, the documents could not be traced. Accordingly, the AO concluded that the purchases claimed to have been made by the assessee from those three parties remained unexplained.

6. The Id. CIT(A) provided the remand report to the assessee for its comments. The assessee raised certain preliminary objection which are reproduced by the Id. CIT(A) at page nos. 11 to 18 of the impugned order, for the cost of repetition, the same are not reproduced herein.

7. The assessee in his rejoinder submitted as under:

**“PARAWISE REPLY TO THE LETTER DATED
14.02.2014:**

That the contents of the Para No. 1 and 2 of the letter dated 14.02.2014 being matter of record, hence the same needs no reply.

That the contents of the Para No. 3 of the letter dated 14.02.2014 are wholly wrong, incorrect and the same are vehemently denied. That it is vehemently denied that the assessee has filed any additional evidence, hence, the

assessee is not required to fulfill the conditions contained in Rule 46A which is for admission of additional evidence. That the documents filed by the appellant along with the letter dated 15.02.2010 are not additional evidences, the said documents were already filed by the appellant before the Assessing Officer at the time of the assessment proceedings vide letter dated 24.12.2004. That it is submitted that while writing the letter dated 14.02.2014, the Additional Commissioner of Income Tax Range 6 has wrongly assumed that the appellate had filed some additional evidences and has failed to take into consideration the order dated 27.07.2007 passed by the Hon'ble Income Tax Appellate Tribunal and has also ignored the settled proposition of law that the remand back matters for afresh assessment are considered as fresh assessment proceedings.

That the contents of the Para No. 4 of the letter dated 14.02.2014 are wholly wrong, incorrect and false and hence, the same are vehemently denied. That it is vehemently denied that even on merit the appeal of the appellant is liable to be dismissed. That it is submitted that again during the remand back proceedings, the Ld. Assessing Officer has not made any proper inquiry from the supplier / banker / check post and without bringing any contrary material on record to prove the purchases bills and builties as bogus, the Ld. Assessing Officer has arrived at a conclusion.

PARAWISE REJOINDER TO THE REMAND REPORT DATED 24.02.2014:

That the contents of the Para no. 1 of the remand report being matter of record, hence the same needs no reply.

However, it is submitted that the Additional Commissioner of Income Tax Range 6 had already made up his mind of rejecting the appeal filed by the appellant and also of rejecting the evidences filed by the appellant as the letter of the Additional Commissioner of Income Tax Range 6 is dated 14.02.2014 i.e. before the remand report of the Ld. Assessing Officer which is dated 24.02.2014. In fact the Additional Commissioner of Income Tax Range 6 had written the said letter dated 14.02.2014 even before the letter of this Hon'ble Commissioner send to the Ld. Assessing Officer which is dated 17.02.2014.

That the contents of the Para No. 2 to 7 of the remand report being matter of record, hence the same needs no reply. That however, it is submitted that at all stages the appellant had duly supported and apprised the Ld. Assessing Officer of all the information as and when the same had been sought for. Further, the summons under Section 131 of the Income Tax Act, 1961 dated 22.08.2013 had been duly served upon the suppliers namely M/s. Jay Pee Steel Industries, M/s. Sai Steel Industries and M/s. Shri Laxmi Vijay Strips P. Ltd. That further, in case of M/s. Shri Laxmi Vijay Strips P. Ltd. the A.R. had send a letter to the Ld. Assessing Officer thereby confirming that the appellant herein was one of the buyer.

That the contents of Para No. 8 of the remand report are wholly wrong, incorrect and hence, the same are vehemently denied. That in view of the above facts, it is clear that again during the remand back proceedings, the Ld. Assessing Officer has not made any proper inquiry from the supplier / banker / check post and without bringing any contrary material on record to prove the

purchases bills and builties as bogus, the Ld. Assessing Officer has arrived at a conclusion.”

8. The Id. CIT(A) after considering the submissions of the assessee deleted the addition by observing in paras 5 to 5.1 of the impugned order as under:

“5. The reason given by AO in the assessment order, the direction of the Hon'ble ITAT, the remand report submitted by the AO, the submission of the appellant and the facts on record are considered. It can be seen that on the date of survey, the survey team had the occasion to see the purchase bills to compare with the books of account available in the premise. As per procedure, these purchase bills should have been taken into cognizance as an evidence for the difference in stock. The AO did not make any attempt to verify the purchase bills submitted by the appellant immediately after the date of survey along with the reconciliation of the account. The enquiry made during the remand proceeding is not complete and not dependable. The large time gap between the date of event and the enquiry made is not explainable in this case. There is possibility that the bill submitted subsequently were available in the premises on the date of survey which were not entered into the books of account. This fact is not examined by the survey team or AO during the assessment proceeding. The AO has not been able to bring any evidence at the time of assessment as well as remand proceedings to contradict the explanation given by the appellant. The payments for the purchases were made by account payee cheque which was not verified by AO. It is submitted that, the fact ascertained by the AO during the remand proceeding were not intimated to the appellant giving an opportunity to the appellant to confront the

third party. The retraction on the statement given by the director and reconciliation statement given immediately after the date of survey and at the assessment stage are not negated by AO and not examined.

5.1 The Hon'ble ITAT observed that no enquiry has been made by the AO in regards to bank payment, and transport documents. The enquiries were not made during the remand proceeding also. The surrender statement given at the time of survey and subsequently retracted, cannot be the only ground to make addition on account of purchases. The observations made by my Ld. predecessor CIT (A) regarding infirmities in documents submitted are explained by the appellant and against these explanation, AO has not furnished any evidence. In view of this, the explanation given by the appellant regarding difference of stock as per physical verification and as per books of account on the date of survey needs to be accepted and no addition is called for on this account.”

9. Now the department is in appeal. The ld. DR strongly supported the assessment order passed by the AO and further submitted that there was excess stock and cash found during the course of survey, therefore, the addition was rightly made by the AO and the ld. CIT(A) was not justified in deleting the impugned addition.

10. In his rival submissions the ld. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned order passed by the ld. CIT(A).

11. 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, since there was difference in the stock tally and the cash in hand physically found during the course of survey vis-à-vis found in the books of account. The assessee although surrendered the amount of difference in stock tally & cash in hand but subsequently retraction was made. The assessee furnished a reconciliation statement and also pointed out that the purchase bills were not considered while preparing the inventories. The assessee furnished the purchase bills after the date of survey alongwith reconciliation of the account but the AO did not make any attempt to verify the purchase bills vis-à-vis the reconciliation statement furnished by the assessee, so there was possibility that the bills submitted subsequently were not available in the premises on the date of survey which were not entered into the books of account but the said fact was not examined either by the survey team or the AO. In the present case, the AO had not been able to bring any evidence on record at the time of assessment proceedings as well as remand proceedings to contradict the explanation given by the assessee. In the present case, the retraction on the statement given by the Director of the assessee company and reconciliation statement given immediately after the date of survey and at the time of assessment proceedings were not negated by the

AO. The ld. CIT(A) deleted the addition only when he was satisfied from the explanation of the assessee which was not controverted by the AO. We, therefore, considering the totality of the facts as discussed hereinabove, do not see any valid ground to interfere with the findings given by the ld. CIT(A). In that view of the matter, we do not see any merit in this appeal of the department.

12. As regards to the Cross Objection filed by the assessee is concerned, it is noticed that no specific relief has been sought by the assessee and the order passed by the ld. CIT(A) has only been supported. Since, we have upheld the order passed by the ld. CIT(A) in the former part of this order. Therefore, the Cross Objection by the assessee becomes infructuous.

13. In the result, the appeal of the department is dismissed and the Cross Objection filed by the assessee is dismissed as infructuous.

(Order Pronounced in the Open Court on 30/06/2017)

Sd/-

(Beena A. Pillai)
JUDICIAL MEMBER

Dated: 30/06/2017

Subodh

Copy forwarded to:

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

Sd/-

(N. K. Saini)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR