

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri S.V. Mehrotra, Vice-President(KZ)

**I.T.A. No. 2446/KOL/ 2016
Assessment year : 2010-2011**

Ashok Trading Company,.....Appellant
13, Noormal Lohia Lane,
Kolkata-700 027
[PAN : AAGFA 0299 M]
-Vs.-

Income Tax Officer,.....Respondent
Ward-45(2), Kolkata,
3, Government Place West,
Kolkata-700 001

Appearances by:

Shri V.N. Purohit, F.C.A., for the assessee

Shri Arup Chatterjee, JCIT, D.R., for the Department

Date of concluding the hearing : May 25, 2017

Date of pronouncing the order : June 08, 2017

O R D E R

Per Shri S.V. Mehrotra, V.P.(KZ):

This appeal has been filed by the assessee against the order of ld. Commissioner of Income Tax (Appeals)-13, Kolkata dated 06.09.2016 for the assessment year 2010-11.

2. Shri V.N. Purohit, F.C.A., appeared on behalf of the assessee and Shri Arup Chatterjee, ld. JCIT, D.R. represented on behalf of the Revenue.

3. Brief facts of the case are that the assessee was, in the relevant assessment year, was engaged in import and trading of umbrella requisites. It had filed its return of income, for the year under consideration, declaring total income of Rs.1,50,033/-. The Assessing Officer had issued notice under section 142(1) to the assessee and in response to which the assessee submitted photo-copies of return

acknowledgment for the assessment years 2008-09, 2009-10 and 2010-11 along with Tax Audit Report, audited Profit & Loss Account and Balance-sheet and part details of sales made by the assessee for its Kolkata Branch. The Assessing Officer has observed that pending examining of the documents filed, the case was adjourned on 03.09.2012 and again there was no compliance as such on that date. The Assessing Officer has noticed from the Tax Audit Report that the assessee had Branch Office at Delhi and Guwahati but Tax Audit Report of those two Branches were not submitted. He observed that after examining Tax Audit Report, it was noticed that the auditors had not mentioned any Branch Office of the assessee-firm in the audit report and therefore, again he issued a letter to the assessee requiring the details, including all invoices regarding purchase of umbrella of different companies located at China. He observed that there was no compliance to this notice. However, in response to letter dated 21.11.2012, the assessee submitted its reply regarding accounting charges Rs.24,000/- paid to Mr. Anil Jha at Delhi and Rs.21,600/- to Mr. Ravinder Nath Jha at Guwahati but did not file any Branch audit report as required. The Assessing Officer after considering the relevant facts in detail concluded in his order at page 10 that the result of the audited accounts for Guwahati and Delhi Branch could not be included in the audited accounts of the Head Office Kolkata under any circumstances, as the date of audit by the Chartered Accountant was on 26.10.2010, whereas the tax audit report of Kolkata (Head Office) was dated 21.09.2010 based on which the return was filed on 27.09.2010. Considering all these aspects including the non-compliance of various notices, he rejected the books of account, *inter alia*, observing that the details furnished by the assessee were not verifiable from the accounts and made an addition of Rs.11,66,204/- by taking net profit @ 5%.

4. Before the Id. CIT(Appeals), the assessee had, *inter alia*, submitted that the assessee firm of two partners was engaged, as in past, in import and trading of umbrellas and its parts. Admittedly, the return was e-filed on 27.09.2010 and photo copies of return, tax audit report, audited

accounts and sale of Kolkata Branch were furnished. The Assessing Officer wrongly rejected audited account books and made assessment under section 143(3)/145(3) of the Income Tax Act, 1961. The accounts reflect separate purchase and sales of Head Office and Branches in its final account. The assessee got its account of the Branches signed separately to be submitted to the sales tax authority of the respective Branches where there was requirement to get separate balance sheet of its Branches. Since the Assessing Officer insisted for the audited accounts of the Branches separately and, therefore, the assessee had submitted the audited branch accounts separately. This does not mean that the accounts of the Branches were not audited or incorporated in the final accounts of the firm as a whole. This fact could not be understood by the Assessing Officer and therefore, rejected the books of account and estimated the net profit of the assessee at the rate of 5% of the gross turnover of the assessee. However, the assessee-firm had maintained proper books of account and got its accounts audited as per the provisions of the Act. But the same had been rejected by the Assessing Officer under wrong misunderstanding that audited accounts were only of Kolkata, which, in fact, were consolidated accounts of Kolkata and two Branches. He submitted that under utterly wrong assumption and presumptions, the Assessing Officer had made number of additions.

5. The Id. CIT(Appeals) after considering the assessee's submissions dismissed the assessee's appeal, *inter alia*, observing that once the assessee did not file details, the Assessing Officer was prevented from making inquiry. He did not accept the assessee's contention that no defect in books of account was found.

6. Being aggrieved with the order of the Id. CIT(Appeals), the assessee has preferred appeal before the Tribunal on the following ground:-

"That the CIT(Appeals)-13 has erred both on the facts ad in law in rejecting the grounds before him, challenging the action of Assessing Officer in (i) rejection of books of accounts, (ii) resorting to provisions of section 145(3) of the I.T. Act and (iii)

estimating the taxable income @ 5% of disclosed turnover and thereby dismissing the assessee's appeal in its entirety".

7. Ld. counsel for the assessee referred to pages 7 & 8 of the paper book, wherein the consolidated accounts of the assessee-firm dated 21.09.2010 are contained. He further referred to pages 11 & 12 of the paper book, wherein the accounts relating to Delhi Branch duly audited on 26.10.2010 are contained. He further referred to pages 13 & 14 of the paper book, wherein the accounts audited on 26.10.2010 of Guwahati Branch are contained. With reference to these, he demonstrated that the consolidated accounts contained all the details in respect of the additions. He further referred to page 16 of the paper book, wherein the detailed chart regarding various items of profit & loss account in respect of three branches Kolkata, Guwahati and Delhi are contained. With reference to all these contents, he submitted that the Assessing Officer wrongly rejected the books of accounts on the ground that the accounts for Delhi and Guwahati Branches were not consolidated with the accounts of Kolkata Head Office. He further submitted that the matter may be restored back to the file of the Assessing Officer for *de novo* consideration of the books of account as rejection of books of account was not justified.

8. The ld. D.R. relied on the orders of the authorities below and submitted that the assessee had not furnished details as required by the Assessing Officer, which is evident from the assessment order. He also prayed that the matter may be restored to the file of the Assessing Officer for *de novo* adjudication.

9. I have considered the submissions of both the parties and also perused the relevant material available on record. The rejection of books of account was primarily on the ground that the Delhi and Guwahati Branch accounts were audited subsequent to the date of audit of Kolkata Head Office. I am of the considered opinion that consolidated accounts of Kolkata included the account of Delhi and Guwahati Branch and there was

no reason for the Assessing Officer to coming to the conclusion that the said accounts could not be incorporated merely because the date of audit was subsequent to the date of audit of Kolkata Head Office. I, therefore, set aside the order of the Id. CIT(Appeals) rejecting the books of account on the ground as stated by the Assessing Officer and restore the matter to the file of the Assessing Officer, as agreed by both the parties, for *de novo* assessment.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08.06.2017.

Sd/-

**S.V. Mehrotra
(Vice-President)**

Dated : 08.06.2017

- Copies to :*
- (1) **M/s. Ashok Trading Company,
C/o. V.N. Purohit & Co.,
Chartered Accounts,
Diamond Chambers, Unit-III, 4th Floor, Suit No. 4G,
4, Chowringhee Lane,
Kolkata-700 016**
 - (2) **Income Tax Officer, Ward-45(2), Kolkata,
3, Government Place West, Kolkata-700 001**
 - (3) *Commissioner of Income-tax (Appeals)-13, Kolkata*
 - (4) *Commissioner of Income Tax- ,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Senior Private Secretary,
Head of Office/DDO,
Income Tax Appellate Tribunal
Kolkata Benches, Kolkata*

Laha/Sr. P.S.