

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 3390/Del/2014
Assessment year : 2010-11**

**Income Tax Officer,
Ward 26(3), E-2 Block,
18th Floor,
Civic Centre,
New Delhi.**

vs **Rajeev Gupta,
C-2/52, FF,
Janak Puri,
New Delhi.**

(Appellant)

**(PAN: AAZPG2397R)
(Respondent)**

**Appellant by : Shri Atiq Ahmad, Sr. DR
Respondent by : Shri Piyush Kumar Kamal, CA**

O R D E R

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal has been preferred by the revenue against the order passed by the ld. CIT(A)-XXIV, New Delhi dated 7.3.2014 for assessment year 2010-11 wherein the ld. CIT(A) had partly allowed assessee's appeal against the assessment order dated 18.3.2013.

2. The brief facts of the case are that the return of income was filed declaring income of Rs. 1,71,980/- on 29.03.2011. A survey u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried on the premises of the assessee on 19.2.2010. During the course of survey, it was found that the

assessee was running his proprietary concern M/s Shri Ramji Tiles & Sanitary from a newly constructed building situated at B-44, Shiv Vihar, Vikas Nagar, Uttam Nagar, New Delhi. During the course of survey, an excess cash amounting to Rs. 9,86,750/- and documents pertaining to unexplained expenses of Rs. 35,60,600/- incurred towards renovation of the business premises were found. Besides this, excess stock of tiles of Rs. 45,82,966/- was also found. The statement of the assessee was also recorded and the assessee surrendered the excess cash amounting to Rs. 9,86,750/-, unexplained expenditure on renovation amounting to Rs. 35,60,600/- and excess stock of Rs. 45,82,966/- for taxation.

2.1 However, when the return of income was subsequently filed on 29.03.2011, the income of only 1,71,980/- was declared and the Assessing Officer, during the course of assessment proceedings, noted that the assessee had not shown the surrendered additional income nor paid the additional tax due on the same. The assessee was asked to show cause and the assessee submitted before the Assessing Officer that he had retracted from the surrender made during the course of survey proceedings by stating that no excess cash was found, no expense

was incurred on renovation of premises and there was no excess stock. The assessee further submitted before the Assessing Officer that the difference in stock was due to difference between the rate taken by the department and the actual cost price. However, the Assessing Officer did not accept the assessee's contention and completed the assessment u/s 143(3) of the Act after making additions on account of excess stock, renovation of business premises and excess cash.

2.2 Aggrieved, the assessee preferred an appeal before the first appellate authority and raised the contention that no actual surrender was made during the course of survey and, in any case, the same was retracted as the surrender was obtained under duress, harassment, fear and coercion. The assessee also reiterated before the Id. CIT(A) that the survey team had valued the stock incorrectly, both in terms of value and quantity, and a detailed chart was filed before the Assessing Officer explaining the deficiencies in stock valuation in the various items of inventory. Regarding the alleged expenses on renovation, the assessee contended before the Id. CIT(A) that only two loose papers were found during the course of survey but there was no corroborative evidence to prove that such expenditure had been

incurred by the assessee as no other voucher or bill was found and the papers were also undated. Regarding excess cash, the assessee contended before the Id. CIT(A) that as this alleged unaccounted cash was left with the assessee and not seized by the department, obviously, there was no actual cash found during the course of survey and the theory of excess cash having been found was introduced by the department to force surrender of the amount. The assessee also submitted that no unaccounted sales bills were found during the course of survey. The assessee also submitted that the entire addition had been made on the basis of the statement of the assessee which the assessee was not accepting and had retracted.

2.3 However, the Id. CIT(A) had not accepted the assessee's contention regarding excess cash and confirmed the same. The Id. CIT(A) also confirmed the addition pertaining to unexplained investment in the renovation of business premises by noting that the assessee had, during the course of appellate proceedings, admitted that the handwriting on the two pieces of paper was his own and that he had destroyed the related vouchers of expenses.

2.4 On the issue relating to difference in valuation of stock, the Id. CIT(A) took into consideration the submissions of the assessee

as well as the relevant purchase invoices and sustained the addition on this account only to the tune of Rs. 1,47,674/-.

3. The department has now challenged the action of the ld. CIT(A) in restricting the addition on account of difference in stock.

The following grounds have been raised by the department :-

“On the facts and circumstances of the case and in law CIT(A) erred in-

1. *Admitting the sweeping submission of assessee and not getting the facts confronted by the AO by providing opportunity under Rule 46A.*
2. *Restricting the addition on account of difference in stock to Rs. 1,47,292/- as against the addition of Rs. 45,82,966/-.”*

4. The ld. Sr. DR placed reliance on the findings of the Assessing Officer and vehemently argued that the ld. CIT(A) had ignored the findings of fact as recorded by the survey team which was recorded on the spot and that he had given benefit to the assessee without even requiring the Assessing Officer to submit a remand report on the issue. It was prayed that the deletion made by the ld. CIT(A) be reversed.

5. In response, the ld. AR submitted that the ld. CIT(A) had given relief to the assessee only after taking into account the deficiencies which were brought to notice regarding the valuation of inventory. The ld. AR submitted that the same should be

upheld.

6. We have heard the rival submissions and perused the material available on record. It is seen that during the course of survey, stock of tiles worth Rs. 99,43,096/- was found in the business premises of the assessee. Out of this, on the date of survey, stock worth Rs. 53,60,130/- was found to be recorded in the books of accounts of the assessee and, thus, as per the department, there was excess stock of Rs. 45,82,966/-. The assessee had objected to the valuation on the ground that the same had been overvalued by the survey team. During the course of appellate proceedings, the assessee objected to valuation of 87 items of stock which, according to him, had been overvalued by the survey team. The assessee furnished copies of purchase invoices to demonstrate the correct rate of purchase of the impugned items of stock. However, on perusal of the same, it was noticed by the Id. Commissioner of Income Tax(A) that while taking the value of purchase cost of many items, the assessee had not included excise duty, VAT and surcharge. On being pointed out the same, the assessee accepted and dropped his objections for 46 items. The assessee further challenged the valuation of stock before the Id. Commissioner of Income Tax(A) and stated

that while valuing the stock in Godown No. C, the value of stock had been taken erroneously as the survey team had valued 8 items (52135 pieces) erroneously on piece basis instead of box basis. This issue was partly allowed by the Id. Commissioner of Income Tax(A).

6.1 It is seen that the Id. Commissioner of Income Tax(A) has duly noted that the contention of the assessee was verified with respect to purchase invoices and it has been further noted that in the previous pages of the valuation report in respect of Godown No. C, the survey team had taken the value of stock on the basis of boxes whereas in respect of the 8 items objected to by the assessee, the survey team had taken the stock on the basis of per piece. The Id. Commissioner of Income Tax(A) has also noted that in page 2 of the inventory of Godown No. C, there was no mention of quantity of stock i.e. as to whether it was on per box basis or on per piece basis. Thereafter, Id. Commissioner of Income Tax(A) calculated the difference in value of stock as per books of account and the physical inventory at Rs. 1,47,674/- and sustained the addition only to this extent. This fact of finding could not be negated by the Department during the course of proceedings before us and the Id. Sr. DR could not point out the error, if any,

had been committed by the ld. Commissioner of Income Tax(A) in the calculation so made. Accordingly, we find no reason to interfere in the order of the ld. Commissioner of Income Tax(A) which is entirely based on facts.

6.2 As far as the Department's contention about the ld. Commissioner of Income Tax(A)'s not calling for a remand report is concerned, we note that no fresh documents were furnished before the ld. Commissioner of Income Tax(A) and these documents were already before the Assessing Officer during the course of assessment proceedings. The ld. Commissioner of Income Tax(A) has given relief to the assessee on the basis of error committed by the survey team in the course of stock taking and the same is also on record and before the Assessing Officer. Therefore, this contention of the Department is also not acceptable. Accordingly, we uphold the order of the ld. Commissioner of Income Tax(A) and dismiss the appeal preferred by the Department.

7. In the result, the appeal of the Department is dismissed.

Order pronounced in the Open Court on 1.11.2017.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

DT. 1.11.2017
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar