

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 1294/Kol/2015

Assessment Year : 2011-12

ITO, Wd-43(4), Kolkata

-vs-

M/s Super Diesel

[PAN: AAMFS 0816 J]

(Appellant)

(Respondent)

For the Appellant : Shri Arindam Bhattacharjee, Addl. CIT

For the Respondent : Shri Manish Tiwari, FCA

Date of Hearing : 14.11.2017

Date of Pronouncement : 29.11.2017

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-13, Kolkata [in short the ld CIT(A)] in Appeal No.43/CIT(A)-13/Cir-43/2014-15/Kol dated 27.08.2015 against the order passed by the ACIT, Circle-42, Kolkata [ in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 31.03.2014 for the Assessment Year 2011-12.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the addition of Rs. 60,48,455/- u/s 69B of the Act without calling for the remand report from the Ld. AO in contravention of provision of Rule 46A of the Income Tax Rules, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a dealer in Auto parts and also runs a servicing of motor vehicles work shop. The return of income for the assessment year 2011-12 was filed on 28.09.2011 declaring total income of Rs. 29,99,088/-. A survey was conducted in the business premises of the assessee on 11.02.2011 and excess stock to the tune of Rs. 61,48,455/- was found which was surrendered by the assessee and advance tax was also agreed to be paid for the same. The Ld. AO observed that the assessee had also paid the taxes due thereon. The Ld. AO observed that at the time of survey, statement of Shri Yaswinder Singh, partner of the assessee firm was recorded, who, in reply to question no. 4 and 5, admitted that quantity and value of stock found by the survey team as genuine and true. However, while filing the return of income, the assessee firm retracted from the surrender made at the time of the survey and value of closing stock was shown at Rs. 69,18,764/-. When this discrepancy was confronted on the assessee during the course of assessment proceedings by the Ld. AO., the Ld. AR of the assessee submitted a detailed chart of the working of closing stock as reflected in the trading account of the assessee. The Ld. AO observed that the assessee vide his AR letter dated 06.03.2014 agreed for valuation of stock made at the time of survey. The Ld. AR of the assessee prayed for certain concessions on account of price difference owing to inclusion of VAT in certain items and also claimed the some of the stocks to be number of replacements warranted/goods returned etc. The Ld. AR was asked to substantiate his claim for the same. The Ld. AO observed that barring the issue of difference in rate, no other claim for concession was found tenable. Accordingly, he granted deduction of Rs. 1,000/- on account of VAT and made addition of Rs. 60,48,455/- towards excess value of stock as unexplained u/s 69B of the Act.

4. Before the Ld. CIT(A), the assessee submitted that the survey team valued the stock at Rs. 89,95,004/- and prepared an accounts to work out value of stock as per books at Rs. 28,46,549/- on 11.02.2011 (being the date of survey) thereby resulting in excess stock of Rs. 60,48,455/-. The assessee was forced to make commitment to pay advance

tax on so-called excess stock. The said statement regarding excess stock was retracted by the assessee later on. The audited accounts enclosed along with return of income contains closing stock of Rs. 69,18,764/- which was duly supported by proper workings. The assessee further explained with the summary of sales of each quarter as per VAT return with supporting documents and summary of purchases of each quarter as per VAT return with supporting documents as well as the reconciliation for discrepancy. The other reasons for discrepancy i.e. warranty parts, scrap items, replacements of goods, goods returned etc. which were claimed to the tune of Rs. 8,64,904/- were rejected by the Ld. AO without any cogent reasons. It was submitted that the difference representing the excess stock in the sum of Rs. 61,48,455/- arrived by the survey team was based on the value of closing stock of Rs. 28,46,549/- which was arrived as per incomplete unaudited profit and loss account on the date of survey. It was submitted that the assessee maintains cash book, bank book, sales register, purchase register, general ledger, sundry debtors ledger, sundry creditors ledgers, journal book, VAT register etc. But it does not maintain any stock register. It was also explained that it is not feasible to maintain any stock register because of innumerable items of motor parts dealt with by the assessee. The assessee accordingly valued its closing stock based on physical verification carried out year on year. The gross profit declared by the assessee at Rs. 55,00,024/- on the total receipt of Rs. 3,37,51,950/- worked out to 16.295% which was in line with similar nature of business as well as earlier gross profit rates which were accepted by the Department. It was submitted that the assessee had retracted from the surrender made at the time of survey while filing the return of income by placing reliance on the decision of this Tribunal in the case of ACIT vs. Ajoy Bokli in I.T.A No. 312/Kol/2013 dated 06.05.2013 wherein it was held that the statement recorded on survey has no evidentiary value for making addition if there is no corroborative evidence. It was pleaded that the Ld. AO based on irrelevant and extraneous circumstances obtained a letter dated 06.03.2014 from Ld. AR of the assessee admitting to the value of stock at the time of survey. It was pleaded that such commitment cannot

override the facts and figures already placed on record which is supported by audited books of accounts and audited financial statement with supporting documents. It was further pleaded that the Ld. AO while framing the assessment was satisfied with the books of accounts of the assessee and no adverse remark so far as maintenance of books of accounts was made by him in his assessment order. No fault in purchases, sales, rate of gross profits etc. were found by the Id. AO in his assessment order. The assessee has filed detailed workings of closing stock as on 31.03.2011 before the Id. AO and the Ld. AO had not pointed out any mistake or any adverse remark on the value of such closing stock by stating that it is incorrect.

5. The Ld. CIT(A) granted relief to the assessee by observing as under:

*“I have gone through the factual background under which addition was made towards unexplained investment in stock. I have also examined the contentions of AR as well as various papers & documents relied upon as contained at paper book Page 1 to 109. After going through the contentions of AR and assessment order, the disputed issue is adjudicated as under:*

*The facts leading to addition u/s 69B of Income Tax Act, 1961 show that during survey conducted at the appellant's business premises on 11.02.2011, and inventory of stock was prepared covering forty four pages and valued at Rs. 89,95,004/-. The appellant did not maintain stock book because of innumerable items of Motor Parts dealt with. As such, the survey party obtained a trading account from computer as on 02.11.2011 wherein closing stock as per book was shown at Rs. 28,46,549/-. It was accordingly concluded that there was excess stock of Rs. 61,48,455/-. The statement obtained from one of the partners in course of survey reveal that the appellant admitted excess stock. The appellant who paid advance tax on such excess value of stock later on retracted from such admission and filed return of income without offering any additional income.*

*The contentions of AR are perused and following documents relied upon and forming part of paper book are examined-*

- (a) Valuation of stock by survey team on 11.02.2011*
- (b) Unaudited Trading & Profit and loss account on 11.02.2011*
- (c) Detailed statement of stock on 31.03.2011 as per audited accounts.*
- (d) Quarterly sales & purchases as per VAT return*
- (e) Audited Accounts with Tax Audit Report for 31.03.2011*

*I agree with views expressed AR that statement u/s 131 obtained from one of the partner in Course of survey admitting excess stock cannot have any evidentiary value for*

*making addition. In this context, reliance is placed to the decision of ITAT, Kolkata Bench in the case of ACIT vs. Ajoy Bokli (I.T.A. No. 312/Kol/2013) dated 06.05.2013. Hence, Addition made by AO merely by referring the assessee's admission during the survey cannot have any legal force.*

*The AR vehemently protested against determination of book value of stock on 11.02.2011 at Rs. 28,46,546/- by referring to unaudited Trading & Profit and loss account drawn on that date without any support of Balance Sheet. AR has also pointed out inconsistencies so far as they related to rate of gross profit and stock/turnover ratio. This contention is scrutinized and examined from unaudited Trading and Profit and loss account as on 11.02.2011 available at page 52 & 53 of paper book. The gross profit of Rs. 11,50,982/- on total turnover of Rs. 2,58,53,204/- works to 4.45% as against declared gross profit as per Tax Audit Report of 16.30%. Similarly, the closing stock determined at Rs. 28,46,549/- against total turnover/sale of Rs. 2,58,53,204/- works to 11% approx. This ratio is opposed to Tax Audit Report wherein ratio is derived at 20.5%. Therefore, I agree that determination of value of stock on the date of survey at Rs. 28,46,549/- is without any basis whatsoever. Accordingly, the determination of excess stock of Rs. 61,48,455/- is not as per law.*

*The AR has also drawn my attention to the fact that quarterly statement of both purchases as well as sales disclosed in the audited accounts are based on VAT return submitted before Sales Tax Authorities. The sales, purchases and opening stock as recorded in the audited books have neither been disturbed nor there is any adverse comments of the AO. This contention of the appellant is examined. I agree that there remains hardly a scope to hold that closing stock was undervalued where opening stock, purchases and sales are accepted as correct as well as there is no variation of gross profit rate of stock/turnover ratio.*

*A reading of the assessment order passed u/s 143(3) reveals that one of the main reason for addition towards unexplained investment in stock is the letter dated 06.03.2014 wherein the representative appearing on behalf of the appellant firm admitted the correctness of the value of stock during survey. I am not inclined to give cognizance on so-called letter dated 06.02.2014 in view of my categorical findings against inconsistencies in the Trading A/c etc. prepared by survey team. This is as per decision of different High Courts as relied by the appellant wherein addition made merely on the basis of confessional statement was considered bad in law.*

*In view of the totality of facts and legal position, I am of the considered view that the addition of Rs. 60,48,435/- on account of excess stock is not sustainable in law. Accordingly, the addition is deleted. The appellant gets relief of Rs. 60,48,435/-. This ground is allowed."*

6. Aggrieved, the Revenue is in appeal before us on the following grounds:

1. *Whether the Ld. CIT(A)-13, Kol was justified on facts and in law in deleting the entire addition of Rs. 60,48,455/- made u/s 69B without calling for the Remand Report from the AO, apparently contravening the provisions of Rule 46A of I.T. Rules, while the assessee had submitted various detail & documents additionally in the form of paper book during the appellate proceedings.*
2. *The appellant craves leave to add new grounds and/or alter or modify any of the grounds of appeal.*

7. The Ld. DR pleaded before us that pages 1 to 109 of the paper book filed by the assessee for the first time before the Ld. CIT(A) and the Ld. CIT(A) ought to have taken remand report from the Ld. AO and hence, the order passed by the Ld. CIT(A) without obtaining remand report is in violation of Rule 46A of the Income Tax Rules. Accordingly, he prayed for setting aside the appeal to the file of the Ld. AO. In response to this, the Ld. AR submitted that pages 1 to 109 of the paper book which was filed before the lower authorities is also placed on record before this Tribunal. No fresh evidences/documents were submitted by the assessee warranting any remand report to be obtained from the Ld. AO. He further argued that in view of innumerable motor parts and accessories, stock registers were not maintained by the assessee and this fact is not in dispute. Hence, the stock print out taken from the computer by the survey team is bound to have some mistakes which cannot be relied upon by the Ld. AO while framing the assessment order. He argued that the Ld. CIT(A) had appreciated the fact that the assessee had valued its closing stock as on 31.03.2011 based on physical verification for stocks carried out at the end of the year. No discrepancy whatsoever has been found by the Revenue in respect of opening balance, purchase and sales reported by the assessee. Hence, he argued that the order of the Ld. CIT(A) is exhaustive and no interference is called for.

8. We have heard the rival submissions and perused the material available on record. At the outset, the only ground raised by the Revenue is with regard to violation of Rule 46A of I.T. Rules committed by the Ld. CIT(A) while disposing off the appeal in favour

of the assessee. In this regard, we find that the assessee has furnished the pages 1 to 109 of the paper book before us which is the same as was placed before the lower authorities as per the certificate given by the assessee in his paper book. The Ld. DR before us could not pinpoint which part of this paper book comprising of pages 1 to 109 were filed for the first time before the Id CITA and hence, on this account itself, the ground raised by the revenue deserves to be dismissed. We find that the revenue had not challenged the validity of deletion of this addition before us. In any case we find that Ld. CIT(A) had approached the entire issue by placing reliance on the audited statement of account and method adopted by the assessee for valuing its closing stock i.e. closing stock i.e. physical verification of the inventory at the end of the year. It cannot be brushed aside that the opening balance, purchases and sales by the assessee are not disputed by the revenue. In any event, we find that the sole basis for framing this addition by the Ld. AO is passed on the statement recorded at the time of survey which, in our considered opinion, has got no evidentiary value as the same is not supported by any corroborative evidence. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. S. Khader Khan Son reported in 210 Taxman 248 (SC). Hence, the grounds raised by the Revenue are dismissed.

9. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the Court on 29.11.2017**

Sd/-  
[S.S. Viswanethra Ravi]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 29.11.2017

SB, Sr. PS

