

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

**I.T.A No. 252/Agra/2016
(ASSESSMENT YEAR-2007-08)**

Kunj Behari Lal & Sons Huzrat Road, Lashkar, Gwalior.(M.P.) PAN No.AABFK9144J (Assessee)	ITO, Ward-1 (1), Gwalior. (Revenue)
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Assessee by	Shri Mahesh Agarwal, AR
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	21.09.2017
Date of Pronouncement	29.11.2017

ORDER

This is assessee's appeal for assessment year 2007-08, raising the following grounds:

- “1. That under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not deleting the entire addition of Rs. 18,18,406/- relating to alleged excess stock (challenged with the total addition of Rs. 22,86,569/- vide ground No. 2 before him) and in confirming the addition of Rs. 8,415/- particularly when he himself accepts that the this difference was too small.*

- 2. That under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not deleting the entire addition of Rs. 4,68,163/- relating to alleged excess cash*

(challenged with the total addition of Rs. 22,86,569/- vide ground No. 2 before him) and in confirming the addition of Rs. 3,51,000/-.

3. *That the Ld CIT(A) has erred in not properly appreciating the explanation of the assessee regarding the availability of excess cash found at the time of survey and, thus, confirming the impugned addition without cogent reason.”*

2. During the year, the assessee was in the business of purchase and sale of timber. A survey u/s 133A of the Income Tax Act, 1961 was carried out on 06.09.2006. During the course of survey, in the assessee's business premises, on physical verification, closing stock of Rs.26,25,770/- was found, while as per books of account, the stock was of Rs.12,92,578/-. Thus, excess stock was found of Rs.13,33,192/-. Similarly, on physical verification, cash was found of Rs.7,03,500/-, while as per cash book, it was Rs.2,35,337/-. Thus, excess cash of Rs.4,68,163/- was found. Regarding the excess stock and cash found, total amounting to Rs.18,01,355/- (Rs.13,33,192+Rs.4,68,163/-), the assessee could not give any explanation and surrendered the same, accepting it as additional income for F.Y. 2006-07.

3. The AO, on the basis of the surrender, made addition of Rs.22,86,569/-, i.e., Rs.18,18,406/- towards excess stock found in the survey and Rs.4,68,163/- towards

excess cash found in the survey. The excess stock was re-worked to Rs.18,18,406/-, as against that of 13,33,192/- as worked out by the survey team.

4. By virtue of the impugned order, the Id. CIT(A) has reduced the addition of Rs.18,18,406/- representing excess stock to Rs 8,415/- and that of Rs.4,68,163/-, representing excess cash, to Rs.3,51,000/-.

5. Apropos the excess stock of Rs.8,415/-, the Id. CIT(A) has held that 'considering the huge stock inventory found, the difference of just Rs.8,415/- is too small a difference calling for any adverse inference because such small mistake could have been there for any reason'.

6. The Id. Counsel for the assessee has contended that the Id. CIT(A) has erred in not deleting the entire addition of Rs.18,18,406/- and in confirming the addition to the extent of Rs.8,415/-, particularly when he himself accepted that this difference was too small.

7. The Id. DR has placed strong reliance on the impugned order.

8. The Id. CIT(A) is not found justified in sustaining the addition to the extent of Rs.8,415/-. No reason for the alleged mistake has been specified/pointed out. Rather, the Id. CIT(A) has himself observed that such a small mistake could have occurred for any reason. This is no basis for sustaining the addition. Accordingly, this addition is deleted.

9. Regarding the addition of Rs.3,51,000/- towards excess cash, before the AO, the assessee submitted that as per page no 133 of the cash book, which is signed by the income tax inspector, there was cash balance of Rs. 2,35,337.43/- on 05.09.2006, but on 01.09.2006 manager Shri Girraj Agarwal had withdrawn Rs. 3,51,000/- for the purchase of goods, which is not accepted while working out the cash balance; but since no purchase could be made, Shri Girraj Agarwal, after return from Sagar, kept the money in the business premises on 05.09.2006, which, due to mental tension, he could not explain at the time of survey. The AO rejected the explanation of the assessee, though without any reasoning / observation. The Id. CIT(A), on the other hand, has observed that:

“The arguments of the appellant even during the course of the appeal have been the same as were advanced before the AO. The contentions/arguments of the appellant have been carefully considered. Undisputedly, cash brought back from Sagar was not found entered in the books on that day. In so far as reply given to explain the cash to the extent of Rs.3,51,000/- by saying that this amount represents the ‘Cash drawn on 01-09-2006 for purchase from Sagar which purchase did not materialise and hence amount brought back to the shop and kept in the drawer’ is concerned it is seen that it is clearly self-serving and not verifiable. It is unbelievable that such a huge cash was placed in the shop that too without entering it in the books more so when Mr. Girraj Aggarwal was the Manager of the Firm and the Survey Team also was not told of this huge

amount that too when it was brought back just few hours prior to the survey. Very logically when the Cash was taken out to Sagar, it was taken for the purpose of purchase etc. and it is unbelievable that without having spent it (not even 10%) this entire amount was brought back and kept in the office. On being tested on the anvil of the test of “surrounding circumstances and applying the test of human probabilities” as propounded by the Supreme Court in its judgment in Sumati Dayal v. CIT 214 ITR 801 SC the explanation put forth by the appellant does not appeal. Very clearly the excess cash found was because of other reasons not disclosed by the appellant. The explanation given by the appellant does not enthuse confidence in accepting it to be reasonable. Under the circumstances, the explanation on the cash to the extent of 3,51,000/- is rejected and to this extent addition is upheld.”

10. The Id. Counsel for the assessee has contended that the Id. CIT(A) has failed to appreciate that the survey was carried out on 06/09/2006 and it continued till 07/09/2006, when the statement of the Manager was recorded; that it is not a hidden fact that under how much pressure a person would be when he is grilled for almost 24 hours; that the non disclosure of cash kept in the drawer by the Manager on his return from Sagar, under these circumstances, cannot be termed unnatural; and that moreover, the returned cash of Rs. 3,51,000/- is entered in the cash book dated 06/09/2006 and cash balance taken is inclusive of this amount, which is continued till the end of year.

11. The Id DR, relying on the impugned order, has contended that the story of Shri Giriraj Aggarwal, Manager, having withdrawn the sum of Rs.3,51,000/- for the purchase of goods from Sagar and having kept back the same since the purchase did not materialize, was not there before the AO.

12. The Id. DR's contention is incorrect. The AO, in the last para at the first page of the assessment order, has taken note of the assessee's contention that as per page 133 of the cash book, which stood signed by the Income Tax Inspector, there was a cash balance of Rs.2,35,337.43/- on 05.09.2006, but on 01.09.2006, the Manager, Shri Giriraj Aggarwal had withdrawn Rs.3,51,000/- for the purchase of goods, which was not accepted while working out the cash balance, but since no purchase could be made, Shri Giriraj Aggarwal, after return from Sagar, kept the money in the business premises on 05.09.2006, which, due to mental tension, he could not explain at the time of survey.

13. So far as regards the CIT(A)'s observation that the cash brought back from Sagar was not entered in the assessee's books, this observation is also wrong. The assessee has produced before this Bench, the copy (APB 41-47) of the assessee's cash book from 01.09.2006 to 06.09.2006. It has been certified to have been furnished before the CIT(A). It is seen that the amount of Rs.3,51,000/- stands entered in the cash book on 06.09.2006 (APB 47). As such, the CIT(A)'s observation is incorrect. This observation is a result of mis-reading and non-

reading of material documentary evidence produced by the assessee before the Id. CIT(A).

14. It is also not the case that after the date of the survey, i.e., 06.09.2006, the assessee had manipulated her books of account. Though the AO was of this view, the Id. CIT(A) has himself, in para 4.3.4 of the impugned order, observed that: 'Further, accept baldly alleging, no material is brought on record by the AO to show that subsequent to the date of survey, the appellant had manipulated her books of account'. It is pertinent that in the remand report furnished before the CIT(A), the AO had made no adverse observation/remark and the Id. CIT(A) duly took this fact into consideration.

15. Further, it is also pertinent that whereas the Id. CIT(A) has taken part cognizance of the assessee's books in favour of the assessee, the part of the cash book relating to the issue under consideration has not been considered and it has erroneously been observed that the amount of Rs.3,51,000/- does not stand entered in the cash book.

16. The Id. CIT(A) has also observed that out of the amount of Rs.3,51,000/-, no amount was spent. It is seen that in the cash book, (APB-47) an amount of Rs.1000/- out of this amount of Rs.3,51,000/- has been shown as expenditure on travel to Sagar from Jabalpur and back. The Id. CIT(A), as observed hereinabove, failed to take into consideration, much less rebutted, this entry in the cash book of

the assessee and this has resulted into the observation under consideration, which is incorrect, causing prejudice to the assessee.

17. In view of the above, the addition of Rs.3,51,000/- is deleted.

18. In the result, the appeal is allowed.

Order pronounced in the open court on 29/11/2017.

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated 29/11/2017

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR