

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA**

[Before Shri Veeravalli Durga Rao, JM and Shri Waseem Ahmed, AM]

**I.T.A. No. 618/Kol/2015
Assessment Year: 2010-11**

ITO, Wd-35(2), Kolkata.....Appellant
Aayakar Bhawan Poorva,
7th Floor, 110, Shanti Palli,
Kolkata - 700107

M/s. Nidhi Sulphonates.....Respondent
46-C, J.L. Nehru Road,
12th Floor, Suite - 12C,
Kolkata - 700071
[PAN : AADFN0495K]

**I.T.A. No. 378/Kol/2015
Assessment Year: 2010-11**

M/s. Nidhi Sulphonates.....Respondent
46-C, J.L. Nehru Road,
12th Floor, Suite - 12C,
Kolkata - 700071
[PAN : AADFN0495K]

ITO, Wd-35(2), Kolkata.....Appellant
Aayakar Bhawan Poorva,
7th Floor, 110, Shanti Palli,
Kolkata - 700107

Appearances by:

Shri Sallong Yaden, Addl. CIT, appearing on behalf of the Revenue.

Shri Raj Kumar Agarwal, AR appearing on behalf of the Assessee.

Date of concluding the hearing : December 11, 2017

Date of pronouncing the order : December 15, 2017

ORDER

Per Veeravalli Durga Rao, JM

These cross appeals filed by the revenue as well as assessee, directed against the order of the Commissioner of Income Tax (Appeals) – 10, Kolkata order dated 23.01.2015 for the A.Y. 2010-11.

ITA No. 618

2. When this appeal is taken up for hearing, the learned counsel for the assessee has submitted that the tax effect involved in this appeal is below 10 lacs. As per the Circular issued by the CBDT No. 21 of 2015 dated 10.12.2012. The appeal filed by the department is not maintainable the same has to be dismissed.

3. On the other hand, the learned DR fairly submitted that the tax effect involved this appeal is below 10 lacs and covered by Circular issued by the CBDT 21 of 2015. We have heard both the sides, in view of the submissions made by both the councils, we find that the appeal filed by the revenue is not maintainable as per the CBDT Circular No. 21 of 2015 dated 10.12.2012. Therefore, the appeal filed by the revenue is dismissed.

4. In the result, the appeal of the revenue is dismissed.

ITA No. 378

5. Facts or in brief that the assessee M/s. Nidhi Sulphonates is engaged in the trading of chemicals. The assessee filed a return of income on 16.09.2010 declaring a total income of Rs. 13,21,720/-. The return filed by the assessee initially passed u/s 143(1) of the Income Tax Act, 1961. Thereafter, there was a survey under section 133A of the IT Act, 1961 carried on the business premises of the assessee on 15.03.2010. In the course of the survey proceedings, inventory of stock, inventory of cash, inventory of note books un-entered sales in accounts, extracts of accounts, statements of partner on the affairs of

business of the assessee was obtained. The case of the assessee was selected for scrutiny and after issuing notice under section 143(2) and 142(1), the assessment was completed under section 143(3) of the IT Act, 1961.

6. During the course of the assessment proceedings, the A.O. has observed that there was a survey conducted in the case of the assessee. It was found CASH of Rs. 18,08,048/-. As per the books of accounts, the cash balance available with the assessee was of Rs. 1,23,702-26/- only. When it was brought to the notice, one of the partner of the firm, Mr. Raja Babu Khandelwal had admitted before the survey team that the source of the CASH found during the survey out of unaccounted sales not accounted in the books of the accounts assessee firm.

7. During the course of the assessment proceedings, the A.O. has asked the assessee to explain the source of unexplained cash of Rs. 18,08,048/- along with the evidence in support of the claim. It was submitted before the A.O. that the partner of the firm during the course of the survey has given statement that the cash found of Rs. 18,08,048/- in respect of unaccounted sales not recorded in the books of accounts. The very statement subsequently retracted by the partner and therefore, addition cannot be made on the basis of statement given by the partner. It is also submitted before Ld. A.O. that the cash found during the course of the survey belonging to sister concern not belonging to the assessee. The Assessing Officer after considering the explanation given by the assessee made an addition

on the ground that the assessee is not able to substantiate that the CASH found during the course of the survey belonging to the sister concern. The A.O. also observed that the retraction statement made by the partner of the firm Raja Babu Khandelwal communicated to the department during the course of the assessment proceedings after 3 years and he is of the opinion that it is an afterthought it cannot be accepted accordingly assessment is completed by making an addition of Rs. 18,08,048/-.

8. The assessee carried the matter before the Ld. CIT(A).

9. The Ld. CIT(A) after considering the submissions made by the assessee, he has observed that the assessee has failed to prove that the excess cash of Rs. 18,08,048/- was from any disclosed source merely claiming that the said cash belonging to the sister concern, mere claim without any basis or material. Accordingly, the Ld. CIT(A) confirmed the order of the A.O.

10. On being aggrieved the assessee filed an appeal before the Tribunal. The learned counsel for the assessee has submitted that though the partner of the firm one Mr. Raja Babu Khandelwal as initially during the course of survey admitted that the cash balance of Rs. 18,08,048/- relating to the unaccounted sales dated 15.10.2010. He has pointed out from the Paper Book page no. 23 submitted that on 19.04.2010, the Director, Mr. Raja Babu Khandelwal retracted by saying that I was not present in the physical inventory, the stock was taken during the course of the survey, I simply sign it the papers,

therefore, the A.O. not correct in making the addition based on the statement given by the Director of the company. Therefore, the addition made by the A.O. may be deleted and the order passed by the CIT(A) may be reversed.

11. On the other hand, the learned DR has submitted that during the course of the survey the Director of the company admitted that the cash found at the time is relating to the unaccounted sales of the assessee firm. Subsequently, he retracted on 19.04.2010, the statement is filed before the A.O. during the course of the survey after 3 years cannot be accepted, it is only an afterthought. Insofar as other submissions of the learned counsel for the assessee, the learned DR further submitted that the cash found during the course of the survey is belonging to the sister concern as per the assessee but assessee has failed to discharge the burden casted upon it by bringing relevant evidence. In the present case, the assessee has not filed any details about the sister concern of the assessee's firm and he has also failed to prove that the assessee's sister concern carrying its activity the very same premises of the assessee's firm and submitted that the order passed by the Ld. CIT(A) may be confirmed.

12. We have heard both the sides perusing the records gone to the orders of the authorities below. The only issue involved in this appeal in respect of addition made by the A.O. of Rs. 18,08,048/-. In this case, there is a survey conducted during the course of the survey, it was found in the business premises of the assessee, an amount of Rs. 18,08,048/-. It was also found in the survey, there was a cash balance

of Rs. 1,23,702.26/- only as per the extracted of the account taken from the computer of the assessee firm. The A.O. has asked the assessee what is the source of Rs. 18,08,047.74. The Assessing Officer has asked the assessee to explain source of the CASH found of Rs. 18,08,048/-. One of the partner firm, Mr. Raja Babu Khandenwal had admitted that the source of the cash found during the survey, out of the unaccounted sales and not accounted in the books of the accounts of the assessee firm. However, subsequently on 19.10.2010 in an affidavit he has retracted the above statement by stating that at the time when I made a statement before the survey team I was under mental pressure, distress and I simply signed the papers placed before me. This retraction letter as produced before the A.O. during the course of the assessment proceedings. When the A.O. was asked the assessee why this letter is not communicated to the department immediately, why this is placed before me after 3 years the assessee has not given any explanation before the A.O. Therefore, the A.O. is of the opinion that retraction made by the assessee on 19.04.2010 placed before him during the course of the assessment proceedings only afterthought and it cannot be accepted. We find that the assessee has not given any explanation before the A.O. why the retraction letter dated 19.04.2010 is placed before the A.O. during the course of the assessment proceedings not communicated to the department. Even before us, the assessee has not given any explanation why this letter is not communicated to the department immediately. Only that the partner Rajababu Khandenwala, he himself admitted that the cash found during the course of the survey out of unrecorded sales made by the assessee firm now before A.O. said that I simply signed the

papers without going it cannot be accepted, we find that this argument raised by the counsel by the assessee is rejected. So far as another argument raised by the counsel that this cash is belonging to the sister concern of the assessee firm. The assessee is not able to establish names of the sister concern and type of business carried by the sister concern and books of accounts of the sister concern. Simply submitted before the A.O. that the cash found during the course of survey is belonging to sister concern is not sufficient. The assessee also failed to explain the sister concern companies also existed in the premises of the assessee firm. The assessee has failed to give details of the sister concern.

13. In view of the above, we find that the assessee failed to recharge burden casted upon him to explain that the cash found during the course of survey not belonging to assessee and it is belonging to sister concern. Thus addition made by CIT(A) is confirmed and the appeal filed by the assessee is dismissed.

14. In the result, both the appeals filed by the revenue and assessee are dismissed.

Order Pronounced in the Open Court on 15th December, 2017.

Sd/-

(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-

(Veeravalli Durga Rao)
JUDICIAL MEMBER

Dated: 15/12/2017
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Nidhi Sulphonates, 46-C, J.L. Nehru Road, 12th Floor, Suite – 12C, Kolkata – 700 071.
2. ITO, Wd-35(2), 7th Floor, Aayakar Bhawan, 110, Shanti Palli, Kolkata – 700071.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata