

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA**

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.437/Kol/2016
Assessment Year :2010-11

| | | |
|---|-------------|--|
| ITO Ward-12(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkta-69 | V/s. | M/s Sudha Jewellers Pvt. Ltd., 2/1A Garia Hat Road, Kolkata-19 [PAN No.AADCS 6713 N] |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

| | |
|--------------------------------------|-----------------------------------|
| अपीलार्थी की ओर से/By Appellant | Shri Kalyan Nath, DR |
| प्रत्यर्थी की ओर से/By Respondent | Shri Soumitra Choudhury, Advocate |
| सुनवाई की तारीख/Date of Hearing | 18-10-2017 |
| घोषणा की तारीख/Date of Pronouncement | 15-12-2017 |

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 22.12.2015. Assessment was framed by ITO Ward-12(1), Kolkata u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 04.03.2015 for assessment year 2010-11. The Revenue has raised following grounds:-

- “1. That on the facts and circumstances of the case, the Ld. CIT(A) has erred by the treating the impounded incriminating document found in course of survey in case of the assessee, as dumb document for its evidentiary whereas, the onus is on the assessee to prove the nature of entries made in that particular document with supporting evidences which the assessee failed.*
- 2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred by overlooking the fact that the incriminating paper, found in course of survey, was meant for calculation of advance tax, but the AD observed that the assessee had not made this paper for correct payment of taxes.*
- 3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred by not appreciating the fact that the AD allowed the claim of the assessee for*

the amount which was shown as 'Actual' in the said sheet of paper simply and in excess of that was disallowed, thereby, the comparison of figures of expenses in P&L Account with the figures drawn up by adding the figures under the head 'Actual' and 'After adding' does not arise and fact of the case was not contrary to the jurisdictional facts of the case.

4. That on the facts and circumstances of the case, the Ld. CIT(A) has erred by erred by ignoring the fact that the assessee failed to produce any evidence in course of assessment to rebut the inference that can be drawn from the said sheet of paper found from the assessee's business premises with supporting evidences and more so, the assessee failed to file the list of Karigars respect of claim of making charges so that the further verification of genuineness of the same could have been made.

5. That the appellants craves leave to add/alter/modify the grounds of appeal before or at the time of hearing."

Shri Kalyan Nath, Ld. Departmental Representative appeared on behalf of Revenue and Shri Soumitra Choudhury, Ld. Advocate appeared on behalf of assessee.

2. Ground No. 1 to 5 are inter-related and therefore being taken up together. The inter-related issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹34,23,550/- on account of difference in the expenses claimed by the assessee on the basis of survey documents.

3. Briefly stated facts are that assessee is a private limited company and engaged in the business of jewellery. A survey operation u/s 133A was carried out at the business premises of the assessee dated 14.09.2010. During the survey proceedings a document was seized which was reflecting the profit and loss account of assessee as on 31.03.2010. The seized document was containing a list of actual expense as well a corresponding inflated expenses. The AO on the basis of seized documents observed the following:-

| Sl. | Particulars | Actual expense | Inflated expense | *(b) |
|-----|-------------------|----------------|------------------|-----------|
| 1 | Making charges | 35,34,550 | 49,25,550 | 13,91,000 |
| 2 | Indirect expenses | 55,96,223 | 93,03,137 | 37,06,914 |

The AO in assessment proceedings observed the difference of ₹35,34,550/- whereas the actual difference is at ₹37,06,914/- but the mistake was rectified by the AO u/s 154 of the Act.

In view of the above, the AO sought an explanation from the assessee. The assessee in compliance thereto submitted as under:-

- a) The seized documents were working paper which was prepared for the calculation of advance tax. As such the seized paper is nothing but a rough sheet and therefore no cognizance of it can be taken;
- b) The survey was conducted on 14.09.2010 whereas the audited financial statement was prepared on 02.09.2010 which was duly signed by the auditor and the director of the assessee-company. As such on reference to the audited profit and loss account it can be found out that no inflated expense has been claimed as shown in the seized document.

However, the AO disregarded the contention of the assessee and made the addition of ₹13.91 lakhs and ₹ 35,34,550/- (correct amount Rs. 37,06,914.00) which was added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the inflated expenses claimed in the seized documents do not match with the amount of expenses claimed in the audited financial statement as detailed under:-

| Sl. Particulars | seized document | | |
|----------------------|-----------------|-----------|-----------------|
| | Actual | inflated | audited P&L a/c |
| 1. Making charges | 35,35,550 | 49,25,550 | 42,06,200 |
| 2. Indirect Expenses | 55,96,223 | 93,03,137 | 31,37,602 |

From the above, assessee submitted that the inflated expenses were not claimed in the audited profit and loss account. The assessee further submitted that the making charge claimed by it is coming at 11.74% in relation to the raw material consumed during the year. The same amount of expense was claimed by it in the earlier years. The assessee in support of its claim has given the details of gross profit for the years beginning from Assessment Years 2007-08 to 2009-10. The assessee also submitted that in the industry of gold and diamond jewellery the making charges range between 8 to 14%

whereas in the instant case assessee has claimed 11.74% which is quite reasonable. The assessee before Ld. CIT(A) also submitted that the expense shown under the head "inflated expense in the seized document" do not match with the expense shown in the audited profit and loss account. As such, the expense shown under the head "inflated expense" in the seized document exceeds the actual expense claimed by assessee in its audited profit and loss account. The assessee in support of its claim had submitted the following details:-

| | Head of expense | As per audited accounts(Rs) | After adding (Rs) |
|---|------------------------------|-----------------------------|-------------------|
| a | Motor car repairing expenses | 2,81,166.64 | 4,10,000.00 |
| b | Travelling charges | 79,451.85 | 2,30,000.00 |
| c | Commission on salesman | 3,00,000.00 | 5,00,000.00 |
| d | Printing & stationery | 26,464.50 | 1,25,000.00 |
| e | Making charges | 42,06,200.00 | 49,25,550.00 |
| f | Telephone charges | 1,36,617.00 | 1,37,001.55 |
| g | Repairing & maintenance | 1,58,387.36 | 2,30,000.00 |

The assessee further submitted that the seized documents cannot be relied upon as it represents to rough calculation made for the purpose of advance tax liability. Ld. CIT(A) after considering the submission of the assessee observed as under:-

- 1) The making charges were paid to the karigars after deducting TDS and all the karigars were income tax payee;
- 2) The making charges claimed by assessee were reasonable as the similar amount of making charges were claimed by the other jewelers;
- 3) No evidence was brought on record by AO suggesting that the inflated expense were incurred by the assessee without recording in the books of accounts/ outside the books of accounts.
- 4) Actual expense claimed by assessee in the audited profit and loss account assessee were much lesser than the amount expense shown in the seized papers.

In relation to indirect expense

- a) AO has not brought anything on record that assessee has incurred the inflated expense as shown in the seized documents.
- b) The actual expense claimed by the assessee in its audited financial statements are much lesser than the expense claimed in the seized documents.

In view of the above, Ld. CIT(A) held that seized document is representing the rough working made by the assessee for the purpose of advance tax liability and accordingly no cognizance can be taken of such papers. Thus, the addition made by the AO was deleted by Ld. CIT(A).

The Revenue, being aggrieved, is in appeal before us.

5. Before us Ld. DR vehemently relied on the order of AO whereas Ld. AR for the assessee submitted that seized documents does not contain the name of assessee and therefore no cognizance of such seized document can be taken for the purpose of assessment. The Ld. AR further submitted that the audit was completed on 02.09.2010 whereas the survey was conducted on 14.09.2010 which shows that the account of the assessee was finalized for the year ending on 31.03.2010 before the date of survey.

5.1 All the making charges were paid to the karigars after deduction of TDS u/s 194C of the Act and same amount of expense has been shown in the audited financial statements. Therefore it cannot be said that the assessee has claimed inflated expense.

The books of account of the assessee were duly accepted and no defect was pointed out by the AO. The addition was merely made on the basis of seized documents. The Id. AR relied of the order of Id. CIT(A)

6. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, the addition was made by AO on the basis of seized document which was *inter alia* containing the information of actual expense as well as inflated expense for the year ending i.e. on 31.03.2010. However, on perusal of the seized documents with the audited profit and loss account of the assessee, we note that expense shown

in the seized document under the head inflated expenses are much higher than the expense claimed by assessee in the audited profit and loss account. Had the assessee claimed inflated expense as reflected in the seized documents then the same expense should have been claimed in the audited financial statement. But it was observed much less expense has been claimed by assessee in its audited profit and loss account. We also note that no defect has been pointed out by the AO in the books of account of assessee despite of the fact that AO was empowered to reject the same u/s. 145(3) of the Act. The addition made by the AO has not been supported with any evidence except the seized documents. Therefore, we are of the considered opinion the impugned addition cannot be sustained in the absence of other documentary evidence.

6.1 We also note that no notice u/s 133(6) of the Act has been issued by the AO to the Karigars to ascertain the amount received by them. In view of above, we do not find any infirmity in the order passed by Ld. CIT(A). We hold accordingly. Consequently inter-related grounds raised by Revenue are dismissed.

7. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 15/12/2017

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,
*Dkp

Sd/-
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 15/12/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward-12(1), Aayakar Bhawan, P-7, Chowringhee Sq. Kol-69
2. प्रत्यर्थी/Respondent-M/s Sudha Jewellers Pvt. Ltd. 2/1A, Garia Hat Road, Kolkata-19
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata 4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata 6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।