

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

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.328/Kol/2016
Assessment Year :2010-11

Madhusudan Organics Ltd., 5,Gopal Doctor Lane, Kolkata-23 [PAN No.AABCM 9003 F]	V/s.	Income Tax Officer, Ward-11(3), Aayakar Bhwan, Kolkata-700001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri B.K. Poddar, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	03-01-2018
घोषणा की तारीख/Date of Pronouncement	09-02-2018

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 27.01.2016. Assessment was framed by ITO Ward-11(3), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 10.03.2013 for assessment year 2010-11.

Shri B.K. Poddar, Ld. Authorized Representative appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. Sole issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the addition of ₹3,04,280/- on account of suppression of closing stock.

3. Briefly, the facts are that assessee in the present case is a limited company and engaged in the manufacturing business of industrial oil and petroleum jelly. The assessee in its balance-sheet has shown closing stock of 70872 litres only but Assessing Officer observed the quantity of closing stock should have been at 79955 litres as per the excise return. Thus a difference in the quantity of closing stock was observed by AO for 9083 litres.

The AO determined the value of suppressed closing stock at ₹33.50 per litres aggregating to ₹304280/- only. On being confronted, assessee submitted that it has received 9083 litres of stock from M/s Balmer Lawrie & Co. for some job work. The impugned stock was excisable items, therefore it was entered into excise record and no entry was made in the books of account of assessee as the assessee has not incurred any cost. Therefore, no closing stock was shown in its books of account. However, AO, during the course of assessment proceedings observed that the explanation furnished by assessee is not based on supporting any documentary evidence. Therefore, AO disregarded the contention of assessee and added sum of ₹3,04,280/- to the total income of assessee on account of suppressed closing stock.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the impugned difference of closing stock has been carried over from the financial year ended 31.03.2008. Therefore, no addition on account of suppressed of closing stock can be made in the year under consideration.

The stock was received from M/s Balmer Lawrie & Co. in the year 2008 to carry out some processing activities. But due to some problem the processing was not carried out and the stock was never returned back to M/s Balmer Lawrie & Co. As the stock was excisable item, therefore the same was entered into excise records but no entry was made in the books of account of assessee as no cost was incurred with regard to such stock. The assessee in

support of its claim also filed a confirmation from M/s Balmer Lawrie & Co. However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing as under:-

“10.2 I have considered the submission of the appellant’s AR on the issue at hand in the backdrop of the assessment order. I find from the assessment order that the AO has pointed out specific defect in the quantity of closing stock of 70872 liters when compared to the closing stock of 79,955 liters of closing stock as per the excise record maintained by the appellant. Neither before the AO not before me has the appellant explained this discrepancy. It is contended by the AR of the appellant that this discrepancy is carried forward from financial year ended 2008 and therefore no addition can be made during this year. However, the AR has failed to substantiate his claim with supporting evidences. Thus I am unable to accept the contentions of the AR of the appellant. This ground of appeal is dismissed.”

The assessee being aggrieved by this order of Ld. CIT(A) has come up an appeal before us.

5. Ld. AR for the assessee before us filed paper book which is running pages from 1 to 54 and drew our attention on confirmation filed by M/s Balmer Lawrie & Co which is placed on page 1 of the paper book. The Ld. AR further submitted that the stock statements beginning from 31.03.2008 to 31.03.2012 were duly furnished before the AO during the assessment proceedings and it was also demonstrated that the difference in stock has arisen from the earlier assessment year. The copy of stock statement is placed on page 3 of the paper book. Ld. AR also placed the excise record where the details of the quantity of the closing stock were shown which is placed on page 4 of paper book.

On the other hand, Ld. DR vehemently relied on the order of authorities below and left the issue to the discretion of the Bench.

6. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, addition was made by AO on account of difference in the closing stock between audited financial statements and excise records. It was claimed by assessee that no cost has

been incurred on such closing stock, therefore, no closing stock for such quantity was shown in the financial statements.

6.1 We find that all the necessary details were duly filed by assessee as stated above but none of the authorities below has pointed out any defect in the submission of assessee. We also find that the details of the addition of M/s Balmer Lawrie & Co was very much available with the AO but AO has not cross-verified

We also find that the impugned difference in closing stock does not pertain to the year under consideration. If at all it is required to be brought to tax then it needs to be added in the year to which it pertains. In this view of the matter, we reverse the order of Lower Authorities and direct the AO to delete the same. Hence, this ground of assessee's appeal is allowed.

7. **In the result, assessee's appeal stands allowed.**

Order pronounced in the open court 09/02/2018

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 09/02/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-Madhusudan Organics Ltd., 5 Gopal Doctor Lane, Kolkata-23
2. प्रत्यर्थी/Respondent-Income Tax Officer, Ward-11(3), Aaykar Bhawan, Kolkata-001
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.

/True Copy/

By order/आदेश से,

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