

IN THE INCOME-TAX APPELLATE TRIBUNAL "J" BENCH MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.331/Mum/2017 (Assessment Year 2012-13)

M/s Stationery Point India Ltd. 5A/5B, Gayatri Bhavan, 90 ft. Road, Above Alma Health Care, Thakur Complex, Kandivli (E), Mumbai-400101. PAN: AAFCS3137G	Vs.	DCIT-9(3), Mumbai.
--	-----	-----------------------

Appellant

Respondent

Appellant by : None (AR)
Respondent by : Ms. Arju Garodia (AR)
Date of Hearing : 21.06.2018
Date of Pronouncement : 21.06.2018

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-tax (Appeals)-21, Mumbai [Id. CIT(A)] dated 14.10.2016 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

(I) ADDITION of Rs. 5,29,35,739/- ON ACCOUNT OF G.P. -

(1) On the facts and circumstances aid in law the learned CIT(A)-21, Mumbai [referred as "CIT(A)"] erred in confirming addition of Rs. 5,29,35,739/- on account of gross profit without giving proper and sufficient opportunity to produce the books of accounts and other details required.

(2) On the facts and circumstances the learned CIT(A) erred in confirming the addition on account of gross profit at 7.5% in place of declared G.P at 5.42%, without appreciating that there was bonafide and genuine reason for not producing the books of accounts, etc.

(3) On the facts and circumstances, Your Appellant prays that the alleged addition may be deleted. Alternatively, in the interest of natural justice, on the facts and circumstances Your Appellant prays that on more opportunity may be

granted to produce the books of accounts as they could not be produced a d explained due to the facts and circumstances beyond control.

(II) ADDITION OF Rs. 18,50,000/- AS UNEXPLAINED CASH DEPOSITS -

(1) on the facts & circumstances & in law the learned CIT(A) erred in confirming addition of Rs. 18,50,000/- as unexplained cash deposit in the Corporation Bank merely on the basis of AIR information and without affording proper & sufficient opportunity.

(2) On the facts and circumstances, the learned CIT(A) failed to appreciate that there was bonafide and genuine reason for not explaining the alleged unexplained cash deposit.

(3) On the facts and circumstances, Your Appellant prays that the alleged addition may be deleted. Alternatively, in the interest of natural justice, on the facts and circumstances Your Appellant prays that one more opportunity may be granted to prove the genuineness of the alleged cash deposit as it could not be explained to the genuine facts and circumstances beyond control.

(III) DISALLOWANCE u/s. 14A r.w.r 8D Rs. 1,95,833/-

(1) The learned CIT(A) erred in confirming the disallowance of Rs. 1,95,833/- under the Rule 8D(2)(iii) out of the total Rs. 35,48,741/- [being interest Rs. 33,52,808/- plus expenditure Rs.1,95,833/-].

(2) On the facts and circumstances alleged disallowance u/r. 8D(2)(iii) may be deleted as there was dividend earning from the alleged investments. Alternatively, n the interest of natural justice, on the facts and circumstances Your Appellant prays that one more opportunity may be granted to prove the claim.

2. Brief facts of the case are that the assessee-company is engaged in the business of Manufacturing, trading of Flexible Packaging & Stationery item, filed its return of income for Assessment Year 2012-13 on 29.09.2013 declaring loss of Rs. (-) 6,90,24,109/-. The assessment was completed on 30.03.2015 under section 143(3) of the Act. The Assessing Officer while passing the assessment order made disallowance under section 14A read with Rule 8D for Rs. 35,48,641/-, added Rs. 18,50,000/- on account of unexplained cash credit and after rejecting books of

account made addition of gross profit @ 7.5%. On appeal before the Id. CIT(A), the addition under section 14A was restricted to Rs. 1,95,833/-, however, other addition on account of gross profit and addition of unexplained cash credit was sustained. Therefore, further aggrieved by the order Id. CIT(A), the assessee has filed the present appeal before us.

3. None appeared on behalf of assessee despite service of notice through RPAD, we left no option except to hear the Id. DR for the revenue and decided the case on the basis material on record. We have heard the Id. Departmental Representative (DR) for the Revenue and various addition and disallowances, the Id. DR for the Revenue supported the order of lower authorities on all the additions/disallowances. The Id DR further submits that the assessee neither came forward to substantiate his grounds not filed any documentary evidences, therefore, the assessee is not entitled for any relief.
4. We have considered the submission of Id. DR for the Revenue and have gone through the orders of authorities below. Ground No.1 relates to addition on account of Gross Profit @ 7.5 in place of Gross Profit declared at 5.42%. The Assessing Officer noted that the sale of assessee was Rs. 254.69 Crore and the assessee has declared Gross Profit of Rs. 13.80 Crore only. Before the Assessing Officer no books of account was produced for examination and proper verification, as a result of which the Assessing Officer rejected the books of account and on the basis of his observation

that assessee is in manufacturing business of stationary items. The assessing officer estimated Gross Profit at 7.5% and thereby made addition of Rs. 5,29,35,739/-. Even before the Id. CIT(A), no books of account was produced, therefore, action of Assessing Officer was confirmed. Before us neither the assessee has appeared to substantiate his ground of appeal nor is any documentary evidence filed in support thereof. Therefore, we do not find any reason to deviate from the finding of lower authorities; hence, Ground No.1 of the appeal is dismissed.

5. Ground No.2 relates to addition on account of unexplained cash deposit.

The Assessing Officer made addition on the basis of AIR information that cash of Rs. 18,50,000/- was deposited by assessee in his bank account maintained in Corporation Bank. No explanation or source of cash deposit was furnished by assessee before Assessing Officer, therefore, the Assessing Officer made the addition of Rs. 18,50,000/-. The assessee failed to substantiate his contention before Id CIT(A). Even before us neither the assessee has appeared nor filed any documentary evidence to substantiate its contention, therefore, we do not find any reason to deviate from the order of lower authorities.

6. Ground No.3 relates to disallowance under section 14A. The Assessing Officer noted that the assessee has claimed interest expenses of Rs. 10,54,07,420/- and that the assessee made investment in shares yielding tax free dividend income. During the assessment the assessee was asked

as to why disallowance under section 14A be not made. The assessee contended that no direct expenses were incurred. No borrowed fund was invested for earning exempt income. Hence no addition/disallowance under section 14A is liable to be made. Contention of the assessee was not accepted by Assessing Officer, the Assessing Officer made the addition of Rs. 33,52,808/- under Rule 8D(2)(ii) and Rs. 1,95,833/- under Rule 8D(2)(iii) being .5% of average value of investment. Thereby, the Assessing Officer made total disallowance of Rs. 35,48,641/-. The Id. CIT(A) on his observation that no fresh investment during the year. The investment in equity share of Shiwani Flexipack Ltd. has come down from 3.58 Crores to Rs. 1.76 Crores. The assessee has share capital and reserves during the year are more than the investment. Thus, disallowance under Rule 8D(2)(ii) was deleted. However, disallowance under Rule 8D(2)(iii) was sustained. As we have already observed that the assessee has neither come forward nor substantiate the ground of appeal by filing any documentary evidence, therefore, we do not find any reason to interfere with the finding of Id. CIT(A). In the result, Ground No.3 of the appeal is dismissed.

7. In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 21.06.2018.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 21.06.2018

SK

Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR “J” Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai**