

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 2632/Del/2010
Assessment Year: 2007-08**

**Smt. Manisha Gupta,
(Legal Heir of Late Shri Ajay Gupta),
C/o Shri Ashok Gupta,
4852/24, First Floor,
Ansari Road,
New Delhi-110002
(Appellant)**

**vs ACIT,
Circle 29(1),
New Delhi.**

(Respondent)

**Appellant by : S/Shri R.S. Singhvi, CA, Satyajeet Goel, CA
Respondent by : Ms Ashima Neb, Sr. DR**

**Date of Hearing: 26.06.2018
Date of pronouncement: 25.09.2018**

O R D E R

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order dated 26.03.2010 passed by the Ld. CIT (Appeals)-XXVIII, New Delhi for assessment year 2007-08.

2.0 Brief facts of the case are that during the captioned year the assessee derived income from execution of electrical contracts and from trading of electrical goods. The E-return was filed on 29.10.2007 declaring income at Rs. 25,43,808/-. Prior to the filing of return of income, there was a search u/s 133A of the

Income Tax Act, 1961 (hereinafter called 'the Act') on 11.12.2006 by the Investigation Wing of the Department and certain loose papers, CPU and notebooks were impounded which were marked as Annexure 1, 2, 3 and 4. The assessee made a disclosure of Rs. 2,02,78,114/- for financial years 2003-04, 2004-05, 2005-06 and 2006-07. Out of the total disclosure, an amount of Rs. 6,007,048/- pertaining to difference in stock and expenditure in salary of non-working employees amounting to Rs. 4,72,000/- pertained to financial year 2006-07 i.e. relevant to the year under consideration in appeal before us. During the course of search operation, the statement of the assessee Shri Ajay Gupta was recorded and in response to question no. 22, he had stated that he was not in a position to explain the discrepancy in physical inventory which was Rs. 12,041,744/- as compared to the book stock which was Rs. 60,34,896/- and, therefore, the assessee had agreed to offer the differential amount of Rs. 60,07,048/- as excess unaccounted stock. Since this amount, as surrendered by the assessee during the course of survey proceedings, was not declared in the return of income, the Assessing Officer proceeded to make an addition of this amount. Further, the Assessing Officer also made an addition of Rs. 1,28,000/- being

unexplained expenditure u/s 69C of the Act which was also based on the entries on page 17 of Annexure A-4 impounded during the course of search operations. The Assessing Officer also made the disallowance of Rs. 2,88,000/- being salary paid to the non-working employees. This was also based on the statement of the assessee recorded during the course of survey wherein these expenses had been surrendered in the statement recorded on 11.12.2006. The Assessing Officer also made some other additions and the assessment was completed at an income of Rs. 90,83,070/- .

2.1 The assessee's appeal against the additions was partly allowed by the Ld. Commissioner of Income Tax (A). The Ld. Commissioner of Income Tax (A), however, upheld the addition of Rs. 60,07,048/- on account of unexplained stock, addition of Rs. 1,28,000/- on account of unexplained expenditure u/s 69C of the Act and disallowance of salary amounting to Rs.2,88,000/-.

2.2 Now, the assessee is before the ITAT challenging the order of the Ld. Commissioner of Income Tax (A) and has raised the following grounds of appeal:-

"1. The learned Commissioner of Income Tax (Appeals) and the Deputy Commissioner of Income Tax have erred in making addition of Rs. 60,07,048/- as unexplained excess stock.

2. The learned Commissioner of Income Tax (Appeals) and the learned Deputy Commissioner of Income Tax have erred in treating Rs. 1,28,000/- as unexplained Expenditure u/s. 69C of the Income Tax Act, 1961.

3. The learned Commissioner of Income Tax (Appeals) and the learned Deputy Commissioner of Income Tax have erred in disallowing Salaries of Rs. 2,88,000/-.”

3.0 The Ld. AR submitted that the addition in respect of stock was made by the Assessing Officer based on the inventory prepared at the time of survey and mainly on the ground that the assessee had admitted towards having excess stock. Ld. AR further submitted that the addition was made entirely on the basis of the statement of the assessee recorded during the course of survey which could not have been the basis of making the addition in view of the judgment of the Hon'ble Apex Court in the case of C.I.T. vs. Khader Khan reported in 79 DTC 184(SC) wherein it was held that the addition on the basis of statement recorded during survey u/s 133A does not empower any income tax authority to examine any person on oath and, thus, such statement does not have any evidentiary value. The Ld. AR also drew our attention to the details of stock inventory prepared at the time of survey and placed at paper book pages 103-109, the closing stock inventory as on 31.3.2007 and placed at pages 93 to

96 of the paper book as well as the reconciliation of stock placed at paper book page 26. The Ld. AR submitted that the assessee was not maintaining quantitative stock records and the stock inventory was prepared at the end of accounting year only. It was further submitted that the inventory prepared by the survey team was merely the reproduction of the hypothecation statement prepared by the assessee and submitted to the bank reflecting inflated value of stock and the same was not corroborated from corresponding purchases bills. It was further submitted that the addition was made on the alleged difference in value of inventory as on 11.12.2006 and the stock as on 1.04.2006 i.e. the opening stock without taking into consideration the purchases and sales made between 1.4.2006 to 11.12.2006 i.e. the date of survey. It was also submitted that the Assessing Officer has not disputed the value of opening stock. The Ld. AR also submitted that if any addition was called for, then the same had to be based on closing stock inventory as on 31.3.2007 in which the assessee has himself disclosed stock of Rs. 1,10,80,046/- as against the opening stock of Rs. 60,34,896/- as on 1.4.2006. The Ld. AR also submitted that the books of accounts of the assessee were not rejected u/s 145 of the Act and further submitted that there

was no dispute regarding the correctness of purchase and sales as per the books of accounts. It was also submitted that the department had not alleged any unrecorded purchase or sale. The Ld. AR also highlighted the fact that the Assessing Officer has not disputed the correctness of closing stock on 31.3.2007 and nor has disputed the correctness of the GP rate and the net profit rate. Reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of C.I.T. vs. Prem Singh reported in 163 ITR 434(Del) wherein the Hon'ble Delhi High Court had held that the Tribunal was right in deleting the addition which was based on inflated list of stock which was filed for the purpose of getting the loan. The Ld. AR also submitted that the issue at best may be restored to the file of the Assessing Officer for re-examining the claim of the assessee in this regard.

3.1 With respect to ground no. 2 challenging the addition of Rs. 1,28,000/- u/s 69C of the Act, it was submitted that the Annexure-4 had no reference to any year or period to which it pertained and further the nature of noting also did not indicate whether the same related to any income or expenditure. It was submitted that these were merely rough noting and further the nature of noting also did not indicate whether the same related to

any income or expenditure. It was submitted that since these were rough noting, in absence of any corroboration with unrecorded expenses or undisclosed income, there was no case for addition. He drew our attention to provisions of section 292C of the Act wherein it is specified that the Assessing Officer has to establish before addition that the amount represented undisclosed income or expenses relating to the year under consideration.

3.2 With respect to ground no. 3, it was submitted that the issue of salary was squarely covered by the order of the ITAT in the assessee's own case for assessment year 2005-06 because in the year under consideration also, the employees were the same. He drew our attention to pages 7 and 9 of the ITAT's order wherein the ITAT had upheld the action of the Ld. Commissioner of Income Tax (A) in deleting the addition made on this account.

4. In response, the Ld. Sr. DR placed extensive reliance on the order of the lower authorities and vehemently argued that the additions/disallowances had been rightly made. However, she had no objection to the issue of valuation of closing stock being restored to the file of the Assessing Officer for re-examination.

5. We have heard the rival submissions and have perused the material available on record. As far as the first issue is concerned which pertains to addition of Rs. 60,07,048/- on account of alleged unexplained stock, since both the parties have agreed that the issue be restored to the file of the Assessing Officer, we restore the issue to the file of the Assessing Officer with the direction to decide the issue afresh after duly considering the explanation of the assessee in this regard after giving proper opportunity to the assessee to present his case. Accordingly, ground no. 1 stands allowed for statistical purposes.

5.1 Coming to ground no. 2 which challenges the upholding of unexplained expenditure of Rs. 1,28,000/- made u/s 69C of the Act, we have gone through the impugned Annexure A-4 which is placed at page 54 of the Paper Book and we are in agreement with the averments of the Ld. AR that the same does not contain any reference to any year or period and further it also does not indicate whether the same pertains to item of income or expenditure. We also note that most of the entries against which amounts have been mentioned have also been crossed out. In such a situation, we are of the considered opinion that addition could not have been made on the basis of this document

particularly when nothing conclusive is indicated on the said document. Accordingly, we set aside the order of the Ld. Commissioner of Income Tax (A) on this issue and direct the Assessing Officer to delete this addition.

5.2 Coming to ground no. 3 of the assessee's appeal which challenges the disallowance of salary of Rs. 2,88,000/-, we agree with the contention of the Ld. AR that this ground is covered in favour of the assessee in assessee's own case for assessment years 2005-06 in ITA No. 725/Del/2012 wherein vide order dated 10.05.2013, the Coordinate Bench of the ITAT has held that in case of all the employees, Provident Fund has been duly deducted and paid and further the Assessing Officer has not recorded any finding that the employees have not rendered any service or that the claim of the salary was not genuine. The ITAT has also referred to the order of the Ld. Commissioner of Income Tax (A) wherein the Ld. Commissioner of Income Tax (A) had given a categorical finding that these employees were with the assessee for the last 4-5 years and even tax and Provident Fund was deducted. It is also undisputed that these employees on whose account this impugned disallowance has been made were the same employees against whose disallowance of salary, the ITAT

had held in favour of the assessee. Accordingly, we find that there is no reason for sustaining this disallowance in the captioned year also. Accordingly, respectfully following the decision of the Coordinate Bench in assessment year 2005-06 in assessee's own case, we set aside the order of the Ld. Commissioner of Income Tax (A) on this issue also and direct the Assessing Officer to delete this disallowance.

6. In the result the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 25th September, 2018.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

DT. 25th SEPTEMBER, 2018
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr.PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |