

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

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 1640/KOL/2017
Assessment Year: 2009-2010**

***Income Tax Officer,.....Appellant
Ward-10(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, 3rd Floor
Kolkata-700 069***

-Vs.-

***Shri Ramautar Gupta,.....Respondent
4, Mysore Road, Rash Behari Avenue,
Kolkata-700 026
[PAN: ADXPG 9713 A]***

Appearances by:

*Shri Christopher Jerome Singh, JCIT, Sr. D.R., for the Appellant
Shri Dev Kumar Kothari, FCA., for the Respondent*

Date of concluding the hearing : December 03, 2018

Date of pronouncing the order : December 03, 2018

O R D E R

Per Shri P.M. Jagtap, Vice-President (KZ):-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-18, Kolkata dated 24.04.2017 and the solitary issue involved therein relates to the deletion by the Id. CIT(Appeals) of the addition of Rs.3,27,37,158/- made by the Assessing Officer on account of the alleged undisclosed sales.

2. The assessee in the present case is an individual, who filed his return of income for the year under consideration on 24.09.2009 declaring total income of Rs.9,91,130/-. During the course of assessment proceedings, the Assessing Officer noticed from the relevant details of

sales furnished by the assessee that the actual sales of the assessee made during the year under consideration were to the tune of Rs.33,89,11,507/- as against the total sales of Rs.30,61,74,349/- disclosed by the assessee in the Profit & Loss Account. Since the assessee could not offer any satisfactory explanation in respect of this difference of Rs.3,27,37,158/- in the sales, the Assessing Officer treated the same as undisclosed sales of the assessee and made an addition of Rs.3,27,37,158/- to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 30.12.2011.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on account of alleged undisclosed sales for the following reasons given in his impugned order:-

"I have carefully considered the facts of the case and the submissions of the assessee. Perusal of the Kolkata branch statement shows that from Trading Depot, local sales of Rs.39,55,513/- has been made. Besides inter-state sales of Rs.71,27,387/- has also been made. Total of these figures is Rs.1,10,82,900/-. This A.O. has considered as suppressed sales. But in reality this is duly reflected in the sales figure of Kolkata Branch. Similarly, export sales of Rs.1,10,42,265/- has been made from 'trading depot' Kolkata. This is duly reflected in the statement of sales made from Kolkata branch. Assessee has also submitted documents from the Customs Officers of Nepal regarding exports made to Nepal.

In the remand report A.O. has mentioned that as per Annexure 'A' - sales from Kolkata has been mentioned at Rs.5,23,34,401/- whereas as per Annexure-B, this figure is Rs.5,74,27,057/-. I have perused both the annexures. Total figure of turnover as per each annexure is Rs.30,61,74,349/-. In Annexure A, there appears to be typographical error. Figure for sales from Kolkata should be Rs.5,74,27,057/- only. Otherwise figure of total turnover would not tally. As per Sales Tax Returns also sales from Kolkata is Rs.5,74,27,057/- only. It appears that in Annexure-A, sales figure of Kolkata branch was wrongly mentioned. But even with error, figure of total turnover was correct.

In the assessment order and remand report (which is a repetition of issues discussed in assessment order), A.O. has discussed various issues and ultimately arrived at Sales suppression figure of Rs.3,27,37,158/-. In arriving at this discrepancy, 3 erroneous figures have been considered.

i) Total State (Depot) wise sales have been taken at Rs.31,69,89,892/-, instead of the correct figure of Rs.30,61,74,349/-.

ii) Rs.1,10,82,900/- has been added on account of suppression of sales from Trading depot (Kolkata).

iii) Rs.1,10,42,265/- has been added on account of suppression of export from trading depot Kolkata).

As discussed above, all these three discrepancies are found to be non-existent. A.O. has erroneously considered these as discrepancies, without properly verifying the books, Sales Tax Returns, Export bills, Certificates of Customs deptt. of Nepal etc. There is no discrepancy in the turnover of assessee. Hence, addition of Rs.3,27,37,158/ - is deleted”.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. D.R. has contended that the unexplained difference in sales was added by the Assessing Officer as undisclosed sales of the assessee, but the said addition was deleted by the Id. CIT(Appeals) vide his impugned order by accepting the explanation of the assessee as regards the difference in sales. He has contended that although the remand report was called for by the Id. CIT(Appeals) from the Assessing Officer, the reconciliation statement prepared and furnished by the assessee for the first time before the Id. CIT(Appeals) explaining the difference in sales was not specifically provided to the Assessing Officer for his verification. The Id. Counsel for the assessee, on the other hand, has invited our attention to the copy of the said reconciliation statement placed at page no. 1 of the paper book and submitted that the difference in sales was treated as explained by the Id. CIT(Appeals) after duly verifying the said reconciliation statement. He

has submitted that the assessee, however, is still open for verification of the said reconciliation statement and the matter may be sent back to the Assessing Officer for giving him an opportunity to verify the same. Keeping in view these submissions made by the Id. Representatives of both the sides, we set aside the impugned order of the Id. CIT(Appeals) on the issue under consideration and restore the matter to the file of the Assessing Officer for the limited purpose of verifying the reconciliation statement prepared and furnished by the assessee in order to explain the difference in sales from the relevant record. Needless to observe that the Assessing Officer shall provide proper and sufficient opportunity of being heard to the assessee while deciding the issue.

5. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open Court on December 03, 2018.

Sd/-

Sd/-

(A.T. Varkey)
Judicial Member

(P.M. Jagtap)
Vice-President (KZ)

Kolkata, the 3rd day of December, 2018

- Copies to :*
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Ward-10(2), Kolkata,
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P-7, Chowringhee Square, 3rd Floor
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 - (2) ***Shri Ramautar Gupta,
4, Mysore Road, Rash Behari Avenue,
Kolkata-700 026***
 - (3) ***Commissioner of Income Tax (Appeals)-18, Kolkata,***
 - (4) ***Commissioner of Income Tax- ,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.