

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1901/CHNY/2017.

निर्धारण वर्ष /Assessment year : 2012-2013.

The Assistant Commissioner
of Income Tax,
Corporate Circle 2,
Madurai.

Vs. M/s. Sri Krishna Nagai
Maligai (P) Ltd,
81, South Avani Moola St,
Madurai 625 001.

(अपीलार्थी/Appellant)

**[PAN AAMCS 0459A]
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. R. Clement Ramesh Kumar,
Addl. CIT.

प्रत्यर्थी की ओर से /Respondent by : Shri. I. Dinesh, Advocate

सुनवाई की तारीख/Date of Hearing : 04-12-2018

घोषणा की तारीख /Date of Pronouncement : 05-12-2018

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the Revenue, which is directed against an order dated 02.05.2017 of Commissioner of Income-tax (Appeals)-1, Madurai, it has taken altogether three grounds of which grounds 1 & 3 are general, needing no specific adjudication.

2. Effective ground No.2 reads as under:-

2.1 The CIT(A) erred in deleting the estimation of the gross profit by the Assessing officer on the ground that Assessing officer was not justified in resorting to estimation of gross profit.

2.2 The CIT(A) ought to have seen that the Assessing Officer has enhanced the gross profit on the reasoning that the assessee had not produced any documentary evidence in support of reduction in profit margin.

2.3 The CIT(A) ought to have further seen that the Assessing officer resorted to the estimation Gross Profit addition based on the material gathered during the survey operation u/s.1334 and hence the decision of Hon'ble Madras High Court in the case of CIT vs, S.Khader Khan sons (300 ITR 157) would not be applicable to the facts of the case and hence ought to have sustained the addition made by the assessing officer”.

3. Facts apropos are that assessee engaged in the business of jewellery had filed its return for the impugned assessment year disclosing income of ₹13,92,73,980/-. An assessment u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") was done on 30.09.2012 accepting income returned by the assessee. Thereafter Id. Commissioner of Income Tax-1, Madurai invoking powers vested on him u/s.263 of the Act set aside the assessment and directed the Id. Assessing Officer to do the assessment afresh, based on the following aspects, which were considered by the Id. CIT as discrepancies in the original assessment.

"1.The value of excess stock of 89 kgs of gold has been assessed as against the unaccounted excess stock of 90 kgs gold admitted during the course of survey. Thus 1 kg of excess gold value of ₹14 lakh [i.e. Rs,1400/- per gram) was omitted to have been added.

2. In the sworn statement recorded u/s 131- on the date of survey the managing director has promised to offer income on the value of unaccounted excess stock of gold and silver besides the profit of ₹84 lakhs earned during F.Y.2010-11, as the current year, profit (i.e. for FY 2011-12). However in the return of income filed for A.Y. 2012-13 the assessee has claimed loss of ₹52,58,892/- as against the profit of ₹85,36,656/- shown in the immediately previous financial year.

3.Penalty Proceedings u/s.271 (1) (c) of the Income tax Act,L961 was not initiated relevant to the AY 2012-13".

Accordingly, Id. Assessing Officer took up the assessment afresh. Assessee was required to produce evidence for claiming lower gross profit and net loss in the relevant previous year. As per the Id. Assessing Officer, assessee did not produce evidence which were called for by him. Id. Assessing Officer noted that gross profit ratio shown by the assessee for financial year 2010-2011 was 32.40%, whereas for the previous year relevant to impugned assessment year, it was only 10.13%. For coming to this conclusion, he relied on the following data gathered from the Audit report in form 3CD for financial year 2010-2011 and 2011-12.

	Current year (2011-12)	In percentage	Previous year (2010-11)	In percentage
Gross Profit	1,93,55,870	10.13%	2,65,13,657	32.40%
Net Profit	-52,58,983	-2.75%	85,36,656	10.43%
Turnover	19,10,90,209		8,18,11,838	

Though the assessee explained that reduction in profit margin was due to commencement of operation in a new building, recruitment of new staff, stiff competition increase in interest expenditure and increase in selling and advertisement expenditure, these were not considered to be satisfactory by the Id. Assessing Officer. He enhanced the gross profit from 10.34% shown by the assessee to 20%. An addition of ₹3,82,18,041/- was made and the assessment accordingly completed.

4. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Ld. Commissioner of Income Tax (Appeals) noted that Id. Assessing Officer had not made any addition on the main issue for which Id. CIT-1, Madurai had invoked powers vested on him u/s.263 of the Act, which was the difference due to excess jewellery of 1 kg valued at ₹14,00,000/- found at the

time of a survey. As per the Id. Commissioner of Income Tax (Appeals), assessee had admitted extra ordinary income of ₹14,38,72,000/- to make the good the deficiencies noted at the time of survey. However, according to him, Id. Assessing Officer after accepting this, erroneously proceeded to make an addition for gross profit without pointing out any defects in the books of accounts. Id. Commissioner of Income Tax (Appeals) also noted that assessee had maintained regular books of accounts which were subjected to audits u/s.44AB of the Act. Id. Commissioner of Income Tax (Appeals) took a view that statements recorded u/s.131 of the Act at the time of survey on 26.07.2011 had no evidentiary value by virtue of judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. S. Khader Khan Sons, 300 ITR 157*. Id. CIT(A) also took cognizance of CBDT Instruction F. No.286/02/2003-IT (Inv-II) dated 10.03.2003 which discouraged the Department from making assessments based on statements recorded during the course of search, seizure and survey. He thus deleted the addition made by the Id. Assessing Officer for the gross profit.

5. Now before us, Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that there was a survey conducted in the premises of the

assessee on 26.07.2011. As per the Id. Departmental Representative, the Managing Director had promised to offer considerable income for making good the value of unaccounted excess stock and for low profits shown for the previous year relevant to impugned assessment year. However, according to him, assessee had not done so. Just because the books was subject to an audit u/s.44AB of the Act, as per the Id. Departmental Representative, an addition made on a sound footing ought not have been deleted by the Id. Commissioner of Income Tax (Appeals). Reliance was placed on the judgment of Hon'ble Delhi High Court in the case of *Goodyear India Ltd. vs. CIT, (2000) 112 Taxman 419 (Delhi)*.

6. Per contra, Id. Authorised Representative strongly supported the order of the Id. Commissioner of Income Tax (Appeals).

7. We have considered the rival contentions and perused the orders of the authorities below. The reason why Id. Commissioner of Income Tax- 1, Madurai invoked powers vested on him u/s.263 of the Act has been reproduced by us at para 3 above. The reason is that in the sworn statement recorded on the date of survey, Managing Director had promised to offer income commensurate with the unaccounted excess stock of gold. In the assessment done pursuant to

such order, Id. Assessing Officer had not made any addition for the excess stock of 1kg gold. Presumably this was due to the fact that assessee in the return had shown a sum of ₹14,38,72,000/- as income of an extraordinary nature. However, Id. Assessing Officer proceeded to make an assessment enhancing the gross profit returned by the assessee. We are afraid the Id. Assessing Officer made a mistake in pursuing this line for making an addition. He had not found any deficiency in the books of accounts or supporting records. There is no case for the Revenue that assessee failed to produce its books of accounts or the evidence in support of such books of accounts during the course of assessment proceedings. It is to be noted that original by the assessment was completed u/s.143(3) of the Act on 30.09.2012 accepting the returned income. Impugned assessment was in a second round of proceedings pursuant an order under Section 263 of the Act. In both the rounds, Id. Assessing Officer could not point out any defect in the books of accounts. Just for a reason that gross profit was lower, in our opinion an addition could not have been made. No doubt as held by the Hon'ble Delhi High Court in the case of *Goodyear India Ltd (supra)*, it is not necessary to accept the books just because an audit u/s.44AB of the Act was conducted. Here the question is not audit conducted u/s.44AB of the Act, the question is whether there

were any defects in the books of accounts. Ld. Assessing Officer was unable to find any deficiency in the books produced by the assessee. That apart, we also find that assessee had given a reasonable explanation for the lower gross profit shown by it during the relevant previous year. This explanation which appear in the assessment order is reproduced hereunder:-

- “1. This is their first full year of operating in the new building.
2. Assessee recruited lots of new staff at high costs, fully air-conditioned show room.
3. Another major cause is stiff competition, periodic frequent volatile changes in gold Prices.
- 4 Further, interest expenses incurred by ₹38 lakhs this year due to increased stock levels and consequent drawing of working capital from bank.
5. Selling and advertisement expenses also has increased from ₹36.55 lakhs to ₹50.35 lakhs
6. Despite all this, this year income tax payment is ₹4.52 Crores due to stock difference”.

In such circumstances, we are of the opinion that addition for lower gross profit was not warranted. In our opinion, Id. Commissioner of Income Tax (Appeals) was justified in deleting such addition. We do

not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

8. In the result, the appeal of the Revenue stands dismissed.

Order pronounced on Wednesday, the 5th day of December, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:5th December, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |