

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5315/Del/2018
Assessment Year: 2014-15

ARVIND KUMAR,
C/O KAPIL GOEL, ADVOCATE,
F-26/124, SECTOR-7,
ROHINI,
DELHI - 110 085
(PAN: ALNPK8589L)

VS.

ITO, WARD-1,
REWARI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Kapil Goel, Adv.
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 05.06.2018 of the Ld. CIT(A), Rohtak pertaining to assessment year 2014-15 on the following grounds:-

- i) That addition amounting to Rs. 14,62,636/- made on account of alleged suppression of closing stock by AO as sustained by Ld. CIT(A) without citing any statutory provision and without proving any clandestine transaction, just relying on stray and isolated figures which stood reconciled, addition is

made which is ex facie incorrect and made mechanically.

- ii) That assessee's alternate claim to allow automatic deduction u/s. 80JJA on aforesaid addition of Rs. 14,62,636/- has been denied on invalid reasons and against the binding and cited CBDT Circular No. 37/2016.
- iii) That addition sustained by Ld. CIT(A) to the extent of Rs. 470,000 is incorrect and alternatively enhanced deduction benefit u/s. 80JJA must be given to the assessee as claimed.

Humble prayer:-

- (i) To delete the addition of Rs. 14,62,636/- on account of alleged non disclosure of closing stock; alternatively deduction and benefit u/s. 80JJA;
- (ii) To delete the addition of Rs. 470,000 and alternatively allow benefit u/s. 80JJA. To restore returned income.
- (iii) Any other appropriate relief.

2. The brief facts of the case are that assessee filed his return of income on 29.11.2014, declaring income of Rs. 1,39,450/-. The assessee is running an industry of manufacturing of bio-fuel briquettes. The case of

the assessee was picked up for complete scrutiny under CASS. Statutory notices and questionnaires were issued. The AR of the assessee attended the proceedings from time to time and filed the written replies during the course of assessment proceedings. The AO observed that the assessee has not declared his profit u/s. 44AD of the Income Tax Act, 1961 (in short "Act"). No where the assessee indicated that he is declaring income u/s. 44AD of the Act. Further gross turnover of the assessee from business already exceeds the limit necessary for getting the accounts audited. Hence, provisions of section 44AD of the Act are not applicable. AO observed that it is only an afterthought which came in to the story only when it is noticed by the AO and trading account of Hindustan Sanitary Plaza was called for. The assessee has not declared assets of Rs. 14,62,636/-. Excess of assets of Rs. 14,62,636/- over the liabilities in the shape of closing stock is the profit of the assessee which he has not declared in his return of income was added to the income of the assessee by AO. Further, the AO has disallowed 25% of expenses claimed under the heads consumables, power/ fuel, packing, freight, miscellaneous, telephone, conveyance, travelling etc. as no vouchers were produced for expenditure claimed as Rs. 47 lacs (as per the table given at page no. 5 of the assessment order) and added the expenses are not considered as genuine and addition of Rs. 11,75,190/- was made to the income of the assessee. Accordingly, the income of the assessee was assessed at Rs. 27,77,280/- u/s. 143(3) of the Act vide order dated 22.08.2016. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide

his impugned order dated 05.6.2017 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that the addition amounting to Rs. 14,62,636/- made on account of alleged suppression of closing stock by AO as sustained by Ld. CIT(A) is without citing any statutory provision and without proving any clandestine transaction, just relying on stray and isolated figures which stood reconciled and addition was made which is ex facie incorrect and made mechanically. He further submitted that the assessee's alternate claim to allow automatic deduction u/s. 80JJA on aforesaid addition of Rs. 14,62,636/- has been denied on invalid reasons and against the binding and cited CBDT Circular No. 37/2016. It was further submitted that the addition sustained by Ld. CIT(A) to the extent of Rs. 470,000 is incorrect and alternatively enhanced deduction benefit u/s. 80JJA must be given to the assessee as claimed. Hence, he requested to delete the addition of Rs. 14,62,636/- on account of alleged non disclosure of closing stock; alternatively deduction and benefit u/s. 80JJA and also delete the addition of Rs. 470,000/- and alternatively allow benefit u/s. 80JJA by allowing the appeal of the assessee.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order dated 26.6.2018 which does not need any interference.

5. I have heard both the parties and perused the records especially the impugned order. As regards sustaining of addition of Rs. 14,62,636/- on account of alleged suppression of closing stock is concerned, I note that the AO has made addition on account of non-disclosure of closing stock of Rs. 14,62,636/- as it was not shown in column 4 of Part A, P&L in the income tax return. This has resulted in less profit and suppression of income. I further find that AO observed that excess of assets in the shape of closing stock is his profit, which is not declared as income by the assessee. The assessee's claim that he should get benefit of provision of deduction u/s. 80JJA of the Act is not tenable because the addition has been made on account of undisclosed closing stock of Hindustan Sanitary Plaza, and this concern dealing in sanitary items. As this income is not derived from the activity of manufacturing which is covered u/s. 80JJA, no deduction is allowable. Hence, the addition of Rs. 14,62,636/- was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, therefore, I uphold the order of the Ld. CIT(A) on this issue and reject the grounds raised by the Assessee.

5.1 As regards sustaining of addition of Rs. 470,000/- is concerned, I note that AO has disallowed 25% of expenses claimed under the heads consumables, power/ fuel, packing, freight, miscellaneous, telephone, conveyance, travelling etc. as no vouchers were produced for expenditure claimed as Rs. 47 lacs (as per the table given at page no. 5 of the assessment order). I further note that the AO has not made disallowance on adhoc basis but after giving full opportunity to the assessee who could

only submit evidence of expenditure of about Rs. 8 lacs out of his claim of Rs. 54.92 lacs. In view of the facts of the case, the disallowance made by the AO was upheld. However, it was restricted to 1/10th of the expenditure not substantiated by the assessee i.e. Rs. 4,70,000/- which was disallowed and therefore, the AO was directed to compute the income accordingly, which does not need any interference on my part, therefore, I uphold the order of the Ld. CIT(A) on this issue and reject the ground raised by the Assessee.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 12-02-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:12/02/2019

SRBhatnagar

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches