

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1876/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2011-12)

M/s. Suvarnakala Pvt. Ltd. 101-FF, National Plaza, C G Road, Ellisbridge, Ahmedabad- 380006	बनाम/ Vs.	DCIT Cir-8, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAE CS7 337 K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	S.N. Sopankar & Urvashi Shodhan, ARs
प्रत्यर्थी की ओर से / Respondent by:	Mudit Nagpal, Sr. DR

सुनवाई की तारीख / Date of Hearing	07/03/2019
घोषणा की तारीख /Date of Pronouncement	27/03/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

In this case return of income declaring income of Rs. 18,76,77,100/- was filed on 25.09.2011 subsequently a notice u/s. 143(2) of the Act was issued on 07.09.2012. The assessee company is in the business of trade in gold bullion etc. The remaining fact of the case are discussed while adjudicating different ground of appeal filed by the assessee as under:

2. Confirming addition of Rs. 2,66,37,137/- on account of difference in the value of closing stock as per stock statement given to the bank and as per books of account. The assessee has raised the following grounds of appeal for the aforesaid issue:-

“1. a) The Ld. AO has erred in law and on facts in making addition and Hon. CIT(A) has erred in law and on facts in confirming addition of Rs. 2,66,37,137/- on account of difference in the values of closing stock as per stock statement given to the bank and as per books of account, disregarding the written submissions of the assessee.

b) Alternatively the Ld. AO has erred and Hon. CIT(A) has erred in not holding that when the addition to closing stock for I.T.A.Y. 2011-12 is made, then opening stock for I.T.A.Y. 2012-13, be increased to that extent.”

During the course of assessment after verification of the detail filed by the assessee the AO has noticed difference between the stock as per statement given to the bank and the stock shown in the books of account of the assessee as on 31.03.2011. Therefore, AO has asked the assessee to explain the excess stock of raw material Rs. 1,70,31,886/- and excess stock of finish goods by Rs. 96,05,251 as per stock statement given to Bank as against stock reflected in the books of account. The assessee explained that it has availed credit facility from AXIS Bank against hypothecation of stocks and book debts. It is also claimed that the credit facility availed from bank was not against pledged of stock. It was also submitted that the stock register was maintained and the books of account of the assessee were audited. It was also explained that statement of higher value was furnished to the bank to avail credit facilities. The assessee has also made reconciliation of the difference in stock reflected in the statement given to the bank and stock reflected in the books of account of the assessee. The assessee has also stated that no discrepancy in the stock has been pointed by the banking authorities. The assessee claimed that it has produced stock register for verification before the AO. The AO has not accepted the explanation of the assessee and stated that the assessee has not submitted item wise discrepancies in the stock. The AO has also state that no stock register was produced for verification. Consequently the AO has made addition of Rs. 2,66,37,137/- consisting of excess stock raw material of Rs 1,70,31,886/- and excess stock finish goods of Rs. 96,05,251/- and added to the total income of the assessee.

3. Aggrieved assessee has filed the Ld. CIT (A). The Ld. CIT (A) has dismissed the appeal of the assessee reiterating the same reason stated by the AO .

4. During the course of appellate proceedings before us the Ld. Counsel has submitted paper book containing detail of submission made before AO and Ld. CIT(A) during the course of assessment proceeding and appellate proceeding. He has further contended that during the course of assessment proceedings the assessee has produced stock register for verification and stated that there was no difference in the quantity of stock mentioned in the stock statement given to the bank and the quantity of stock mentioned in the books of account maintained by the assessee. In this connection he has referred Page No. 16 of the Paper Book which is a letter dated 13.11.2013 written by the assessee to the AO during the course of the assessment proceeding in which it has been clearly stated by the assessee that it has been maintaining stock register with complete quantitative detail of stock including day to day details of raw material and finished goods. He has contended that in the aforesaid letter it is also mentioned that the stock register was produced for verification. He has further contended that in the case of the assessee the stock was only hypothecated to the bank and not pledged. Unlike pledge under hypothecation the stock is not kept in lock and key of the bank and the stock always remains in possession and control of the assessee. He has also referred copy of audit report placed in the paper book demonstrating that various books of account including stock register were maintained by the assessee. He has also referred various pages of the paper book and stated that AO has disallowed the difference in stock without considering the submission and supporting material provided by the assessee.

5. On the other hand the Ld. DR has placed reliance on the order of lower authorities.

6. We have heard both the sides and perused material on record carefully. The assessee has obtained bank loan from AXIS Bank against hypothecation of stock and book debt. It is noted that as per stock statement as on 31.03.2011 furnished to the bank by 07.04.2011 the value of stock as on 31.03.2011 was shown at Rs. 52,73,44,000/- as against the value of stock shown in the books of account on 31.03.2011 was at Rs. 50,07,33,863/-. Therefore there was difference of Rs. 2,66,37,137/-. The assessee has submitted that its stock is hypothecated to the bank

not pledged. The assessee has also maintained stock register. The books of account of the assessee were audited. The assessee has demonstrated by referring the details placed in the paper book that there was no difference in the quantity of stock reflected in the stock statement given to the bank and stock position shown in the books of account of the assessee. It was also submitted that the stock statement as on 31.03.2011 was provided to the bank within a short time by 07.04.2011, therefore, the correct valuation of the stock could not be incorporated in the stock statement submitted to the bank. The assessee has also placed reliance on number of judicial pronouncements placed in the paper book.

With the assistance of the Ld. Representative we have gone through the paper book submitted by the assessee claiming that it has been maintaining stock register and there was no difference in the quantitative stock position submitted to the bank and appearing the books of accounts of the assessee. We have further noticed that AO has stated that assessee has not produced any stock register for verification during the course of assessment proceedings. However, we find that assessee in his submission before the assessing officer during the course of assessment proceedings vide letter dated 13.11.2013 has produced the stock register for verification. In this connection we find that AO has not contradicted the aforesaid submission of the assessee that no such stock register was produced for verification along with the said submission. Considering the aforesaid material fact we are of the view that it will be appropriate to restore this issue to the file of AO for deciding a fresh after verification/examination of the detail information/stock register to be produced by the assessee during the course of set aside proceedings. Accordingly this issue is restored back to the file of the AO for deciding a fresh as directed above after affording adequate opportunities to the assessee. Therefore this ground of appeal of the assessee is allowed for statistical purposes.

7. Second ground of appeal addition of Rs. 1,15,800/-as unexplained salaried expenses:-

During the course of assessment the AO has noticed that Baroda Branch of the assessee has incurred salary expenses of Rs. 1,51,800/- which were not recorded in books of account. The assessee has submitted statement of employees in respect of whom the unrecorded salaries were worked out. These employees were under probation and it was decided by the directors that the company should not pay full salaries to avoid employment benefit which were linked to the salary payment. It is claimed that the directors have personally paid the aforesaid salaries out of their personal withdrawals. The AO has not accepted the explanation of the assessee stating that during the course of the post survey proceedings the assessee itself admitted that these salary payment were not recorded in the book.

8. Aggrieved assessee has filed before the Ld. CIT(A) has dismissed this ground of appeal of the assessee stating that assessee has itself admitted that the salary payment were not recorded in the books.

9. We have heard the rival contentions and perused the material on record. We do not find force in the claim of the assessee stating that directors have paid these salaries out of their withdrawals for household expenses. Considering the above facts and the material available on record we observe that assessee has failed to substantiate the claim of aforesaid salary expenses of Rs. 1,51,800/- therefore, we do not find any infirmity in the decision of the Ld. CIT(A). Accordingly this ground of appeal of the assessee is dismissed.

10. Third ground of appeal addition of Rs. 37,166/- on account of delay payment of employees' contribution to Provident Fund and ESIC:-

During the course of assessment proceedings the AO has noticed that assessee has made late payment of employees' contribution towards Provident Fund ESIC etc. The AO has observed that the assessee has failed to deposit employees' contribution of Rs. 37,166/- before the due date, as prescribed in the relevant acts, therefore, the aforesaid amount constituted the income of the assessee as per the provisions of Sec. 2(24)(X) r.w.s. 36(1)(va) of the Act. Accordingly the aforesaid amount Rs. 37,166/- were added to the income of the assessee.

11. Aggrieved assessee has filed before the Ld. CIT(A). Ld. CIT(A) has sustained the addition made by the AO after placing reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation 265 CTR 64 (Guj.).

12. We have heard the rival contention on this issue and perused the material on record. It is undisputed fact that assessee has not deposited the employees' contribution towards PF/ESIC before the due date as prescribed in the relevant Act. Therefore we do not find any error in the decision of Ld. CIT(A) after considering the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation wherein it is held that when the employer has not credited the sum received by it as employees contribution to employees account in relevant fund on or before due date as prescribed in explanations 36(1)(va) the assessee shall not be entitled to deduction. Therefore, we do not find any merit in this ground of the assessee. Therefore, the same is dismissed.

13. In the result, appeal of the assessee is partly allowed for statistical purposes.

This Order pronounced in Open Court on 27/03/2019

Sd/-

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad: Dated /03/2019

Tanmay

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, अहमदाबाद ।