

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5793/Del/2011
Assessment Year: 2008-09

Marvel Crafts,
C/o Krishna Neeraj & Associates,
141, Rajendra Place,
New Delhi.

Vs DCIT,
Circle-26(1),
New Delhi.

PAN: AAFFM1572J

(Appellant)

(Respondent)

Assessee by	:	Shri Bharat Bhushan Bhatia & Ms Vijay Laxmi, Advocates
Revenue by	:	Ms Rinku Singh, Sr. DR
Date of Hearing	:	08.04.2019
Date of Pronouncement	:	16.04.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 29th September, 2011 of the CIT(A)-XXIV, New Delhi, relating to assessment year 2008-09.

2. Facts of the case, in brief, are that the assessee is a partnership firm and filed its return of income on 29th September, 2008 declaring the total income at Rs.8,71,588/-. The Assessing Officer, during the course of assessment proceedings, observed that the

assessee has declared the turnover at Rs.5,18,67,911/- for the year under consideration as against Rs.7,02,57,563/- in the preceding year. The net profit declared in the current year was Rs.7,03,871/- as against Rs.6,97,550/- in the preceding year. He noted that a survey u/s 133A of the Act was conducted in the premises of the assessee on 17th May, 2007. During the survey, the inventory of stock and cash was made in which the discrepancies were found in the case of stock at Rs.83,75,000/- and in case of cash at Rs.7,24,967/-. In view of the above discrepancies, the assessee firm through its partner Shri Vishal Bhasin has surrendered additional income of Rs.90,99,967/- for the year under consideration and offered the cheques of Rs.28,11,890/- towards tax payable on the surrendered income. However, the assessee, in the return of income has declared income of Rs.8,71,588/- only. He, therefore, asked the assessee to justify for not including the surrendered income which was offered by him during the course of survey operations u/s 133A of the Act on account of difference in the closing stock and excess cash found.

3. The assessee submitted that an amount of Rs.6,85,000/- which was the cash found was not entered in the books of account and the deposit of cash in the bank account amounting to Rs.20,000/- and wages paid to the tune of Rs.59,940/- were not entered. The reconciliation of cash as on 17th May, 2007 was submitted before the Assessing Officer. It was further submitted that the statement of Shri Vishal Bhasin, partner, recorded on 18th May, 2007 was misquoted by recording that he could not have any explanation regarding Rs.7,24,967/- being the amount of difference in the

cash. So far as the stock as on 17th May, 2007 is concerned, it was submitted that the stock taken by the survey team was not exact quantity, rather, it was on estimate basis. Moreover, the rate taken by the survey team for valuation of the stock was also hypothetical without following the generally accepted accounting principles for valuation of the closing stock. The assessee furnished the details of stock for fabrics as on 17th May, 2007 showing the quantity, rate and amount. It also filed the movement of stock during the period between 01.04.2007 and 17.05.2007.

4. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He referred to the statement recorded during the course of survey of one of the partners, namely, Shri Vishal Bhasin wherein he could not explain the differences. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.90,99,967/- being the difference in cash and difference in the valuation of the stock on the date of survey. He accordingly determined the total income of the assessee at Rs.99,71,560/-.

5. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

- 1) “That the assessment order passed by the A.O. is bad in law as well as facts of the case.
- 2) That on the facts and circumstances of the case and in law, the Ld. Assessing officer has erred in making addition of Rs. 7,24,967/- on account of difference in. cash as per books of accounts and actual cash found by the Income Tax Official.
- 3) That on the facts and circumstances of the case and in law, the Ld.

Assessing officer has erred in making addition of Rs. 83,74,400/- on account of difference in stock estimated by the Income Tax Officials during survey and actual stock on the date survey.

4) That the order passed violates the principles of natural justice, equity & fair play.

5) That the assessee craves right to add, alter or amend any grounds of appeal.”

6. The ld. counsel for the assessee strongly objected to the order of the CIT(A). Referring to various pages of the paper book, he submitted that the amounts drawn from the bank account on various dates were not entered into the cash book for which all these discrepancies were found. Further, on the date of survey, the main partner of the firm was out of India and the partner who was present could not explain the things properly because he was only looking after the production side. He submitted that the survey team had adopted imaginary figures for the quantity as well as the rate without considering the exact quantity and exact rate which should have been applied for computation of closing stock on the date of survey. He submitted that the statement of the partner was forcibly taken and he was made to sign the cheque for the payment of tax liability on account of additional income surrendered by him under coercion. He submitted that the various discrepancies regarding the difference in cash and difference in valuation of closing stock was filed before the lower authorities. However, instead of going through the same, the lower authorities merely relied on the statement of the partner which was recorded on the date of survey and made the addition. He accordingly submitted that the entire addition should be deleted.

6.1 In his alternate contention, he submitted that the matter may be restored to the file of the Assessing Officer with a direction to re-examine the various statements filed by the assessee substantiating the difference in the cash found and the discrepancies in the valuation of closing stock.

7. The Id. DR, on the other hand, strongly opposed the arguments advanced by the Id. counsel for the assessee and submitted that the submission of the Id. counsel is factually incorrect and wrong. She submitted that physical verification of stock was done in presence of one of its partners Shri Vishal Bhasin along with other employees of the said firm. Further, Shri Ajay Bhasin, another partner of the firm retracted the surrendered amount of Rs. Rs.90,99,967/-, vide his letter dated 6th September, 2007 which is after four months of survey conducted u/s 133A of the IT Act. He failed to submit any documentary evidence to prove the assessee's contention/disagreement. Even during the assessment proceedings as well as before the CIT(A) the assessee firm failed to submit any documentary evidence to prove the contention of the assessee regarding such discrepancies. Under these circumstances, the order of the CIT(A) should be upheld and the arguments of the Id. counsel for the assessee for setting aside of the matter to the file of the Assessing Officer should be rejected.

7.1 Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Avinash Kumar Setia reported in 395 ITR 235*, she submitted that the Hon'ble High Court in the said decision has held that where the assessee surrendered certain income by way of declaration and withdrew the same after two years without any satisfactory

explanation, it could not be treated as bona fide and hence, the addition would sustain. Referring to the Hon'ble Delhi High Court decision in the case of *Raj Hans Towers (P) Ltd. vs. CIT reported in 373 ITR 9*, she submitted that the Hon'ble High Court in the said decision has held that where the assessee has not offered any satisfactory explanation regarding the surrendered amount being not bona fide and it was also not borne out in any contentions raised before lower authorities, the additions so made after adjusting expenditure were justified. She also relied on the following decisions:-

- (i) M/s Pebble Investment and Finance Ltd. vs. ITO, 2017-TIOL-188-HC-MUM-IT; and
- (ii) M/s Pebble Investment and Finance Ltd. vs. ITO, 2017-TIOL-238-SC-IT.

8. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We have also considered the various decisions cited before us. We find a survey action u/s 133A was conducted in the case of the assessee on 17th May, 2007 during which discrepancy in cash amounting to Rs.7,24,967/- and discrepancy in stock of Rs.83,75,000/- were found. The statement of one of the partners Shri Vishal Bhasin was also recorded during the said survey. He was confronted with the above discrepancies for which he had surrendered additional income of Rs.90,99,967/- for the discrepancies so found as mentioned earlier. However, subsequently, the assessee, vide letter dated 9th June, 2007 retracted the said statement which is after four months of survey conducted u/s 133A of the IT Act. We find the Assessing Officer rejected the contention of the assessee that the valuation of

stock was made arbitrarily by the survey team by putting hypothetical stock and arbitrary rate. Similarly, the Assessing Officer also rejected the explanation given by the assessee regarding the discrepancy in cash. We find the Id.CIT(A) upheld the action of the Assessing Officer. It is the submission of the Id. counsel for the assessee that the assessee had given reconciliation statement regarding the discrepancy in cash and discrepancy in the closing stock. It is his submission that the various withdrawals from the bank on different dates were not entered in the cash book for which all these discrepancies arose. According to him, since the withdrawals from the bank are undisputed therefore, if the same are taken into account, then, there will be no discrepancy at all so far as the cash is concerned. So far as the discrepancy in the valuation of closing stock is concerned, it is the submission of the Id. counsel for the assessee that the stock was taken by the survey team arbitrarily and not in exact quantity and the rate adopted by the Department was also not correct. The generally accepted accounting principles have not been followed for which the discrepancy arose. It is also the submission of the Id. counsel that the statement was recorded under duress and coercion. It is the submission of the Id. DR that the assessee was given adequate opportunity during the course of assessment proceedings and appeal proceedings and it could not justify the huge discrepancies in the cash and closing stock. Therefore, once the assessee has surrendered the amount during the course of survey where the stock was inventorised in the presence of its partner and other staff, therefore, the matter could not be set aside and the addition should be sustained.

9. We find the assessee in the instant case has filed certain reconciliation statement regarding the discrepancy in cash and valuation of closing stock. The assessee during the course of assessment proceedings had filed the movement of stock from 1st April, 2007 till 17th May, 2007. It has also given the quantity and rate of the stock found during the course of survey. We find the Assessing Officer, instead of examining the same has gone by the statement of the partner during the course of survey. No doubt, the assessee, in the instant case, had surrendered certain amount during the course of survey on the basis of certain discrepancies pointed out to one of the partners regarding the discrepancy in cash and the discrepancy in the valuation of closing stock. However, the same, in our opinion, cannot be conclusive and binding on the assessee once the assessee is able to substantiate with evidence to the satisfaction of the A.O. regarding the discrepancies. The lower authorities in the instant case appears to have made the addition solely on the basis of the statement recorded during the course of survey instead of examining thoroughly the reconciliation statement filed by the assessee during the course of assessment proceedings regarding the difference in the cash found and the difference in the valuation of closing stock. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to thoroughly examine the reconciliation statement filed by the assessee during the course of assessment proceedings regarding the discrepancy in cash and the difference in the valuation of closing stock. The Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct

accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 16.04.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 16th April, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi