

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No. 101/Coch/2019
Assessment Year : 2007-08

M/s. AGL Moulds & Tools, Pappinissery, Kannur-670 561. [PAN: AANFA 9018R]	Vs.	The Income Tax Officer, Ward- 1(1), Kannur.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri T.M. Sreedharan, Sr.Adv.
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	14/05/2019
Date of pronouncement	15/05/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Kozhikode dated 28/11/2018 and pertain to the assessment year 2007-08.

2. The assessee has raised the following grounds of appeal.

1) The order of the Commissioner of Income Tax (Appeals), Kozhikode in ITA No.66/KNR/CIT/CLT/2009-10 dated 28th November, 2018, dismissing the appeal filed by the appellant for the assessment year 2007-08 is infirm in law and contrary to facts and circumstances of the case.

2) The learned lower authorities erred in making an addition of Rs.4,83,426/- as unexplained investment u/s. 69 of the Income Tax Act, 1961.

3) The learned lower authorities ought to have found that the valuation of 'Work-in-Progress' estimated at the time of inspection for VAT registration purposes was purely on estimate basis. In the absence of any deficiency in opening stock, sales and purchases as per day to day books of accounts maintained found during the course of assessment, there is no justification for making the above addition of Rs.4,83,426/- merely relying on VAT inspection records.

4) a copy of the grounds of appeal filed before the First Appellate Authority is enclosed. The grounds raised therein to the extent it is applicable to the matters impugned above may also be treated as part of this grounds of appeal as well.

5. For the above and other grounds that may be urged at the time of hearing, the appellant humbly prays that the Hon'ble Income Tax Appellate Tribunal, Cochin Bench, Cochin-16, may be pleased to vacate the additions sustained by the Commissioner of Income-tax, Kozhikode and allow this appeal.

3. The facts of the case are that the assessee is a firm manufacturing dyes, moulds, tools and allied goods. The firm started its business w.e.f. 01/06/2006 after converting from proprietorship of Smt. P.T.P. Shamina. It filed its return of income for the assessment year 2007-08 on 20/11/2007 declaring a total income of Rs.65,860/-. During the year under consideration, the assessee had shown sales of Rs.21,67,000/- by consuming raw materials of Rs.5,24,506/-. The sole purchasers are their own sister concern. The firm started its business on 01/06/2006 taking over the closing stock of proprietary business valued by the partners at Rs.1,50,000/- comprising of aluminium block, rods and paltes of 630 Kgs. An amount of Rs.22,400/- was 'Work in Progress'. A shop inspection was carried out by the Commerical Tax Department on 17/07/2006 who ascertained the total stock of raw materials and goods for Rs.8,89,150/-. It included 'Work in Progress' of Rs. 7 lakhs. From the books of accounts and vouchers, he purchase up to the date of

inspection was only for Rs.1,28,258/- which included opening stock of Rs.150,000/- taken over from the proprietary concern and Rs.128,258/- purchases upto the date of inspection. In addition, as per books, the work-in-progress was Rs.22,400/- as taken over from the proprietary concern. The Assessing Officer calculated the difference between the stock as per books of accounts and the stock as per inspection report of the commercial Tax Department which worked out difference of Rs.6,10,892/-. After giving deduction of expenses incurred up to the date of inspection for Rs.1,27,466/- the difference of Rs.4,83,426/- was assessed as unexplained investment u/s. 69 of the Act by the Assessing Officer.

4. On appeal, the CIT(A) observed that the Commercial Tax Department carried out inspection as per which the total stock was valued at Rs. 8,89,150/- whereas as per books, the same came to Rs.2,78,258/-. According to the CIT(A), the difference was too large to be ignored even if the assessee's plea that valuation by the Commercial Tax Department was rough estimate can be considered. The CIT(A) found that the books of accounts had the position of stock as on date of inspection for Rs. 2,78,258/- and work in progress of Rs. 22,400/-. Therefore, the CIT(A) was of the view that any stock found during physical inspection over and above the stock as per books of accounts leads to only one conclusion that the extra stock or the excess stock was out of regular books of the assessee for which the assessee had no satisfactory explanation. The CIT(A) rejected the assessee's argument that if an addition is made u/s 69, the same will go to increase the expenses and reduce the profit as the excess stock found during inspection would

have never been entered in the books of account till the date of inspection and there was no material on record which can prove that the same was entered after the date of inspection, Therefore, it was clear that the same was utilized out of books of account and no effect will be there on firm's declared profit. It also leads to the conclusion that as on date of inspection, the difference between the books and the valuation report indicated suppression of investment done in the purchases up to that date and is therefore, liable to be assessed as unexplained investment under section 69 of the Income Tax Act. The CIT(A) observed that the assessee's reliance on the judgment of the Supreme Court in the case of Smt. P.K. Noorjahan's (237 ITR 570) was also misplaced because the decision was purely based on the facts of that case and income ratio laid down the principle that the word "May" used under section 69 of the Income Tax Act gives discretion to the Income Tax Officer to treat the source of investment as income of the assessee even if the explanation offered by the assessee is not found satisfactory and such discretion has to be exercised keeping in view the facts and circumstances of the particular case. The CIT(A) was of the view that the totality of facts in this case do not warrant any discretion in favour of the assessee and in view of the clear cut and specific evidence, the Assessing Officer had rightly added excess stock as on the date of inspection after giving due credit of expenses as to the income of the assessee by treating it as unexplained investment u/s. 69 of the Act and therefore, decided the issue against the assessee

5. Against this, the assessee is in appeal before us. The Ld. AR submitted that the Assessing Officer had stated that the firm commenced on 01.06.2006 by taking over the closing stock of the proprietary business. However, the Ld. AR submitted that the Assessing Officer had accepted the Books of Accounts and accepted returned income of Rs.65,850/-. However, the Assessing Officer referred to a shop inspection conducted by the Assistant Commissioner, Commercial Taxes, Kannur on 17.07.2006 after one month of commencing production. The Assessing Officer also referred to a difference worked out by the Commercial Tax Officer in the stock and work-in-progress. This Work-in-progress was valued on an adhoc basis by the Commercial Tax Officer at the time of inspection on an estimate basis without referring to the quantity or the rate. He referred to the gross profit estimated and included in Work in progress. It was submitted that relying on the inspection figures prepared on estimate basis, by the Commercial Tax Officer, the Assessing Officer in the impugned order came to the conclusion that the difference between the inspection figures and what the assessee accounted in the Book of Accounts, indicated suppression of investment in purchase and stock upto that date. It was submitted that the Assessing Officer invoked Section 69 and estimated the investment u/s 69 amounting to Rs.4,83,426/- without any basis whatsoever and made addition u/s 69.

5.1 It was submitted that Section 69 can apply to unexplained investment and reads -" Where in the Financial Year immediately preceding the assessment year, the assessee has made investments which are not recorded in the Books of

Accounts, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of the investment or the explanation offered by him is not in the opinion of Assessing Officer satisfactory the value of the investments may be deemed to be the income of the assessee of such Financial Year". It was submitted that first of all, the assessee had not made any investment during the above Financial Year which was not recorded in the Books of Accounts. Secondly, the entire sales turnover of Dyes and Moulds were correctly recorded in the Books of Accounts and the turnover had been offered for assessment which was declared in the financial statements and Accounts for the year ended 31.03.2007. It was also submitted that the assessee had also declared gross profit amounting to Rs.11,07,943/- which worked out to 51.12%.

5.2 It was submitted that the Commercial Tax Officer had also not disputed the sales turnover of Rs.21,67,200/- declared. According to the Ld. AR, the Assessing Officer merely surmised that there was unexplained investment and how he came to the above conclusion and from what material, was not stated. According to the Ld. AR, the assessee submitted a written explanation before the Assessing Officer dated 23rd September 2009. There is no dispute as regards gross profit or turnover declared and the estimate adopted by the Commercial Tax Officer for determining the value of the material and the correctness of the sales turnover was also not different from what was revealed in the Books of Accounts. As such, it was submitted that on the facts of the case, the addition to the income of Rs.4,83,426/- on that basis by invoking provisions of Section 69 of Act was liable to be set aside.

5.3 The Ld. AR submitted that the First Appellate Authority had merely reproduced the Assessment Order and the submissions made by the assessee and without appreciating the facts as revealed from the Books of Accounts. According to the CIT(A), he merely relied on the observations of the Commercial Tax Officer which are mere perceptions and not facts found or supported by evidence. The observations made by the Commercial Tax Officer at the time of the inspection are only spontaneous and not based on records. Hence, it was submitted that the conclusion arrived at by lower authorities are liable to be set aside. In this connection, the Ld. AR referred to another legal issue, i.e. as regards the additions that could be made by invoking Chapter 6 of the Act and Section 69 finds a place therein. It was submitted that in order to invoke Section 69 there must be clear evidence to show that the assessee had made investments which are not recorded in the Books of Accounts. In the assessee's case there was no such unrecorded investment omitted in the Books of Accounts. According to the Ld. AR without establishing unrecorded investment made by the assessee, the assessee can be asked to explain the nature and source of the investment and it is only upon fulfillment of the above conditions, the Assessing Officer can ask the assessee to explain the nature and source. Even after fulfillment of these requirements, according to the CIT(A), still the option given to the Assessing Officer to treat the value of the investment as income of the assessee for such Financial Year by using the expression "may" in the Section. It was submitted that the fact that the

Assessing Officer had accepted the books of accounts, audited profit and loss account and balance sheet in toto, for the year ended 31/03/2007, is a conclusive proof that the Assessing Officer had not established unaccounted investment. Moreover, it was submitted that the same balance sheet was accepted for the next Financial Year 2007-08 without disturbing the investment in assets declared in the Balance Sheet. So also the Profit & Loss Account and Balance Sheet disclosing the profit of Rs.65,860/- was accepted in toto without any modification. In the above circumstances, it was prayed that the addition of Rs.4,83,426/- as the undisclosed investment may be vacated and the appeal may be allowed.

6. The Ld. DR relied on the order of the lower authorities.

7. We have heard the rival submissions and perused the record. Admittedly, in this case, the assessee's assessment was completed u/s. 143(3) of the Act. The assessee's authorized representative, Shri C. Suresh Kumar, FCA attended the hearing and produced the documents and other details before the Assessing Officer. The Assessing Officer has not rejected the books of account of the assessee and he has considered the profit returned by the assessee at Rs.65,860/-. Thereafter, he made addition of Rs.4,83,426/- u/s. 69 of the Act on account of valuation of work-in-progress by the Assistant Commissioner of Commercial Taxes (ACCT) at the time of inspection in the business premises of the assessee. The ACCT estimated the valuation of work-in-progress without mentioning the quantity or rate of the individual item. It was a rough estimate. The Assessing Officer arrived at the

difference between the valuation of work-in-progress done by the ACCT and what was accounted in the books of accounts which was at Rs.4,83,426 (Rs.6,10,842 – Rs.1,27,460). In our opinion, to estimate this difference, first of all the Assessing Officer has to reject the books of account of the assessee. Without rejecting the books of account, it is not proper to make addition towards unexplained investment u/s. 69 of the Act. The ACCT has not at all pointed out the method of valuation of work-in-progress. Without determining the method of valuation of work-in-progress, it is not possible to sustain the addition. In other words, prima facie, the Assessing Officer has to reject the books of account of the assessee and thereafter, he has to estimate the unexplained investment in work-in-progress in the relevant assessment year by following the market price or cost which was lower which the Assessing Officer has failed to do so. Being so, we are inclined to delete the addition made u/s. 69 of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on this 15th May, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 15th May, 2019

GJ

Copy to:

1. M/s. AGL Moulds & Tools, Pappinissery, Kannur-670 561.
2. The Income Tax Officer, Ward-1(1), Kannur.
3. The Commissioner of Income-tax(Appeals), Kozhikode.
4. The Pr. Commissioner of Income-tax, Kozhikode.

5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin