

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2826/AHD/2013
(Assessment Year: 2002-03)**

| | | | |
|---------------------------|------------------|------------|--|
| ACIT Ahmedabad | Circle-5, | V/S | M/s Neptune Textile Mills Ltd. 128, News Cloth Market, Outside Raipur Gate, Ahmedabad |
| (Appellant) | | | (Respondent) |

PAN: AAACN5339G

**Appellant by : Shri B. L. Meena, Sr. D.R.
Respondent by : Shri C. N. Shah**

(आदेश)/ORDER

Date of hearing : 08 -02-2019
Date of Pronouncement : 24 -04-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-XI, Ahmedabad dated 05.09.2013 pertaining to A.Y. 2002-03 and following grounds have been taken:

- 1. The Id. CIT(A) has erred in law and on facts in deleting the addition of Rs. 73,77,700/- on account of variation in purchase of cloth not shown in the audit report.*
- 2. The Id. CIT(A) has further erred in ignoring the fact that the Assessee failed to comply with the directions given by the Hon'ble ITAT for furnishing bills and vouchers in support of the claim that there was a mistake transferring the quantity from purchase to consumption without giving a matching effect n monetary and has revenue neutral effect.*
- 3. On the facts and circumstances of the case, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.*
- 4. It is, therefore, prayed that the order of the Id. CIT(A) may be set-aside and that of the Assessing Officer be restored.*

2. The original assessment for A.Y. 2002-03 was completed u/s 143(3) on 22/03/2005 by then Asst. Commissioner of Income, Circle-5. Ahmedabad.
3. The Asst. Commissioner Circle-5 REDUCED LOSS OF Rs. 7377700/- as per para no 6 of the assessment order u/s 143(3) on 22/03/2005 as there was some discrepancy in presentation of schedule "P" of audit report as the quantity of cloth purchases (trading) was shown at 152911 mtrs valued at Rs. 111395957-. However in course of assessment proceedings u/s 143(3) , the quantity of cloth purchased was shown as at 424S79/- and the corresponding value was shown at Rs. 111395957-Hence according to A.O. quantity of purchase of grey cloth of Rs. 2719687- metres representing the value of Rs. 7377700/- has not been shown in the audit report while finalising the same. Thus A.O. issued show-cause notice dated 18/03/2005 reading as under:
"On going through the case records and details filed during the course of assessment proceedings it is noticed that the point number-13 of schedule-P of Audit Report, the total cloth purchase has been shown at 152911 metres valuing at Rs. 111395957- whereas while furnishing the details of trading sales

and purchases during the financial year 2001-02 the trading sales and purchases are shown as under:

| Purchase | | Sales | | |
|----------------|----------------|----------|----------------|-----------------|
| | Mts. | Amount | Mts. | Amount |
| | 152911 | 3761895 | 152911 | 3945064 |
| | Value of goods | | Value of goods | |
| | Transferred to | | Transferred to | |
| Grey Purchases | 271968 | 7377700 | Grey Purchases | 544173 14074249 |
| | 424879 | 11139595 | | 699084 18019313 |

In this connection, you are required to reconcile the above discrepancies pointed along with relevant documentary evidences, bills, vouchers etc at 3.00 P.M. on 22-03-2005. Please note that if you fail to reconcile the above discrepancies the appropriate additions will be made without further reference to you as this is time barring assessment.

A formal notice u/s 142(1) is enclosed herewith."

4. The appellant company replied to the said show cause notice dated 18/03/2005 vide letter dated 22/03/2005 reading as under:

Some of the bills of trading purchases to the extent of 271968 mtrs. Which was consumed for manufacturing purpose was wrongly taken in trading account was corrected by transferring 271968 mtrs valuing Rs. 7377700/- from trading account purchase to Grey purchase account. List of such bills are filed. However transfer was made in quantity account but in presentation effect of such transfer in value was not given. But it would not have any effect on financial results i.e. on profit/ loss account. If you refer Schedule "K" of the audited accounts, if the effect would have been given in value, the Raw Material consumption would have been Rs. 1869013621- + Rs. 7377700 = Rs.

194279062/- and Trading Purchases would in Schedule "L" would be reduced by Rs. 7377700/- i.e. Trading Purchases would have been Rs. 11139595/- - Rs. 7377700/- = Rs. 3761895/-. Hence your honour would appreciate that there is no impact on profit & loss account. Similarly some of the sales bills of manufacturing were posted in Trading Sales. Hence correcting entry is passed in transferring 544173 mtrs valuing Rs. 14074249/-. In sales both trading sales and manufacturing sales are presented in a consolidated figure. Hence such discrepancy is not manifested. List of such 544173 mtrs valuing Rs. 14074249/- is filed. Please note that transfer of purchase mtrs of trading and sales mtrs of trading has no relevance.

We hope the above reconciliation will meet with your requirement.

5. However without appreciating the substance of the reply dated 22/03/2005 that even if the value of Rs. 7377700/- is not transferred from trading account to manufacturing account there would not have any effect on financial results i.e. on profit and loss account, he reduced the loss by Rs. 7377700/-. Even if the effect have been given Schedule "K" of the audited accounts Raw Material consumption would have been Rs. 1869013627- + Rs. 7377700A aggregating Rs. 194279062/-and Trading Purchase in Schedule "L" would be reduced by Rs. 7377700/- i.e. Trading Purchase would have been Rs. 11139595 - Rs. 7377700/- = Rs. 3761895/-. Hence it would be revenue neutral.
6. The addition was made merely on the ground that the audit report does not mention of such transfer of Rs. 271968 mtrs of cloth valuing Rs. 7377700/- and further the assessee has not produced the relevant bills/ concrete evidence/ documents/ proof of passing transfer entries of such goods. As a matter of fact list with bill numbers date and amount was produced.

7. The assessing officer did not realize that if the entries of 271968 mtrs valuing Rs. 7377700/- would have been passed the question would not have arisen of such bonafide mistakes. However same was explained in course of assessment proceedings u/s 143(3).
8. The assessing officer ought to have given substance of such additions by pointing out any source of generation of income in a exciable goods.
9. The appellant filed appeal before Commissioner of Income Tax (Appeal) XI on said additions of Rs. 7377700/- on the grounds that non transfer of entries in respect of 271968 mtrs in value would be revenue neutral and it would not effect profit and loss account as even if the entries would have been passed by Rs. 7377700/- the value of raw material consumption would have increased in Schedule "K" of the audited accounts and the value of Trading Purchased in Schedule "L" would have been reduced by Rs. 7377700/-.
10. The Learned CIT (Appeals) XI while adjudicating the appeal of the appellant appreciated the Grounds of Appeal No 5 vide para 3.1.5 of his order dated 09/11/2005 in Appeal no. CIT (A) XI / 2005-06 by which appellant established that what is stated against 152911 mtrs at Rs. 11139595/- in audit report is merely a mistake and gave his finding in para 3.2 as under:
"I have perused the submissions and details produced before me by the A.R. of the appellant. I have also perused the observations of the assessing officer in the assessment order. After verifying the trading account and P & L A/c. I am of the view that the value of the grey cloth purchased is very much in stock of Rs. 11646747/- which is raw material. However, it is very much in Schedule "K" in purchase of finished goods. It is also seen that because of above

mistake, there is no impact on Profit & Loss Account. Therefore, the addition made is deleted."

11. The Department filed appeal before Income Tax Appellate Tribunal against the order of CIT (Appeals) XI's order dated 09/11/2005 in Appeal No. CIT (A) XI/ 737 2005-06 on following grounds"

"LD CIT (A) XI Ahmedabad has erred in law and on facts in deleting addition of Rs. 7377700/- being made by the A.O. on account of closing stock"

12. Hon'ble Ahmedabad Bench "D" of Income Tax Appellate Tribunal in Appeal No. ITA269/AHD/2006 adjudicated the appeal of the Revenue on 20/11/2009 narrating the contents of the order of assessing officer circle-5 dated 22/03/2005 and held vide para 11 as under:

Having heard both the sides, we have carefully gone through the orders of authorities below and the relevant material placed on record, it is pertinent to note that the bills and vouchers which the A.O. is stated in the assessment order were not examined by the Learned Commissioner of Income Tax (Appeals), it is also not known whether before the Learned Commissioner of Income Tax (Appeals) the assessee has produced copies of accounts showing transfer entries of the goods so that one examine whether it was a case of bonafide mistake. Keeping in view the facts and circumstances of the case. We found considerable force in the submission made by the Id. D.R. that the Learned Commissioner of Income Tax (Appeals) ought to have called the remand report before adjudicating the addition of Rs. 7377700/-. Since this was not done, we set aside the order of Learned Commissioner of Income Tax (Appeals) and restore the matter to the file of A.O. with the direction that the assessee should furnish relevant bills/ vouchers in respect of list, which were

not furnished before the A.O. The assessee is also directed to furnish the copies of accounts showing the transfer entries and also a certificate from the concerned chartered accountant, who had audited the accounts, certifying that this bonafide mistake which was crept in the books of 'accounts, and how this mistake could not be detected while conducting the audit / tax audit of the assessee's accounts. On receipt of these documents, the A.O. will re-adjudicate the addition of Rs. 7377700/- afresh in accordance with law.

13. In order to give effect to ITAT's direction as above the the Deputy Commissioner of Income-Tax, Circle 5 issued to notice vide letter No. DCIT/ Cir-5/142 (1) NMM/10-11 dated 12/10/2010 to furnish following information / details/ documents so as to complete set- aside assessment for the asst. year 2002-03:]

1. Furnish all the bills vouchers and copies of accounts showing transferred entries and a certificate from the Chartered Accountant, as referred to in para 11 of the aforesaid appellate order of Hon'ble ITAT.

14. Accordingly the appellant filed the following before DCIT Circle-5, Ahmedabad

1. The original bills as per list showing quantity of 271968 mtrs valuing Rs. 7377700/- which were verified by DCIT with the list

2. Copies of accounts showing transfer entries in quantity both in Trading Account and Grey Purchase Account was also filed before DCIT showing that quantity of 271968 mtrs was reduced from Trading Account ("F" Purchase) during the year 2001-02 and same was added in Grey Purchase during the year 2001-02

3. Total quantity account of cloth in mtrs was also filed and same was shown tallied as shown in Audit Report in Schedule "P" for F.Y. 2001-02

4. A certificate from concerned chartered accountant who audited the accounts, certifying that this bonafide mistake which was crept in the books of accounts and how this mistake could not be detected while conducting the audit/ tax audit of the assessee's accounts. On receipt of the above the A.O. was directed to re-adjudicate the additions of Rs. 7377700/- afresh in accordance with law.

15. However, despite furnishing the details as directed by Hon'ble ITAT Bench "D" the learned DCIT, Circle-5 reduced the loss of Rs. 7377700/- from the loss returned by the assessee at Rs. 1,85,06,246/- without appreciating the following facts on record mentioned in the order of CIT (Appeals) XVI dated 09/11/2005 copy filed vide Annexure.

| i. Para | Total quantity | Rs. | Rate per Mtrs. |
|--|---|--|---|
| Rs. 3.1.5 | Purchased on Trading A/c in mtr | | |
| Total quantity Of Grey Cloth In Trading A/c Less: Transferred To mfg A/c entry Passed in quantity But not in value | 424879 Mtrs 271968 Mtrs. | Rs. 11139595 Rs. 73777000 | Rs. 26.22 Rs. 27.12 |
| Balance Left in Trading A/c In Accounts only Gross value shown but in quantity net Value shown | 152911 Mtrs. 152911 Mtrs. | Rs. 3761895 Rs. 11139595/- | Rs. 24.60 Rs/72.98 per (X) |
| Which is impossible as grey cloth cannot be of Rs. 72.98 per mtrs. | | | |
| Total quantity Sold on Trading A/c | Mtrs 699084 | Rs. 18019313 | Rs. 25.77 per mtr |

| | | | |
|--------------------|---------------|----------|---------------|
| Sold | <u>152911</u> | 3945064 | 25.79 per mtr |
| Transferred to mfg | 54417 | 14074249 | 25.86 per mtr |

Sales

3.1.6. ultimately there is no impact on P& L A/c. It is also pointed out that the cloth rate was arrived at Rs. 72.98 was wrong. The quantity of cloth of 271968, if included to 152911 mtrs the value per metre would be Rs. 26.22 Ps.

3.2 "I have perused the submission and the details produced before me by the A.R. of the appellant. I have also perused the observations of the assessing officer in the assessment order. After verifying the trading account and P & L A/c. I am of the view that the value of the grey cloth purchased is very much in stock of Rs. 11646747/- instead of purchases. The cloth value of Rs. 73777001- should have been added to Rs. 185542976/- which is raw material. However, it is very much in Schedule "K" in finished goods. It is also seen that because of above mistake, there is no impact on Profit & Loss Account. But ld. A.O. was not agreed with the contention of the assessee and made addition of Rs. 73,77,700/- on account of variation in purchase of cloth.

16. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) and ld. CIT(A) granted relief to the appellant.

17. Now revenue has come before us against the order of ld. CIT(A).

18. We have gone through the relevant record and impugned order. In this case, during the current year the appellant had transferred the stock of 271968 mtr of grey cloth from trading account to manufacturing account of raw materials for consumption. The mistake that has occurred is that while transferring the grey cloth from trading purchase account to raw materials consumption account, the value in monetary terms was not transferred. In effect the raw

materials for real consumption account was understated in monetary terms by a figure of Rs. 73,77,7007-whereas the purchase of finished goods, while correct quantitatively, was overstated in monetary terms by an amount of Rs.73,77,700/-. The raw material consumption purchases have been grouped under schedule K and the purchase of finished goods under trading purchases have been grouped under schedule L. Both these schedules find place on the debit side of the profit and loss account. Therefore, overstating one schedule by certain amount and understating another schedule by the matching amount will not alter the figure of total expenses claimed or debited in the profit and loss account. It is not the case of the assessing officer that the purchases booked by the appellant under trading purchase are bogus or that the raw material consumption for manufacturing is excessive when considered quantitatively.

19. The mistake of transferring the quantity from purchase to consumption without giving a matching effect in monetary terms is a bona fide mistake. Since increase in trading purchases and the reduction in amount of raw materials consumption is occurring on the debit side of the profit and loss account therefore it does not have any cascading effect on the overall expenses claimed or debited in profit and loss account and therefore this mistake, in our considered opinion, is a bona fide and there is no loss to the revenue.
20. In a case, if any bona fide mistake is being committed by an assessee and there is no loss to the revenue . In that case, in our considered opinion, addition cannot be made. Therefore, we hold that Id. CIT(A) has passed reasoned and detailed order and it does not require any kind of interference at our end. Therefore, appeal of the Revenue is dismissed.

21. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 24- 04- 2019

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 24/04/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad