

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2235/Del/2015
(Assessment Year: 2010-11)

Amit Marbles Pvt. Ltd, Khasra No. 5, Near Choudhry Ram Ratan Estate & Co, Fatehpur, Delhi PAN: AABCA3515C	Vs.	ACIT, Circle-1(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Mahendra Dadu, CA Shri Pankaj Dadu, CA
Revenue by:	Shri S. N. Pandey, Sr. DR
Date of Hearing	15/05/2019
Date of pronouncement	17/05/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals) – 1, New Delhi dated 27/1/2015 for assessment year 2010 – 11.
2. The assessee has raised the following grounds of appeal:-
 - “1. *The learned Assessing Officer, Circle-1(1), New Delhi has erred in making additions on account of difference in stock of Rs. 1,21,66,083/- and Rs. 4,65,146/- on account of undisclosed cash without going into the facts of case and without providing due opportunity.*
 2. *Aggrieved by the Income Tax Assessment order, the assessee filed an appeal before the ld CIT(A)-I, New Delhi. It has stated that M/s. Amit Granites & Marbles also operates from the said premises and the cash of Rs. 4,65,146/- & Stock of Rs. 1,21,66,083/- belonged to M/s. Amit Granites & Marbles but inspite of submission of necessary documents, learned Commissioner of Income-tax (A)-I, New Delhi did not allow the appeal but dismissed the said appeal without going into the depth and facts of the case.*

3. *The said additions may please be ordered to be deleted.*”

3. Brief facts of the case shows that assessee is a company deriving income from the business of trading in marbles and granites. It filed its return of income on 15/10/2010 declaring income of INR 5300710/-. The assessment u/s 143 (3) of The Income Tax Act, 1961 (The Act) was passed on 30/3/2013 determining total income of INR 17931940/-. During the year the survey operation u/s 133A of the income tax act was carried out on 8/1/2010 at the business premises of the assessee company. During the course of survey operation, physical verification of stock was taken and there was a difference in stock amounting to INR 20107380/- and excess case of INR 4 65146/- which was found to be not recorded in the books of accounts. The statement of the director of the company was recorded during the course of the survey. In the statement of the Director, a question was asked showing that stock lying at the premises is approximately INR 80,000,000 and further as per the trading account provided by the assessee as on 5/1/2000 and the closing stock was shown at INR 7 8486047/-. The physical verification of the inventory was conducted which was founded INR 9 8593427/- and therefore there was a difference of INR 20107380/- was found. In answer to the above question director of the assessee submitted that closing stock difference to the tune of INR 2 0107380/- was on account of unrecorded purchase out of the books of accounts which was in excess and over and above from record the regular income of the assessee. Therefore he offered INR 20107380 for taxation.
4. During the course of assessment proceedings the learned assessing officer issued a show cause notice dated 18/2/2013 to show why the difference in stock may not be added to the taxable

income. The assessee submitted that statement of the director of assessee shows that on the date he is also a partner in another partnership firm M/s Amit Garnies and Marbles. It was submitted that assessee has submitted a complete reconciliation of the difference in the stock of INR 20107380/- on that date explaining that difference in the stock surrendered in the financial statement for assessment year 2010 – 11 is Rs. 2382947/-, totalling error and rate as per the documents submitted by the assessee before the assessing officer is of Rs. 5558350/- and stock of Amit Granites and Marbes as on 8/1/2010 is of INR 12166083.98. Therefore, there is a complete reconciliation available of INR 20107380.98 and hence there is no further undisclosed income. The learned assessing officer verified the explanation submitted by the assessee. The learned AO accepted the explanation of the assessee about the totaling error and rate adjustment as per the documents submitted by the assessee of Rs. 5558350/-. The learned assessing officer further noted that stock difference in stock of INR 2382947 has already been declared in the return of income by the assessee. Therefore these 2 differences were accepted by the learned assessing officer. However with respect to the difference in stock of INR 12166083/- which was stated to be belonging to the stock of Amit Granites and Marbles , which is another partnership firm carrying on its business from the same premises, and the stock of the partnership firm was also lying at the same premises, was not accepted. The main reason for making the addition was that the director of the assessee offered the above amount for taxation and further the director of the assessee was also the partner of the same firm but did not state that the

stock belongs to that firm, but the same has not been expressed clearly while giving the statement by the director that no such stock belongs to other concern. Therefore the learned assessing officer recorded that this is an afterthought of the assessee which is not acceptable particularly when at one stage he says that he is the partner in the other concern which he remembers at the time of giving of the statement but he did not disclose that the part of the inventory also belongs to the partnership firm. He further noted that the authorised representative of the assessee company has failed to produce any corroborative evidence regarding justification for the stock of Amit Granite and Marbles found lying in the business premises of the assessee belonging to the partnership firm. Accordingly the addition of INR 12166083/- was made.

5. Aggrieved, assessee preferred an appeal before the learned CIT – A. Before him the assessee reiterated the same submission. The learned CIT – A rejected the contention of the assessee vide para number 5.2.1 of the order. He held that the director in the appellant company has nowhere mentioned in his statement that the stock belongs to its sister concern. He further stated that even during assessment proceedings no documentary evidences were submitted to substantiate the above contention that excess stock belongs to the sister concern. Accordingly he also held that explanation of the assessee is an afterthought. Therefore assessee is aggrieved, has preferred the appeal before us.
6. The learned authorised representative submitted that Amit Granite and Marbles is a sister concern of the assessee company which also operates from same premises for a long time. During the course of assessment proceedings the assessee submitted

that an amount of INR 12166083.98 is a stock belonging to that Concern and not of the assessee as on 8/1/2010. The assessee also submitted and supported the evidences by the copies of purchase and sale bill of that firm, copies of the VAT returns and the copy of trading and profit and loss account of that particular firm. Assessee also submitted a proof that Amit Granites and Marbles is also situated at the same place but the learned AO has disregarded those documents. He further submitted the copies of the income tax returns of the partnership firm for last several years till to date which shows the gross profit ratio of 12% – 13% and the closing stock every year. He submitted that the stock and the books of accounts of the assessee as well as the partnership firm were accepted by the income tax department. He therefore stated that when the assessee has submitted the complete set of the annual accounts of the partnership firm along with the copies of purchase bills, copies of the bank statements showing purchase and sale transaction as well as the copies of the income tax returns of the partnership firm, the balance sheet of the company as well as the partnership firm showing that there is a stock lying in the books of accounts of the partnership firm, lower authorities should have accepted the same. He further stated that during the course of the assessment proceedings the assessee submitted the complete reconciliation of the purchase and sale of its accounts and closing stock of the Assessee Company and also full purchase and sales of the material along with the value of closing stock of the partnership firm as on the date of survey. Therefore he submitted that the lower authorities have grossly erred in not appreciating contention of the assessee and has not granted the

credit of the closing stock found during the course of survey which is belonging to the partnership firm. He further stated that director of the company though could not reconcile and recollect at the time of survey that the stock of the partnership firm is also included in the physical verification and therefore in anxiety he has forgot to mention so. He further stated that merely because the director could not mention the stock pertaining to the partnership firm, subsequently when the complete reconciliation is provided, the addition cannot be made in the hands of the assessee.

7. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that during the course of survey the assessee was specifically asked to explain the difference between the closing stock in the physical stock found. During the course of statement the director of the company did not mention that part of the stock is belonging to the partnership firm and not to the assessee company, therefore, the lower authorities have clearly held, and rightly so, that it is merely an afterthought.
8. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly during the course of survey the excess stock was found then what was recorded in the books of accounts amounting to INR 20107380/-. The assessee could reconcile the difference in the stock on account of totaling error and the rate difference amounting to Rs. 5558350/-. The balance difference in the stock was surrendered for assessment year 2010 – 11 of INR 2382947. These 2 items of the adjustment were undisputed on either side. However the only dispute is with respect to the stock of INR 12166083/-

which is pertaining to the stock of Amit Granite and marble which is another partnership firm maintaining stock in the same premises on which survey took place. The assessee supported the argument that the stock belongs to the partnership firm and not to the assessee by submitting the

- a. copy of the purchase and sales bill
- b. annual accounts of the partnership firm
- c. Income tax Returns
- d. VAT Returns
- e. Stock details

It is further stated that Amit Granite and Marbles is continuously assessed to income tax as well as under VAT laws. Therefore, Merely because the assessee has made a statement and found later on that there is an error and there is a stock lying at the premises belonging to another assessee, a partnership firm and not of the assessee company, without examining the complete facts about the argument of the assessee which is heavily supported by the evidences, there is no reason to make an addition. Before us, assessee has submitted the audited accounts of the partnership firm placed at page number 14 – 21 of the paper book. As on 31/3/2009 the partnership firm was having a closing stock of INR 12658039/- and sales of Rs. 13250138 and purchases of INR 1 4168630/-. The partnership firm was also having the opening stock of Rs. 9216614/-. These annual account shows that the sister concern of the assessee was also having these closing stock available at the same premises. The learned AO as well as the learned CIT – A did not controvert the fact that both assessee as well as the partnership firm is existing at the same place. Both the lower authorities

have rejected the contention of the assessee for the simple reason that they have considered the explanation of the assessee as an afterthought. However, merely on the presumption that it is an afterthought, overwhelming evidences produced by the assessee with respect to the partnership firm in the form of purchase and sales bills, the annual accounts, sales tax returns, income tax returns as well as the stock details, the addition cannot be made. However it is also the duty of the assessee to show before the assessing officer about the quantity of the stock as well as the valuation of those stock which is belonging to the sister concern. Undoubtedly heavy burden lies on the assessee to show the availability of the stock at the premises pertaining to not the assessee but to the partnership firm. The lower authorities have not examined the purchase and sales invoices as well as the evidences produced by the assessee but have merely brushed aside the same. Same is the case with respect to the cash found of INR 4 65146/- which is also claimed to be belonging to the sister concern. In view of this, we set aside the whole issue of the amount of addition of INR 1 2166083/- with respect to the undisclosed stock available during the course of survey and cash found of INR 4 65146/-, which is claimed to be belonging to another sister concern, to the file of the learned assessing officer for fresh examination. The assessee is directed to substantiate its claim before the assessing officer to the satisfaction of the AO. AO may examine those details and grant proper opportunity to the assessee to substantiate its claim. Thereafter he may decide the issue afresh. Same is the case with respect to the cash found of INR 4 65146/-. In the result the solitary ground of appeal is set aside to the file of the learned assessing officer.

9. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17/05/2019.

-Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 17/05/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	