

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No. 5798/Del/2015
Assessment Year: 2010-11**

**Summit India,
Z-48, Okhla Industrial Area,
Phase-II, New Delhi.
PAN AANFS4306C**

**vs ACIT, Circle-28(1),
New Delhi.**

(Appellant)

(Respondent)

**Appellant by: ShriSatyenSethi, Advocate
Shri Arta Trana Panda, Advocate
Respondent by: Shri N.K. Bansal, Sr. DR**

**Date of hearing: 9/7/2019
Date of order : 23/7/2019**

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 31.8.2015 in Appeal No.30/13-14 for the Assessment Year 2010-11 passed by the Commissioner of Income-tax (Appeals)-10, New Delhi {"Id, CIT(A)}, assessee preferred this appeal.

2. Briefly stated facts are that the assessee is a partnership firm engaged in manufacturing and export of garments to various companies in USA, Europe and other countries. The firm consists of

five partners, namely, Shri O.P. Sawhney (25% share), Shri Rohit Sawhney (25% share), Smt. Sheel Sawhney (20% share), Smt. Rachna Sawhney (20% share) and PNG Marketing & Management P. Ltd. (10% share). During the year under consideration, a survey was conducted at the business premises of the assessee on 12.11.2009. During the course of survey proceedings, the statement of Shri Rohit Sawhney, partner of the firm was recorded on oath and with regard to the difference in stock as per books and stock found during survey proceedings of Rs.1.50 crores as his additional income.

3. Assessee filed the return of income on 21.9.2010 for the Asstt. Year 2010-11 declaring an income of Rs.11,75,82,010/- and the Id. AO found that the assessee had not declared the sum of Rs.1.5 crores offered at the time of survey. On being asked, assessee stated that the garments manufactured run into hundreds of different designs; that though the stock records are maintained, yet identifying the exact consumption to the final products is impossible as the consumption of fabric payment of labour differ from design to design; that, however, the complete details of purchases in terms of quantity and consumption are maintained; that at the time of survey, the physical verification of stock continued for more than 12 hours and final tally was made around 12 PM at night; that as estimated trading account was made by the assessee on estimated figures taking GP rate of closing stock was calculated on the basis of last year GP rate of 21.82% and approximate value of the garment/stock in hand was taken; that this estimated trading account gave an

impression that actual stocks were in excess by about Rs.1.5 crore which amount assessee considering it as his income, agreed to pay tax on the same; and that, however, everything was only an estimate and not that our actual stock was more than as shown by the books of accounts.

4. Assessee further stated that after the survey they checked their figures and found that the selling price of finished garments at average of Rs.320/- per piece was taken whereas the actual average sale price was only Rs.270/- per piece; that, similarly, for semi-finished items the value at Rs.295/- per piece was taken whereas the actual price was about Rs.245/- per piece; that if these correct figures were taken at the time of survey, the physical stock should have been Rs.4.96 crores after adjustment of our margin of GP rate @ 21%; and that a statement showing the closing stock as per the correct sale price is enclosed with the supporting documents to show that the average selling rate was Rs.270 per piece in the case of finished goods and not Rs.320 per piece which was taken in estimated stock/inventory prepared at the time of survey.

5. Assessee, therefore, stated that there was no excess physical stock at the time of survey and since the entire question revolves around the variation of stocks, the sales prior and subsequent to the survey and also the figures relating to the entire year do not justify the valuation of the stock @ Rs.320 per piece and if the profit is

taken into account the value of the stock will be much less than Rs.270 per piece.

6. Further, assertion of the assessee is that in view of their offering Rs.1.5 crores as additional income, they have valued their closing stock at the end of the year by taking into consideration the GP rate of 25.02% of the turnover as against 21.82% in the immediately preceding year, which gave the figure of Rs.2.61 crores which subsumes Rs.1.5 crores offered by them at the time of survey.

7. Learned LD. AO rejected these contentions of the assessee on four grounds, -

- (i) that the valuation was done with the help of the skilled workers of the assessee in the presence of a partner of the assessee partnership firm;
- (ii) that the figure of cost or market price, whichever is lower, adopted by the assessee, cannot be verified;
- (iii) that the average sale rate of 213711 pieces were submitted by the assessee as against 100027 pieces appearing in the inventory; and
- (iv) that the assessee had sold certain pieces of finished stocks at varying prices i.e. Rs.139, Rs.180/- and Rs.328/- per piece respectively to the same party and, therefore, wide variation in sale price was only made to reconcile the figures of closing stock as on the date of survey.

Learned AO, therefore, on the above premise, added Rs.1.5 crores on account of difference in valuation of stock.

8. Assessee preferred an appeal to the CIT(A). It was submitted before the Id. CIT(A) that the grounds on which the Id. AO rejected the contentions of the assessee are not firmly based on facts. Assessee submitted that the Ld. AO had taken the plea that the stock was valued with the help of the skilled labours but the skilled labours are not experts in valuation of the stock or with the nuances in the foreign exchange differences and preparation of the closing stock for the purpose of balance sheet etc. They are skilled only in manufacturing, but not in finance and accounting so that taking their opinion does not give correct figures of valuation.

9. It was further submitted by the assessee that they have submitted the invoices showing the average sale price of the garments as Rs.275.62 per piece prior to the survey i.e. from 1.4.2009 to 11.11.2009, Rs.282.88 per piece from 11.12.2009 to 31.3.2010 and Rs.279.53 per piece for the entire financial year. Basing on this, the assessee submitted that the average selling price of the garments per piece was at best Rs.279.53 per piece and if GP rate of 21% or 25%, as the case may be, is considered, it would be much much less. Assessee, therefore, contended that the value of the garment per piece at Rs.320/- is far from reality.

10. Further contention of the assessee was that the total sold pieces of 213711 represents the sale of garment from 13.11.09 to

30.11.2009 also which were parts of physical inventory of garments at the time of survey and there was a stock of unfinished items to the tune of 49351 pieces.

11. In respect of the observation of the Id. AO that there was variance in the price of the garment pieces sold to the same party ranging between Rs.139 to Rs.328, the assessee submitted before the Id. CIT(A) that in garment industry per piece cost and selling price depends upon size, design and style and when these were followed, the cost cannot remain constant and there are thousands of models basing on the variation of size, design and style and that is the reason why the average cost of the piece is taken.

12. Ld. CIT(A) rejected the contentions of the assessee. According to him, the addition was made not because of the survey u/s 133A of the Act on 12.11.2009 at the business premises of the assessee, but stock inventory was prepared with the help of the staff of the assessee in the presence of one Shri Rohit Sawhney, one of the partners of the assessee, who offered Rs.1.5 crores as additional income. Never before the notice dated 21.3.2013, the assessee came forward with the discrepancy in the valuation of the stock and their figures and since the retraction of the statement was made, long after the offering of the additional income, it cannot be accepted. Ld. CIT(A) referred to the date of survey as 12.11.2009, payment of tax on the additional income on 17.11.2009 and filing of the return on 21.9.2010. Ld. CIT(A) placed reliance on certain decisions to say that

retractment of an admission had to be done in time and if it is not so done, it shall affect the final results.

13. Ld. CIT(A) further observed that since the valuation of the stock was done with the help of the skilled workers of the assessee, the issue of accuracy of stock raised at the first appellate stage will in no way help the assessee. Lastly, ld. CIT(A) observed that the GP rate earned during the year at the end of the year has nothing to do with the outcome of survey and as a matter of fact, even in the past, it was noticed that the GP of the assessee's business was fluctuating between 21.82% to 24.81% in 2008-09 and 2007-08 respectively. Ld. CIT(A) placed reliance on the decisions reported in *Bachittar Singh vs. CIT (2010) 328 ITR 400 (P&H)* and *CIT Raj Hans towers (P) Ltd vs. CIT (2015) 373 ITR 9 (Delhi)* on the aspect of making addition on the basis of retracted statement.

14. With the above observations, ld. CIT(A) confirmed the addition and dismissed the appeal. Assessee is, therefore, in this appeal challenging the same on the ground that in respect of the documentary evidence, decided cases and in the absence of any scientific basis for the valuation of the stock on the date of survey, which has never been the selling price of the assessee, rejection of the contentions by the CIT(A) require interference by this Tribunal.

15. It is the submission on behalf of the assessee that without there being any scientific basis, the survey team valued the stock at Rs.320/- per piece and their basing it on the opinion of the skilled

workers cannot give any credibility to valuation because the expertise of the workers is only in manufacturing process but not in valuation of the stock keeping in view of the foreign exchange fluctuation and for the purposes of balance sheet and profit and loss account. He further submitted that the statement of the partner clearly shows that the approximate valuation by the assessee basing on the past GP rate apply to the sales, they valued the stock at Rs.5 crores but the valuation of the stock at Rs.6.5 crores by the survey team gave an impression that there was excess stock necessitating the surrender at 12 midnight at which time it was impossible to find the cost or market value of the entire stock worth crores. He clearly submitted that the assessee is a 100% export oriented unit and all the sales are recorded. The invoices for the period prior to the survey, subsequent to the survey and for the entire financial year have unmistakably pointed out the sale price of the garments per piece at much lower than the valuation done by the survey team. According to them, the highest average per piece was Rs.282.88 and if we consider the GP at 21%, it is much much lower than the same.

16. Learned DR submitted that no stock registers were maintained by the assessee and none was produced before the survey team. Further, if there is any error committed by the staff of the assessee in valuing the stock, one of the partners of the assessee could have stated then and there about the same. Further, the selling of the agreements at different prices ranging from Rs.328 to Rs.139 suggest that only to reconcile the figures, the assessee had fabricated the

invoices. He heavily relied upon the orders of the authorities below and prayed to dismiss the appeal.

17. We have gone through the record. Facts are simple. There was a survey on 9.10.2011 on the premises of the assessee and the survey team valued the stock as below:

Particulars	Value per piece	Total
Finished goods – 49351 pieces (5265+2295+675+40576)	320	1,57,92,320
Consumable accessories		10,40,217
Semi finished – 100027 pieces	295	2,95,07,965
Fabric – 438959.83 mts	30	1,31,68,794
Fabric – 97098 mts	40	38,83,920
Cut fabric – 44261 mts	37	16,37,657
Total		6.50.30,874

According to the partner of the assessee, the approximate value of the stock based on the past GP rate has applied to the sales was Rs.5 crores. Therefore, there arose the difference of Rs.1.5 crores, which was offered as additional income.

18. Subsequently, when the notice dated 21.3.2013 was issued calling upon the assessee to explain as to why they included Rs.5.18 crores in the return of income, it is clearly stated by the assessee, according to their valuation, the value of the stock was only Rs.5 crores. Assessee furnished the valuation as under:

Particulars	Value per piece	Total	
Finished goods – 49351	270	1,33,24,770	Disputed

pieces (5265+2295+675+40576)	(appx.s ale price)		
Consumable accessories		10,40,217	No dispute
Semi finished – 100027 pieces	245	2,45,06,615	Disputed
Fabric – 438959.83 mts	30	1,31,68,794	No dispute
Fabric – 97098 mts	40	38,83,920	No dispute
Cut fabric – 44261 mts	37	16,37,657	No dispute
Total		5,75,61,973	
Less: Gross profit @ 21% on 1,33,24,770 +2,45,06,615		79,44,590	
Net Value		4,96,17,383	

19. A perusal of the above two tables, one prepared by the department and the other prepared by the assessee, clearly show that there is no difference in the counting of the closing stock. There were 49351 finished goods; 100027 semi finished goods, 438989.83 Mts and 97098 Mts of fabric and 44261 Mts of cut fabric. Insofar these measurable parameters are concerned, there is no difference between the assessee and the department. Further, there is no difference between the assessee and the department in respect of the valuation relating to the consumable accessories, fabric and cut fabric. The only difference is in respect of the value of 49357 pieces of finished goods and 1000027 pieces of semi finished goods.

20. It is, therefore, clear that it is only the question of valuation but not the excess or suppressed stock. According to the assessee,

though they are maintaining the stock records, identification of the exact consumption of the final goods was impossible as the consumption of fabric, payment to labour differ from design to design which run into hundreds of designs. It has to be kept in mind that there is no discrepancy in respect of the consumption of fabric.

21. We, therefore, now proceed to address the question as to at what rates finished and semi finished goods should have been valued. Firstly, the contention of the revenue is that while valuing the finished and semi finished goods, they have taken the help of the skilled workers and that is why they estimated the value of finished goods at Rs.320 per piece and semi finished goods at Rs.295 per piece which, according to the assessee, are Rs.290/- and Rs.245/- respectively. Assessee produced voluminous invoices and vouchers. It is also available for the department to know the price of the finished goods sold in the market in the immediately preceding year. It is not the case of the revenue that at any point of time prior to the survey, the average per piece valuation of the garments sold by the assessee was at any rate nearer to Rs.320 per piece. The average price of the garments was Rs.279.53 for the entire financial year and it was Rs.275.62 per piece for the period between 1.4.2009 and 11.11.2009, which is the date of survey. There is no reason for us to disbelieve the statement of the assessee, based on invoices, that post survey for the period between 13.11.2009 and 31.3.2010, the average selling price was Rs.282.88 per piece.

22. It is not in dispute that the assessee has been manufacturing the garments which they are vastly different in designs and it can't be said that irrespective of the variance in the size, design and style of the garments must be valued at a particular specified price. The variation in the size, design and style reflects in the consumption of fabrics and the labour charges which go without saying that will find a reflection in the sale price also. It seems Id. AO has missed this vital point while rejecting the contention of the assessee that it is possible in garment industry to sell a particular piece to same party at Rs.139 per piece and another piece at Rs.328/-.

23. Having recorded the nature of business and also to the probability of variance in the selling price of different pieces of garments, we are inclined to believe that at no point of time, the average selling price of the garment had ever reached Rs.320 per piece.

24. It has been the contention of the assessee that in their books of account they were entering the value of the closing stock by applying past GP rate as applied to the sales and in that exercise the value of the stock was estimated at Rs.5 crores. There is no basis for the revenue to value the stock at Rs.320 per piece and Rs.295 per piece in respect of the finished and semi finished goods. We, therefore, reject the contention of the Revenue that since the valuation was done with the help of the skilled workers, it must be accepted. We have to take into consideration - in what field they are

skilled - whether in manufacturing or valuation taking into account the foreign exchange rate and the purpose of valuation for balance sheet and profit and loss account. Such a valuation done with the help of the skilled workers cannot be a basis to go against the other evidence of the recorded transactions.

25. Except the so-called surrender by the partner of the assessee, there is no other material available on record to support the contention of the revenue and, therefore, we are unable to accept the valuation done by the department as against the record available on this aspect.

26. Ld. AR submitted that the decisions relied upon by the Ld. CIT(A) have no application to the facts of the case inasmuch as in the case of Bachittarsingh (supra) it was observed that the assessee failed to produce books of account or any other authentic contemporaneous evidence of the agricultural income; whereas in the case of Raj Hans towers (supra) there was material de hors the statement to make the addition. Assessee placed reliance on the decisions of Agra Bench of the Tribunal in the case of ACIT vs Maya Trading Co (2013) 34 taxmann.com 144 (Agra-Trib) and DCIT vs Bansal credits Ltd (2016) 74 taxmann.com 224 (Delhi-Trib) for the principle that where the assessee company furnishing all evidences for genuineness of the claim to show that the admission made during the survey by surrendering income on excesses stock was incorrect,

learned Assessing Officer cannot make addition only on the basis of surrender made during the course of survey.

27. On a careful consideration of the facts and circumstances involved in this matter where of the considered opinion that the evidence produced by the assessee in respect of the valuation of stock as on the date of survey at the rate of per piece was never Rs. 320/-for finished goods and Rs. 295/-for the semi finished goods and the invoices produced by the assessee for the periods prior to the survey, subsequent to the survey and for the entire financial year do not suffer any improbability are inconsistency and they unmistakably show the value of the stock for less than Rs. 270/-per piece in respect of finished goods. We also consider the assessee the taking into consideration the surrender made by them during the course of survey, they have valued the stock at the end of the year by taking the GP rate at 25%, they have shown the excess income at Rs. 2.6 crores which subsumes the Rs. 1.5 crores.

28. Be that as it may, the fact remains that there is no excess of stock in terms of verifiable physical measurements, but the entire dispute revolves around the valuation of the stock. Except basing on the opinion of the labourers are workmen, there is no other material whatsoever available on record to support the valuation done by the Revenue; whereas there is sufficient material to support the contention of the assessee in respect of the valuation. The surrender is not supported by any material whereas the contention of the

assessee supported by material. We therefore having regard to the totality of the circumstances believe the version of the assessee and hold that the addition cannot be sustained. With this perspective, we direct the AO to delete the addition.

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

Order pronounced in the open court on 23rd July, 2019.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMEBR
Dated 23rd July, 2019/VJ

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

By order

Assistant Registrar

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