

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT – RAJKOT BENCH**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकरअपीलसं.ITA No. 431/Rjt/2012

निर्धारणवर्ष/Asstt. Year: 2005-06

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| Vijay Timber Industries Pvt. Ltd. Klapesh S. Doshi & Co. Chartered Accountants 411, Cosmo Complex Mahila College Circle, Rajkot 360001 | Vs. | Addl. CIT Gandhidham Range, Gadhidham |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAA CV7 089 B | | |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

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| Assessee by : | Shri Kalpesh Doshi, AR |
| Revenue by : | M/s. Namita Khurana, Sr. DR |

सुनवाईकीतारीख/Date of Hearing : 16/07/2019

घोषणाकीतारीख/Date of Pronouncement: 30/07/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the assessee for A.Y. 2005-06, arise from order of the CIT(A)-XX, Ahmedabad dated 04.04.2012, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The fact in brief that return of income declaring income of Rs. 10,23,800/- was filed on 21.10.2006. The case was subject to scrutiny. During the course of assessment proceeding the AO has noticed that assessee has failed to deduct tax at source and also defaulted in depositing the TDS in time as prescribed in the Income Tax Act. Therefore, the AO has made disallowance of Rs. 2,03,991/- u/s. 40(a)(ia) of the Act.

3. The assessee filed appeal before the Ld. CIT(A). Ld. CIT(A) has restricted the addition to the extent of Rs. 17,587/- on which the tax was not deducted and other addition was deleted as the TDS amount deducted was deposited before the due date of filing the income tax return in accordance with amendment made by the Finance Act, 2008. The other addition of Rs. 1,16,571/- was made for not deducting as per sec. 195 of the Act on payment of interest income to the non-resident.

4. The third addition was made by the AO was to the amount of Rs. 94,52,468/- on account of under valuation of stock. During assessment the AO has noticed that assessee has shown closing stock at Rs. 10,42,26,955/-, however, the AO has computed the valuation of stock on basis of valuation of material as per FIFO method to the amount of Rs. 10,51,79,423/-. The assessee could not explain the variation in the valuation of stock therefore, difference of stock of Rs. 9,52,468/- was added to the total income of the assessee.

5. The assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee could not controvert the finding of the AO and directed the AO for adopting the revised closing stock as opening stock of succeeding year.

We have heard rival contention and perused the material on record. Regarding first ground of appeal pertaining to disallowance of Rs. 17,587/- on account of non-deduction of tax, it is noticed that the Ld. CIT(A) has deleted all the addition wherein the assessee has furnished evidence of depositing the amount of TDS collected before the due date of filing of income tax return, however, in respect of interest amount of payment of Rs. 17,587/- the assessee has not made any deduction of tax, therefore, the Ld. CIT(A) has restricted the disallowance to the extent of Rs. 17,587/- only.

6. During the course of appellate proceeding before us the assessee could not substantiate with supporting document of any compliance to the TDS provision in respect of the payment of RS. 17,587/-. Therefore, we do not find any substance in this ground of appeal of the assessee. The same is dismissed.

Regarding other disallowance of Rs. 1,16,571/- the Ld. Counsel has brought to our notice that assessee has duly deducted TDS as payment of interest and contended that AO has wrongly disallowed the claim of the assessee. We restore this issue to the file of the AO for deciding afresh after verification of the supporting material to be produced by the assessee in support of its claim that TDS was duly deducted on the payment of interest of Rs. 1,16,571/-. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

7. The third ground of appeal of the assessee is pertained to addition of Rs. 9,52,468/- on account of under valuation of stock.

During the course of assessment the AO has computed the value of closing stock on the basis of material on record according to FIFO method adopted by the assessee and noticed that there was under valuation of stock to the extent of Rs. 9,52,648/- and same was added to the total income of the assessee.

8. The Ld. CIT(A) has sustained the addition as assessee has failed to controvert the finding of the AO and made a request for adopting the closing stock of the year under consideration as opening of the succeeding year.

During the appellate proceeding before us the assessee could not controvert the finding of the AO with any relevant supporting material. In the light of above facts and after taking into consideration the material on record we do not find any error in the decision of the CIT(A). However, the AO is directed to adopt the closing stock computed by him for the year under consideration as opening stock of the succeeding year. Therefore, the alternative plea of the assessee to consider

the closing stock as opening stock has been allowed. Therefore, this ground of appeal of the assessee is partly allowed.

9. In the result, appeal of the assessee is partly allowed.

[Order pronounced in the Court on 30-07-2019]

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER *TRUE COPY*

Ahmedabad; Dated 30/07/2019
TANMAY

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अर्गेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधित आयकर आयुक्त/ Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Rajkot