

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 1112/Mum/2018 (Assessment Year 2010-11)

M/s. Alpha Life Shop No. 63,64,65 Amrit Niwas, 165 K.M. Sharma Marg Lohar Chawl Mumbai-400 002. PAN : AAIFA3819K (Appellant)	Vs.	ITO Ward 18(1)(1) 2 nd Floor Earnest House Nariman Point Mumbai-400021. (Respondent)
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Assessee by	Ms. Dikle Hariya
Department by	Shri Chaitanya Anjaria
Date of Hearing	10.6.2019
Date of Pronouncement	23.8.2019

ORDER

This appeal by the assessee is directed against order of learned CIT-A dated 17/5/17 and pertains to year 2010 -11.

2. Assessee has raised various issues, challenging the validity of reassessment and various other grounds. The assessee is basically aggrieved on two counts

1. ground number 4 : Addition of unexplained investment u/s. 69 of the Act Rs. 40,01,181/-
2. Ground No. 5 : disallowance of remuneration paid to partners u/s. 40(b) Rs. 6,91,303/-

3. Brief facts of the case are that in this case, a survey u/s.133A was conducted on 17.3.2010. During the course of survey, unaccounted income of Rs.40,01,181/- was declared on account of unaccounted stock of goods found and the same had been offered to tax. The assessee is in the business of dealing in electrical goods and fancy lights. During the course of survey, inventory of the stock was taken which showed excess stock to the

tune of Rs.40,01,181/-. The assessee was in possession of this excess stock not recorded in the books of account maintained by it and has admitted in the statement under oath that it declares it as the unaccounted income of the firm for A.Y.2010-11. This was declared as their income over and above the normal income for A.Y.2010-11. Subsequent to the survey, the assessee has included this income in the closing stock and arrived at a net profit of Rs.18,35,639/- which works out to 9.39%. The appellant's GP also shot up to 14.03% as against the regular GP shown at 3.3%. Consequently, the book profit was arrived at Rs.48,75,723/- and remuneration to working partners was worked out at Rs.30,15,434/-. After reducing the remuneration, the net total income was arrived at Rs.18,60,289/-.

4. The AO requested the assessee to produce certain information during the course of assessment. The assessee chose not to comply with the requisition and during the hearings, it specifically informed that it does not want to adduce any evidence or produce books of account, bills or vouchers or any evidence for examination. Therefore, the AO proceeded to complete the assessment u/s, 144 of the IT Act. The AO reduced the amount of Rs.40,01,181/- from the book profit as it is not considered business income of the appellant and reworked the remuneration to partners allowable u/s.40(b) of the I.T. Act. As against the claim made by the assessee to the tune of Rs.30,50,434/-, the re-worked remuneration allowable was Rs.6,91,303/-. He thus made addition of Rs.40,01,181/- u/s.69 of the I.T. Act after reducing the same from book profit.

5. Upon assessee's appeal learned CIT-A confirmed the same.

6. Against above order assessee is in appeal before the ITAT.

7. I have heard both the counsel and perused the records. I note that assessee has done exactly what was found and offered at the time of survey. Excess stock has been included in the closing stock. This has resulted in considerable higher profit. The resultant gross profit is at 14.03% as against

the regular gross profit of 3.3%. The computation of partner's remuneration has also been done correctly on the basis of the resultant increase in profit. Hence no adverse inference can be taken against the assessee for not adhering to the finding of the survey.

8. There is no material with the revenue that excess stock is not related with the business. It is not the case that excess stock found was of a different item than that dealt with by the assessee. Admittedly the survey team had obtained excess stock and assessee's acceptance to the same. Now the assessing officer is taking a totally different stand. He is treated the same as addition u/s. 69 of the Act. The same is wholly arbitrary and whimsical not sustainable in law. The learned CIT-A has also upheld the same without proper application of mind. Accordingly in the background of aforesaid discussion I set aside the orders of authorities below and direct that the addition be deleted.

9. Since the issue on merits has been decided in favour of the assessee the other grounds raised have become academic in nature.

10. In the result appeal by the assessee stands allowed.

Order has been pronounced in the Court on 23.8.2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 23 /8/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai