

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 524/JP/2018
निर्धारण वर्ष/Assessment Year :2012-13

Smt. Ritu Ajmera B-102, Sethi Colony, Jaipur	बनाम Vs.	DCIT, Central Circle-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABHPA3647B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri Varindar Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 26/08/2019
उद्घोषणा की तारीख / Date of Pronouncement: 02/09/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-04, Jaipur dated 01.03.2018 for Assessment Year 2012-13 wherein the assessee has taken the following sole ground of appeal:-

"1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 2,17,260/- by applying g.p rate of 6.39% on alleged short stock of Rs. 34 lacs (instead of Rs. 32 lacs)."

2. Briefly stated, the facts of the case are that the assessee is in business of trading of pharmaceutical items both on wholesale as well as retail basis. The assessee filed her return of income on 28.9.2012 declaring total income at Rs. 8,70,320/- and the Assessing officer completed the

assessment u/s 143(3) r.w.s. 153B(b) of the Act vide order dated 13.3.2014 at a total income of Rs. 11,67,580/-.

3. During the course of survey u/s 133A conducted at the business premises of the assessee on 8.6.2011, stock was physically counted and valued by the survey team at Rs. 1,10,87,117/-, however, the survey team did not work out the stock as per books as on the date of survey. During the course of assessment proceedings, the assessee was asked to submit book stock as on 8.6.2011 and explain the difference between the stock found and book stock. The A/R of the assessee desired copies of stock inventories for verification which was provided to him. Vide reply dated 17.10.2013, the A/R submitted that book stock as on the date of survey was Rs. 19,97,54,11/-. For value of stock found and valued by the survey team, the A/R submitted that inventories were not properly valued and totalled. He pointed out various defects in the stock inventories prepared by the survey team. Specifically he pointed out that valuation was done on the basis of MRP instead of actual cost price, various items in the inventory left without any valuation and many items of high value were counted and valued on lump sum/estimate basis rack wise instead of actual counting and correct valuation. The A/R furnished the assessee's own working of valuation of physical stock found at Rs 1,67,75,411 as against the book stock of Rs 1,99,71,757. The A/R was again asked to justify the difference in stock and why the short stock may not be treated as undisclosed sales and profit may be estimated accordingly.

4. The A/R of the assessee replied, vide letter dated 25.11.2013, that there was no shortage of stock. In fact, stock taking was grossly defective as the inventory was taken on estimation without properly counting all the items, valuation was made on the basis of MRP which is more than the real

cost price and the difference ranges from 10% to 70% depending on item to item. The calculation/valuation of stock was made in letter dated 17.10.2013 on the basis of 25% difference and if this difference is taken at 15% there would be only a nominal difference in the stock. The A/R thus requested that no addition is justified on this issue.

5. The claim of the A/R was considered by the Assessing officer but not found convincing in its entirety. As per Assessing officer, it is correct that valuation was got done on the basis of MRP and also various items were counted on the basis of estimation of items rack wise, but all these defects must have been pointed out by the assessee at the time of survey itself. Moreover, the A/R of the assessee himself has valued the stock inventory as per his convenience in his letter dated 17.10.2013 and if the difference is there, it was required to be explained with specific instances but he has failed to do so. Under such circumstances, the claim/argument of the A/R was not accepted and gross profit on short stock of Rs 34 Lacs is estimated at current GP rate of 6.39% and an addition of Rs 217,260 was made in hands of the assessee.

6. On appeal, the Id CIT(A) has upheld the findings of the Assessing officer stating that the valuation of stock was done by the assessee herself in presence of two independent witnesses.

7. During the course of hearing, the Id. AR reiterated the submissions made before the lower authorities and our reference was drawn to the submission dated 17.10.2013 filed during the course of assessment proceedings, wherein it was stated as under:-

"22. During course of survey physical stock was counted by the survey team. The list of stock prepared by the survey team suffers from many shortcomings as mentioned below:-

(a) At some place rack wise stock has been taken instead of item wise stock. For example at page 38 item no. 343 has been taken as misc item wooden rack. Similarly at page 55 & 56 item no. 50 to 70 has been taken rack wise as 'mix item' and value has been mentioned as estimated. There are number of items in the rack. Thus rack wise stock taking is totally incorrect. It should have been done on the basis of quantity of each item.

(b) Rate mentioned in the list prepared by survey team is MRP of item. This fact is mentioned on the list itself.

(c) Against many items, the rate is mentioned but the value has not been calculated.

(d) There is mistake in totaling of the pages of inventory prepared by department.

Inspite of these shortcomings and incorrect stock taking, if the inventory list prepared by the survey team is valued (on the basis of MRP mentioned in the list) and totaled correctly, the total value of inventory comes to Rs. 2,23,67,214/-. Item wise calculation of value and page wise total made by us is enclosed.

As mentioned above the survey team has mentioned MRP of the item in the inventory list prepared by them. We have carried out an exercise in respect of around 100 items wherein their MRP (as taken in the inventory list prepared at the time of survey) is compared with the purchase price of such item. Such list along with copy of purchase bills is enclosed. Variation between the MRP and the purchases price ranges between 15% to 68%. On an average, 25% of the value worked out on MRP is reduced then the cost of stock physically found in survey works out to Rs. 1,67,75,411/-. As against this the book

stock as on the date of survey works out to Rs. 1,99,71,757/- as below:-

Trading Account as on 08.06.2011

<i>Particulars</i>	<i>Amount</i>	<i>Particulars</i>	<i>Amount</i>
<i>Op. Stock 1-4-2011</i>	<i>2,05,67,632</i>	<i>Sales</i>	<i>2,93,84,434</i>
<i>Purchases.</i>	<i>2,69,10,894</i>	<i>Closing Stock</i>	<i>1,99,71,757</i>
		<i>(Balance figure)</i>	
<i>Gross profit applying G.P. rate of 6.39%*</i>	<i>18,77,665</i>		
<i>Total</i>	<i>493,56,191</i>		<i>493,56,191</i>

- *G.P. rate as per trading account as at 31-3-2012 is taken.*

The book stock as per above trading account is more than the value of stock found during survey. The reason for such difference is on account of incorrect stock taking by the survey team as mentioned above.

It may be noted that assessee is distributor of medicines. All the medicines are purchased and sold through bill/voucher. Further the assessee is supplier of mainly A class cancer drugs which are supplied to hospitals and wholesalers/retailers. Total sales are made through bills. Due to large number of items it is not possible to maintain inventory but otherwise there is proper control on the receipt and issue of medicines. The value of stock found in survey is more or less verifiable with that as per books of accounts after considering the defect in valuation as stated above, Thus stock found in survey is fully explained."

8. Per contra, the Id. DR relied on the findings of the lower authorities. It was submitted that the assessee has been provided adequate opportunity by the Assessing officer to explain the difference in stock and where as per the

assessee's own working, the short stock of Rs 34 lacs has been determined by the Assessing officer and on which gross profit rate has been applied, there is no infirmity in the order of the Assessing officer which has rightly been confirmed by the Id CIT(A).

9. We have heard the rival contentions and perused the material available on record. The survey team has valued the physical stock at Rs 1,10,87,117 at the time of survey which was challenged by the assessee during the assessment proceedings. Basis the review of the stock inventory list prepared at the time of survey, the assessee determined the value of inventory at Rs. 2,23,67,214/-(on MRP basis) and taking average difference between the MRP and the cost @ 25%, determined the value of the inventory at Rs 1,67,75,411. Further, the assessee herself determined the stock as per books of accounts as on the date of survey at Rs 1,99,71,757. The Assessing officer, after considering the explanation and submission of the assessee, accepted the value of physical stock at the time of survey at Rs 1,67,75,411 and the stock as per books of accounts as on the date of survey at Rs 1,99,71,757. In other words, the Assessing officer accepted the working and the explanation of the assessee (and has not gone by the valuation carried out by the survey team) and basis the same, where he has held that physical stock is less than the book stock by Rs 34 lacs, which should actually be Rs 31,96,346 (Rs 1,99,71,757 less Rs 1,67,75,411), we donot see any infirmity in the order of the Assessing officer. The argument of the Id AR that instead of 25%, where 15% average variation is taken, there would not have been any difference cannot be accepted for the reason that the assessee was duly provided the opportunity by the Assessing officer to explain the difference and thereafter, even before the Id CIT(A) and before us, no such working is submitted to support the 15% average variation. The physical stock being less than the book stock effectively means out of book sales to the extent of

Rs 31,96,346 and applying gross profit so declared by the assessee @ 6.39%, the addition comes to Rs 204,246 (as against Rs 217,260 determined by the Assessing officer) which is hereby confirmed.

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

Order pronounced in the open court on 02/09/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 02/09/2019.

Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Ritu Ajmera, Jaipur
2. The Respondent – The DCIT, Central Circle-1, Jaipur
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 524/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar