

**आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 6171/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

आयकर अपील सं./ ITA No. 2148/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 3086/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer,

Ward 11(3)(3), Room No. 429, Aayakar  
Bhavan, 4<sup>th</sup> Floor, M.K. Marg, Mumbai-400 020

**PAN – AAACV1373N**

..... Appellant

v/s

M/s Ventura Textiles Ltd.

313, Midas Sahar Plaza, J.B. Nagar, Andheri(E)  
Mumbai-400 053

.....Respondent

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shir Sushil Kumar Poddar, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Deepak Tralshawala, AR

सुनवाई की तारीख / <b>Date of hearing:</b>	28.08.2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	23.09.2019



## आदेश / O R D E R

**महावीर सिंह, न्यायिक सदस्य/**

**PER MAHAVIR SINGH, JM:**

These three appeals by the Revenue are arising out of the different orders of Commissioner of Income Tax (Appeals)-18, Mumbai in Appeal No. CIT(A)-18/IT-54/ITO-11(3)(3)/16-17, CIT(A)-18/IT-7/Addl.cit-8(3)/15-16, CIT(A)-18/IT-118/ACIT-11(3)(2)/15-16 dated 29.05.2017, 04.01.2017, 16.12.2016. The Assessments were framed by the Income Tax Officer, Ward 11(3)(3), Addl. CIT-8(3), Mumbai (in short ACIT/ITO/ AO) for AYs 2013-14, 2011-12, 2012-13 vide dated 28.03.2016, 27.02.2014, 27.02.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of Revenue in ITA No.6171/Mum/2017 for AY 2013-14 is against the order of CIT(A) deleting the addition made by the AO on account of loss of sales of stock as the assessee did not submit any stock statement and the bank considered the stock of the company as Nil. For this Revenue has raised the following two grounds: -

*"1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs.40,35,22,309/- on account of loss of sales without appreciating the fact that the assessee company did not submit any stock statement since December 2008 and therefore the bank considered the stock of the company at nil in absence of any detail filed by the assessee*

*company. As the company did not submit any stock statement, bank did not inspect the stock. Further, the bank stated that there is no record as to the inspection of mortgaged properties i.e. plant and machinery.*

*2. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs.40,35,22,309/- on account of loss of sales appreciating that the stock of Rs.40,68,10,503/- was sold as scrap at Rs.32.88 lakhs benefit of reducing the income of RS.47,91,16,254/- on account of settlement with the banks in respect of the loans borrowed by them. The operandi is nothing but a colourable device to escape payment of taxes as held Supreme Court in MDowell & Co Ltd., vs. CTO.”*

3. Brief facts are that the assessee company is engaged in the manufacturing of cotton grey fabric and made-up items for export and domestic market. The assessee before the AO during the course of assessment proceedings claimed that there was no business activity from December, 2008. The AO noticed from the details of closing stock as on 31.03.2012, taken as outstanding as opening stock as on 01.04.2012 at ₹ 40,68,10,503/- and as against the same scrap sales disclosed by the assessee during the year was ₹ 32,46,632/-. The AO from the profit and loss account extracted the details of opening stock and scrap sales as under: -

Dr		Cr	
Opening Stock	40,68,10,503	Scrap Sale	32,46,632
Employee benefit expenses	2,35,25,546	Interest income	42,562
Interest and finance charges	2,45,557	Closing stock	0
Manufacturing and Operating expenses	5,36,095	Exceptional income	47,77,06,087
Administrative expenses	42,95,808		
Depreciation	3,22,92,578		
Profit	1,46,98,361		

4. The AO noted that the contention of the assessee was that due to Industrial strike and there being no business activity of the assessee since December, 2008, this stock get damaged and thus had to be sold as scrap. He noted that the assessee strangely shown opening stock on 01.04.2012 as goods-stocks-raw materials-finished goods-stores ₹ 40,68,10,503/- but closing stock as on 31.03.2013 was shown as Nil. According to him, the assessee has not disclosed any corresponding sale in the profit and loss account and disclosed scraps sale of ₹ 32,46,632/-. The AO was not convinced with the reply of the assessee and further noted that there is debt restructuring in the case of the assessee and therefore, the loan of working capital provided by the SBI of ₹ 47,91,16,254/- was waved off by the assessee and the assessee set off the same by deliberately claim the sale of opening stock worth ₹ 40.68 crores as scrap sale for an amount of ₹ 32.46 lacs. According to him, this created a fictitious loss of ₹ 40,35,22,309/- and by this loss entry the assessee avoided in paying tax against the exceptional income of capital loan waiver of ₹ 47,91,16,254/-. Therefore, the AO made addition by disallowing the claim of loss of stock amounting to ₹ 40,35,22,309/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) allowed the claim of loss and reversed the finding of the AO by stating that the assessee's factory premises were closed as on 08.12.2008 on

account of strike by workers and factory remained close for close to 4 & ½ years, since, no settlement is being arrived between the assessee and the workers. Due to heavy losses, the assessee has to close the factory and for repaying loan entered into an agreement with banks for one-time settlement in respect of loan borrowed from them. During this period, when factory was closed, the assessee's stock amounting to ₹ 40,68,10,503/- damaged as this is a carry forward stock from earlier years and this year, the stock further destroyed being cotton grey fabric which is a running item and it cannot be put on hold for sale. Ultimately, the assessee has to sale this stock of cotton grey fabric as scrap and he only realized this amount of ₹ 32,46,632/-. The CIT(A) also noted that these damaged stocks was having no commercial value and the same could only be sold as scrap in weight and not by measurement. He noted that the assessee has produced a report from technical expert who also gave his opinion regarding the life of fabric in such conditions. Hence, according to CIT(A), this is a genuine loss and assessee has rightly claimed the same. He allowed the claim of the assessee and reversed the findings of the Assessing Officer. Aggrieved, now Revenue is in appeal before Tribunal.

5. Before us, the learned Counsel for the assessee Shri Deepak Tralshawalla filed paper book containing pages 1 to 290, wherein he first of all took us through the audit report and the books of account including balance sheet and profit and loss account. He drew our attention to audit report, wherein auditor has noted the following facts: -

*“On perusal of audit report, it was seen that the auditor of the assessee S.M. Kapoor & CO. had reported in the annual report/ audit report of the*

*assessee as under in respect of valuation of inventories in note No. F:*

*(1) Raw materials, consumable stores and packing material are valued at cost.*

*(2) Finished goods are valued at sale price less gross margin or cost, whichever is lower.*

*(3) Stock in process is valued at lower of cost or net realizable value.”*

6. The learned Counsel for the assessee stated that as per breakup of this stock, the entire raw material, work-in-progress, finished goods, stores and spares are valued as on 01.04.2012 and as on 31.03.2016 is as under: -

Nature of goods	Value as on 31.03.2016	Value as on 01.04.2012
Raw Materials	0	75,00,858
Work in progress	0	31,81,81,318
Finished Goods	0	7,37,94,357
Stores and Spares	0	73,33,970
Total	0	40,68,10,503

7. He argued that the valuation of stock have been done primarily on the basis of cost or no realizable value whichever is less and in that eventuality the stock was valued at ₹ 40,68,10,503/- as on 01.04.2012. He narrated the facts that the assessee is a listed company on the Bombay Stock Exchange and all the transactions are at arm's length and subject to public scrutiny. The assessee's factory had closed on 08.12.2008 on account of illegal strike by the workers. During the assessment year 2013-14, the Company entered into a settlement with all the workers and consequently the factory was re-opened, however, prior to this date the assessee was not allowed to enter the factory

premises. During the period 08.12.2008 to the date of re-opening i.e. after a period of around 4 ½ years the stocks lying in the factory premises was damaged due to dust, rainwater and fungus. The assessee could salvage only the finished stocks and some yarn, which were sold in bulk and for which the assessee realized ₹ 32,46,632/- and thereby sustained loss of ₹ 40,35,22,309/-. Raw materials represented cotton, yarn fabrics and packing materials. Cotton lost its strength and hence could not be used for producing any fabrics. Thus the realizable value was nil. Further the stock in process which was a major component of stock was totally damaged having come in contact with chemicals during the manufacturing process. The finished goods along with yarn were salvaged to some extent and which were sold by weight to the scrap dealers.

8. He explained that a major portion of the stock to the extent of ₹ 25.10 crores was hypothecated to State bank of India in accordance with the stock statement for the month of December, 2008 filed on 19.01.2009 with State bank of India. The assessee also drew our attention to the report from a technical expert explaining the state of affairs of the quality of fabrics which were lying in closed doors and on machines. The said report clarifies the salvage value of such stock which will be negligible after span of 4 ¼ years.

9. On the other hand, the learned Sr. Departmental Representative, Shri Sushil Kumar Poddar argued that no evidence as such regarding the scrap sale being stock disclosed in the balance sheet from 01.04.2012 to 31.03.2015 was filed before the Assessing Officer. He stated that there is no evidence filed before the AO like the details of the parties to whom the scrap sale was made and the parties also was not produced before the



Assessing Officer. The learned CIT DR stated that once the basic and primary evidence are not available before the AO, how the AO will allow the loss. The assessee has not given any business for determining the value of closing stock at ₹ 32.88 lacs as against the stock disclosed in the books of account in the immediate preceding year at ₹ 40.86 crores. According to CIT(A), there is no basis how the old materials was valued and cost was ascertained by the parties whoever have purchased the same in the absence of these details, the AO rightly disallowed the loss and he supported the order of the AO.

10. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee has given the details of stock as on 31.03.2009, 31.03.2010 and 31.03.2011. He also provided the stock details for the year ending 31.03.2012 and in FY 2012-13 this stock was sold as scrap. We find that the assessee has filed complete details in respect of scrap sale invoices and filed the same in its paper book from pages 229-240. The entire detail of parties including address, sale tax registration, VAT registration, TAN number etc. are given. Even complete detail is provided to the AO including Annual Report and accounts for and from assessment year 2008-09 to 2012-13. Even this stock was accepted by the AO in earlier years starting from 31.03.2009.

11. We have gone through the case records and noted that the assessee had approached the lenders for restructuring and onetime settlement of its loans during 2009 and that the restructuring coincidentally took place in the current year. State Bank of India while considering the restructuring plan was not concerned with the stock lying in the factory premises since the issue before them was the amount to be arrived at as

"one time settlement between the assessee and the bank. The A.O. failed to appreciate that it was a coincidence that the strike by the workers ended in the relevant financial year and the settlement with the lenders also took place in the relevant financial year and hence arrived at fallacious conclusions, failed to appreciate that the assessee company had arranged for loans of Rs.9.72 crores to repay towards onetime settlement. If the assessee company was able to sell the stocks, there would have been no need to bring in funding of Rs.9.72 crores. The presumption is further negative since the assessee had to sell its land during financial years 2013-14 and 2014- 15 to payoff the liabilities. If the assessee was able to sell its stocks, there was no need to introduce fresh loans and resort to sale of company's land in subsequent years.

12. Secondly, we noted that the assessee was going through the crisis. It was a double whammy, by settlement with the bankers the assessee gained and lost due to compensation paid to workers Rs. 2,28,73,760/- and loss on account of damage to stocks, the A.O has made the addition purely on conjecture, assumption and presumption. The AO failed to appreciate the note given by the auditors in the report for the financial year 2008-09 which continued till financial year 2011-12 which read asunder:

*"As the company's factory remains closed on account of an illegal strike since 81h December, 2008, the management is not in position to assessee the realizable value of the inventories. Hence, the loss of the company might be higher than as stated in the financial statements. The management will recognize the realizable value*

*of the inventories as and when the illegal strike is called off.'*

And further note no.24 of the financial accounts for 2012-13 as under:

*“During the year, the Company has disposed off the entire inventories on as-is where-is-basis as a scrap. Except for the stock records and the sale bills relating to the sale of scrap, the Company does not have any other independent source to determine the value of the scraps.”*

13. We find from the facts of the case that the assessee had physical stocks which has been carried forward from earlier years. The department has accepted the book results in the past. The assessee has enclosed annual accounts for the year ending March 2009, 2010, 2011, 2012 and 2013 wherein the stocks have been reflected constantly. The AO failed to appreciate that the quantity details have been mentioned in the annual accounts from year to years that scrap salvage is always sold by weight and not by meters. That the stocks were hypothecated to bank as per the stocks statement for the month of December 2008 and no stocks statement could be furnished for the subsequent period due to closure of the factory premises. The AO failed to summon the scrap dealer to verify the genuineness of sale made by the assessee. If he had done so his doubts would have been cleared and the conclusion would have been different. The AO has made the addition without rejecting the books of accounts as envisaged in section 145 of the Act. Moreover, the assessee has engaged the services of a technical expert to evaluate the status of stocks in the given situation. The expert has given his

exhaustive report and concluded that stocks after 4 1/2 years will deteriorate and will hardly have any value.

14. In view of the above facts and circumstances, we are of the view that the CIT(A) has rightly allowed the claim of the assessee and there is no reason to interfere with the same, hence, we dismiss this issue of Revenue's appeal and affirm the order of CIT(A).

15. The next common issue in these three appeals of Revenue is against the order of CIT(A) allowing the claim of depreciation. For this, in all three years, the Revenue has raised the identically worded grounds relating to disallowance of depreciation except quantum. The facts and circumstances are exactly identical in all the three years. Hence, we will take the facts from AY 2011-12 in ITA No. 3086/Mum/2017. The relevant ground raised is ground No. 2 read as under: -

*“2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO on account of depreciation amounting to ₹ 76,10,671/-. Without appreciating the fact that the assets had not been put to use as there was no manufacturing / business activity carried out by the assessee in the earlier years, during the year under consideration and in subsequent years.”*

16. Briefly stated facts are that the AO noticed during the course of assessment proceedings that the assessee has claimed depreciation under section 32 of the Act amounting to ₹ 76,10,671/- in its computation

of income. The AO noted that since there was no activity carried out during the year on account of lock out by workers, the assets of the assessee company were not actually put to use and hence he disallowed the claim of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who allow the claim of the assessee by observing that once, the machinery is part of block of assets and in earlier year on the same depreciation has been allowed by the Revenue itself, in this year and in future years, the depreciation cannot be disallowed by this reason. Aggrieved, Revenue came in appeal.

17. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has not close down the business but it is not going on because of illegal strike by the workers and therefore manufacturing has been stopped temporarily. It is not the case that the assets are not in use or the intention of the assessee is not to use the same. Another factor is that once, assets is forming part of block of assets and in earlier years depreciation is allowed and due to certain risks in this year, assessee is unable to carry out the manufacturing activities, depreciation cannot be disallowed. Hence, we affirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.

18. Similarly, in AYs 2012-13, 2013-14, depreciation has rightly been allowed by CIT(A). We confirm the orders of the CIT(A) in these two years also.

19. The next common issue in AYs 2011-12 and 2012-13 is as regards to the order of CIT(A) deleting the disallowance of various expenses for the reason that there was no manufacturing or business activity carried out by the assessee in earlier years. For this facts and circumstances in

both the years are identical and issue is also identical. Hence, we will take up the facts from AY 2011-12 in ITA No. 3086/Mum/2011. The relevant ground read as under: -

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO on account of various expenses amounting to ₹ 70,12,999/- claimed by the assessee without appreciating the fact that there was no manufacturing/ business activity carried out by the assessee in earlier years, during the year under consideration and in subsequent years.”*

20. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO disallowed the expenses on adhoc basis and by noting that the there was no business or manufacturing activity carried out by the assessee during this year or earlier years. We noted that the CIT(A) allowed the claim of the assessee on the premises that the assessee did not carry on the business because the workers of the company are went on illegal strike and therefore, the assessee business was stopped including manufacturing activity. He stated that actually, the assessee's business is very much in place and assessee has not close down its business. It can be called a temporarily lull in the business activity and none of the expenses are in the category of disallowable items rather the same are for business expenditure. It is not the case of the AO that the expenses are not genuine or not related to business. We have gone through the facts in entirety and noted that the assessee has placed on record that the assessee has sold closing

stock of goods as scrap sale in AY 2013-14. This justifies that the assessee's business was not close down. We find that the CIT(A) has rightly allowed the claim of the assessee and we confirm the order of CIT(A).

21. Similar are the facts in AYs 2012-13, 2013-14, we confirm the orders of the CIT(A) in these years also and allow the claim of the assessee.

**22. In the Result, all the appeals of the Revenue are dismissed.**

Order pronounced in the open court on 23.09.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 23.09.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai