

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 531/Del/2016
Assessment Year: 2011-12**

Gaurav Garg, Near Sharma Pathology, Jarcha Road, Dadri, Gautam Budh Nagar, Uttar Pradesh. PAN No. AFLPG4724P	vs	ITO Ward 3(1) Noida.
APPELLANT		RESPONDENT

Assessee by	Shri K.P. Garg, CA
Revenue by	Ms. Rakhi Vimal, Sr. DR

Date of Hearing	09.10.2019
Date of Pronouncement	15.10.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-1, Noida dated 30.11.2015 for AY 2011-12, challenging the addition of Rs. 61,62,426/- on account of opening stock as unexplained investment.

2. Briefly the facts of the case, are that assessee filed return of income on 28.09.2012 declaring an income of Rs. 4,68,560/-. The assessee is engaged in the business of processing and trading of rice. The assessee during the year under consideration, has declared gross sales of Rs. 6,33,76,996/- and declared net profit of Rs. 5,31,867/-. The main contention between the assessee and the Revenue is the discrepancies in the value of closing stock as shown on 31.03.2011 and as taken on 01.04.2010 as opening stock. The AO stated that in the return filed for preceding AY 2010-11, the assessee has claimed that he was not liable for audit its books of account u/s 44AB of the Act and, therefore, there was no need to mention the name of the auditor signing the tax audit report. The AO has stated in the order that the closing stock was specifically shown to be nil in the return of income for preceding AY 2010-11. In view of the same, the AO has treated the opening stock as on 01.04.2010 of Rs. 61,62,426/- as unexplained investment u/s 69 of the Act and made the addition.

3. The assessee challenged the addition before Ld. CIT(A) and it was submitted that return for preceding AY 2010-11 was filed by some other professional and by mistake and oversight the said professional did not fill up the particulars of closing stock correctly. It was further argued by the Counsel that the case of the assessee for AY 2010-11 was liable for audit u/s 44AB and the audit was also done as per law but the professional filing the return of income incorrectly mentioned that the assessee was not liable for such audit and no such audit having been done there

was no need to disclose the particulars of statutory auditor. The assessee submitted that he is not much educated and though he authenticated the return of income filed on his behalf but he could not make out the errors committed by the said professional. The assessee filed affidavit explaining the discrepancy on account of difference in the closing stock as is explained in the audit report u/s 44AB of the Act.

4. The Ld. CIT(A) found that in the return for preceding AY 2010-11, the value of the closing stock has been shown as nil. The assessee also stated that he was maintaining regular books of account but in return it is stated that he is not liable for audit u/s 44AB of the Act. Therefore, particulars are not filed. The Ld. CIT(A) did not accept the contention of the assessee and affidavit filed by him. Ld. CIT(A) also noted that on the date of filing of the return audit report for assessment year under appeal as well as for preceding assessment years were available, therefore, if any, mistake has been committed the figures would not have tallied. The Ld. CIT(A) rejected the contention of the assessee and confirmed the addition.

5. Ld. Counsel for the assessee reiterated the submissions made before authorities below and submitted that it was a mistake in the return filed for preceding AY 2010-11 in not mentioning the value of closing stock though complete details are available. The assessee maintained complete details of closing stock of earlier years and assessee maintained regular books of account which are

also audited. Copy of the audit report is also filed in the paper book. He has submitted that in the audited account for preceding assessment year assessee has shown value of closing stock of the impugned amount. Details of which are also maintained. Copy of the details of the opening stocks of last three years are filed at page 84 of the Paper Book. Ld. Counsel for assessee submitted that assessee is willing to produce books of accounts and other details of closing stock of preceding AY 2010-11 before AO for verification.

6. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that assessee has mentioned in the audit report for this year as well as preceding year that no stock registered has been maintained. Ld. DR submitted that assessee has unnecessarily blamed the professional and that when assessee says accounts of assessee are not liable for audit, there was no reason to produce the copy of the audit report before the authorities below.

7. We have considered the rival submission and perused the material on record. The assessee has claimed opening stock of the impugned amount in assessment year under appeal. However, no closing stock of the similar amount has been shown in the return for preceding AY 2010-11. It has created doubt in the mind of the AO that assessee has made undisclosed investments in the stock. The assessee, however, claimed that there was a mistake by the professional in not showing the closing stock in preceding AY

2010-11. The assessee filed affidavit along with audit report for preceding AY 2010-11 to show that accounts are maintained by assessee which are also audited in which value of the closing stock as on 31.03.2010 has been shown. The assessee has also filed details of the closing stock as well as details of closing stock for last preceding three assessment years. Ld. Counsel for assessee submitted that assessee maintained regular books of account and is willing to produce the same before the AO for verification. Considering it to be a mistake in not disclosing the value of the closing stock in preceding assessment year, we are of the view that one more chance could be given to the assessee to explain the value of the closing stock of preceding assessment year before AO on production of the relevant record to the satisfaction of the AO. In this view of the matter, we set aside the orders of the authorities below and restore the matter in issue to the file of the AO with a direction to re-decide the issue in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee. Assessee is directed to produce complete books of account and details of closing stock of preceding AY 2010-11 before AO for his verification. Since, AO doubted audit report for AY 2010-11, therefore, in case any need arise, AO may also record statement of the auditor who has prepared the audit report for preceding AY 2010-11 for verification of the above issue. The assessee is directed to cooperate with the AO for finalization of the matter. In view of the above discussion, we allow the appeal of the assessee for statistical purposes.

8. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15/10/2019

*Kavita Arora

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.10.2019
Date on which the typed draft is placed before the dictating Member	14.10.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	15.10.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	15.10.2019
Date on which the fair order comes back to the Sr. PS/PS	15.10.2019
Date on which the final order is uploaded on the website of ITAT	15.10.2019
Date on which the file goes to the Bench Clerk	15.10.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

