

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI A. T. VARKEY, JM & DR. A.L. SAINI, AM**

**आयकरअपीलसं./ITA No.2284/Kol/2016**

**(निर्धारणवर्ष / Assessment Year:2012-13)**

<b>DCIT, Circle- 1(2), Kolkata</b>	<b>Vs.</b>	<b>M/s Wilson Eng. Industries Pvt. Ltd.</b> <b>Block-7B, 7<sup>th</sup> Floor, Anju Chamber, 24, Park Street, Kolkata-700016.</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACW 2689 J</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

**C.O. No.03/Kol/2017**

**(Arising out of आयकरअपीलसं./ITA No.2284/Kol/2016)**

**(निर्धारणवर्ष / Assessment Year:2012-13)**

<b>M/s Wilson Eng. Industries Pvt. Ltd.</b> <b>Block-7B, 7<sup>th</sup> Floor, Anju Chamber, 24, Park Street, Kolkata-700016.</b>	<b>Vs.</b>	<b>DCIT, Circle- 1(2), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACW 2689 J</b>		
<b>(Cross-Objector)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Smt. Ranu Biswas, Addl. CIT

Respondent by : Shri K. M. Roy, FCA.

सुनवाईकीतारीख/ Date of Hearing : 06/08/2019

घोषणाकीतारीख/Date of Pronouncement : 23/10/2019

**आदेश / O R D E R**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the Revenue and the cross objection filed by the assessee, pertaining to assessment year 2012-13, are directed against the order passed by the Commissioner of Income Tax (Appeal)-1, Kolkata, in appeal

No.627/CIT(A)-1/C-3(1)/2015-16, dated 20.09.2016, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 30/03/2015.

2. The grounds of appeal raised by the Revenue are as follows:

*1. Whether on the facts and in the circumstances of the case of law, the ld. CIT(A) erred in deleting addition of Rs.1.5 crores on account of stock difference & Rs. 50 lakh on account of unexplained expenditure made by the Assessing Officer for the detailed reason given in the assessment order and material facts based on disclosure during survey.*

*2. Whether on the facts and in the circumstances of the case and law, the ld. CIT(A), erred in relying upon case which are clearly distinguishable on the fact and in law.*

*3. Whether on the facts and in the circumstances of the case and law, the ld. CIT(A) erred in deleting addition on account of Employee's contribution to PF beyond due date, infringing provisions of section 36(1)(va) r.w.s2(24)(x).*

*4. That the assessee craves to add, alter and/or modify, substitute all or any of the ground of appeal, during the course of hearing.*

3. Ground nos. 1 and 2 raised by the Revenue relate to deletion of addition of 1.5 crores on account of stock difference and Rs. 50 lakh on account of unexplained expenditure.

4. Brief facts qua the issue are that the assessee filed its return of income for A.Y. 2012-13 on 30.09.2012 declaring total income to the tune of Rs. 36,93,210/-. The assessee's case was selected for scrutiny u/s 143(2) of the Act. In case of the assessee company, a survey operation u/s 133A was conducted on 19/10/2011 and some incriminating documents were impounded. During the course of survey proceedings on 20/10/2011, the G.M. of the company, Shri Vishal Sahay disclosed an amount of Rs. 1.50 crores on account of difference in stock valuation and Rs. 50 lakh for unaccounted disclosure totaling Rs.2 crores. The AO noted that since the assessee disclosed the stock difference during the course of survey and on that basis Rs.1,50,00,000/- was added back in the total income of the assessee. The AO also noted that since the assessee accepted unexplained expenditure amounting to

Rs.50,00,000/- during the course of the survey therefore on that basis Rs. 50,00,000/- was added back to the total income of the assessee.

5. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer. Aggrieved by the order of the Id. CIT(A) the revenue is in appeal before us.

6. Before us, Id. DR for the Revenue, has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity. On the other hand, Id. Counsel for the assessee has defended the order of the Id. CIT(A).

7. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that Id CIT(A) passed the order observing the followings:

*“ I have considered the AO’s findings, written submissions of the AR, remand report, rejoinder and the documents on record. It is observed that the assessee Company had filed its return of Income for the relevant year declaring income Rs.36,93,210/- .The case was selected for scrutiny through issue of notices u/s 143(2) of the IT. Act. During the proceedings; the A.O found that the assessee had not declared that additional income admitted by the assessee during the course of survey u/s 133A. On 19-10-2011, a survey u/s 133A of the Act was conducted at the business premises of the assessee company and some incriminating documents were impounded. The A.O also noted that during the survey on 20/10/2011, the G.M of the company, Sh. Vishal Sahay had disclosed an additional amount of Rs. 1.50 crores on account of difference in stock valuation and Rs.50 lacs for unaccounted disclosure totalling Rs. 2 crores. However, during the course of assessment proceedings, Sh. S.S. Sahay, M.D of the assessee company in his statement. u/s 131 recorded on 18/3/2015 had retracted the admission made during the survey offering the additional amounts of income. The assessee's Director/G.,M, Sh. S.S.Sahay, during his statement recorded on 18.3.2015 did not accept the additional income and contended that his statement during the survey was the result of duress, as his son, Sh. Vishal Sahay, G.M , marketing was made to sign the statement at around 4.00 a.m forcefully without understanding the implications of the disclosure. The A.O after confronting the said discrepancies to the assessee during the course of scrutiny proceedings, made and addition of Rs.1,50,00,000/- on account of stock difference found during the survey and Rs. 50,00,000/- on account of unexplained expenditure to the Total Income of the assessee aggregating Rs.2,00,00,000/-. The Assessee's A.R has mainly contended in respect of the impugned additions to the income by the A.O that firstly, the assessee had retracted the admission made during the survey. In this regard;” reference was made to the Question no. 13 of the statement recorded u/s 131 on 20/10/2011 by*

*Vishal Sahay, G.M Marketing. It was; argued that the statement does not have any evidentiary value because it was not recorded under oath. In this regard, on perusal the said statements, it is observed that although the A. R had annexed copy of hand written statement of Sh.Vishal Sahay purportedly recorded during survey u/s133A, the A.O has submitted a copy of statement u/s 131 dated 20.10.2011. Therefore, the averments made in the admission made by Sh. Vishal Sahay need to be examined along with, relevant documentary evidence to ascertain whether the surrender is corroborated by any documentary evidence. In the decision in Pullangode Rubber Produce Co. Ltd. v. State of Kerala (1973) 91 ITR18 (SC) the Hon'ble Apex Court held that an admission is an important piece of evidence, but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect. Secondly, it was argued that discrepancy, i.e. the difference in valuation was ascribed to 31/03/2010 and 31/03/2011, whereas the basis for working out net profit of assessee's business was valuation of closing stock as on 31/03/2012. It was further averred that the addition of Rs.1,50,00,000/- on account of stock difference was made only on the basis of Statement for stock hypothecation submitted to the bank was of a higher value based on the business need to maintain the drawal power on the cash credit facility with the bank. The value of closing stock in the final books of accounts is ascertained is on the basis of lower of cost and net realizable value. In this regard, it was stated that this was also evident from the copies of the stock statements submitted to the bank which were also verified at the bank by Income Tax officers under the instructions of the appropriate authority. In this regard, from perusal of documents marked as WEIPL-9, it is observed that it's a statement of "Combined Stock" as on 31.3.2010, wherein the aggregate stock for 3 branches is shown as 1285.11 MTs, whereas the "Combined stock as on 31.3.2010 is shown at 1327.33 MTs. Thus, the difference in valuation of closing stock has been taken by the A.O. as the basis for admission of Rs.1,50,00,000 by the assessee. However, the A.O has not confronted the said discrepancy to the assessee or sought his explanation to ascertain as to how the stock difference as on 31.3.2010 between stock hypothecated to bank and as per stock statement as on 31.3.2011, could be the basis for addition to business income for the A.Y.2012-13. The A.O. has misdirected himself by considering the alleged stock difference pertaining to F.Y. ending 31.3.2011 pertaining to A.Y 2011-12, to be the basis for addition of value of stock difference for the A.Y.2012- 13 under consideration, which is prima-facie erroneous. Thirdly, it was emphasized by the A.R that the A.O did not bring out any difference in physical quantity of closing stock or any specific defect was pointed out by the A.O. Moreover, it was averred that no stock taking was undertaken at the various locations at any point. Further the question no. 14 posed before Vishal Sahay has got no relevance as this was asked on 20/10/2011 whereas closing stock is valued on 31/03/12. The assessee has thus submitted that there was no scope of addition of Rs. 150 lacs on this issue. As regards, the addition of Rs.50,00,000/- made by the A.O in respect of admission of unexplained expenditure, the A.O held that the Assessee accepted unexplained expenditure amounting Rs.50,00,000/- during the course of survey and during scrutiny, which was added back as undisclosed expenditure. The assessee's A/R has contended that the entire addition of Rs. 50 lacs for unaccounted expenditure is based solely on surrender without any corroborative evidence brought on record by the A.O. It is observed that the Assessing Officer had conducted a survey at-the premises of the assessee and, inter alia, recorded his statement in which the G.M/Director's son, Sh. Vishal Sahay had surrendered additional income of Rs. 50,00,000/- for the assessment year 2012-13. The assessee's A.R has argued that the disclosure was made of 50 lakh rupees roughly, which points out that it was only an approximate indication. In the subsequent assessment, the addition was made simply on the basis of the statement which was in cohesive. In the course of assessment, it was duly pointed out that the expenses were all disclosed in profit and loss A/c and the statement given out by Mr S.S Sahay was a mere repetition pointed out earlier and was given as a token of cooperation with the department. Hence, it appears that during the assessment proceedings, the assessee did not accept the additional income of Rs. 50 lacs and contended that his statement during the survey was not based upon any actual unexplained expenditure but the result of misappreciation of issues confronted to him during the survey. This contention. was not*

accepted by the A.O who added back the impugned amount of Rs. 50 lacs to the Taxable Income of the assessee. The Assessee's A.R has contended through the written submissions that the assessee having retracted the statement made during the survey, it was the duty of the Assessing Officer to collect some material that there was additional income and that statement having been retracted, the same could not be made the basis of the assessment. He contended that the statement was recorded under duress and was, therefore, not valid. It was further argued that apart from the statement made during the survey, there was no material to support that there was additional income. It was also contended that the assessee having retracted the statement made during the survey, it was the duty of the Assessing Officer to collect some material that there was additional income and that statement having been retracted, the same could not be made the basis of the assessment. The A.R has thus argued that the statement was recorded under duress at late hour of 4 a.m of Sh. Vishal Sahay who was not well aware of the implications and the surrender was, therefore, not valid.

The A.O has neither rejected the books of accounts or the book results. Thus, the evidentiary value of the audited books of accounts and vouchers were, lost sight in the mind of the AO who wanted to justify the addition of impugned difference in stock and unexplained expenditure solely on the basis of surrender statement of the assessee during the survey. Thus, there is merit in the contention of the learned A. R. that the difference in stock and expenditure, having been found in excess could have been found in excess only on the basis of proper inventory of stock vis-à-vis relevant entries thereof in the books of accounts, as available on the date of survey. The intervening period of more than 4 years could have been utilized by the AO in making necessary enquiries to verify the authenticity of book results and connected transactions recorded in the books of accounts of the assessee. This clearly indicates the contradiction in the AO's finding which are dealt with hereunder.

It is observed that the A.O has not found any serious defects in the books of accounts which were duly audited and the A.O has also not rejected the books of accounts or the book results by invoking provisions of section 145(3.) of the Act. It is pertinent to note the contention of the assessee made during the assessment proceedings, "... that the survey was conducted on 19th October, 2011 and after that our assessment for the assessment year 2009-10, 2010-11 and 2011-12 were completed u/s 143(3) without any addition on this ground despite the fact that the survey report was very much on record. Therefore, by no stretch of the imagination the veracity of our accounts can now be challenged." Similarly, the addition of the impugned amount of Rs.50,00,000/-, on account of unexplained expenditure was made merely on the basis of admission of Sh. Vishal Sahay without any corresponding corroborative evidence. Thus, after the rebuttal of the presumption by the assessee, the onus had shifted to the A.O to substantiate the validity of the impugned additions by way of inference from finding of facts or documentary evidence on record. The A.O was found to be unable to bring any cogent evidence or finding of fact on record, through the remand report to establish that there was excess stock valued at Rs.1,50,00,000/- as on 31.3.2012 representing the discrepancy in the value of closing stock.

From perusal of the impounded documents relied upon by the A.O to correlate the discrepancy in connection With the surrender of Rs.1,50,00,000/-pertaining to discrepancy in closing stock there is reference to document marked. WEIPL-10 in the statement of Sh. Vishal Sahay, wherein it is observed as under:-

"Q.12. Please go through the bunch of loose sheets bearing ID Marks WEIPL-10. In page q32 the combined stock as on 31/3/2011 amounting to Rs. 1327.7 lakhs has been shown in page 55 of this bunch combined stock as on 31/3/2010 amounting to Rs. 1285.00 lakhs has been shown. What is the meaning of combined stock mentioned in these pages.

*Ans. This stock position of combined stock of our factories at Howrah (Two units), Patna and at Uttarakhand. But as per audit report of the company as on 31/03/2010 and as on 31/02/2011 the inventories of stocks amounting to Rs.1096.37 lacs and Rs. 1022.25 lakhs respectively has been shown.*

*Q.13.Please explain the differences of stocks as per page 132 and page SS of WEIPL 10 and the audit report of the company.*

*Ans. These statements are made for submitting it at the bank for loan purposes. However three are discrepancies in valuation of stock as per books and as per WEIPL -10.*

*Q-14 How much there may be the discrepancy in the valuation of closing stock?*

*Ans. Roughly around 1.5crores. This may be calculated after going through the pages in WEIPL-10 and our audited books.*

*Thus, from appraisal of the above discussion, it is apparent that the "surrender" of Rs. 1,50,00,000/- was made on the assessee's behalf on the basis of alleged discrepancies found as per narration in WEIPL-10 indicating some difference in value of combined stock as on 31/3/2010 and 31/3/2011 as submitted to the bank for hypothecation for loan purposes and as per figures of closing stock in the audited accounts. However, the admission, which formed the basis of the surrender of the impugned amount of Rs. 1,50,00,000/-, was relied upon by the Assessing Officer for making the addition of Rs.1,50,00,000/- was erroneously considered by the A.O in respect of financial year end 31.3.2012 relevant to the A.Y. 2012-13 under consideration. It is well settled that every Assessment Year is separate and the income is to be considered for taxation in respect of income and expenditure pertaining, only, to the transactions for relevant Previous year. Therefore, the addition made by the A.O for discrepancies pertaining to the preceding assessment years 2010-11 and 2011-12, if found to be erroneous and in, law cannot form the basis for any valid additions on this account during A.Y. 2012-13.*

*The assessee had filed details of its purchases and sales, along with separate trading account for taxable goods and tax paid goods and had also given details of opening stock, closing stock, purchases, sales etc. The AO did not disturb the same, thereby indirectly accepting the flow of stock from 1st of April, 2011 up to the date of survey. Similarly, with the cash balance the expenses and other claims made by the assessee on, account of payments to creditors were not disturbed which were transcribed in the books of accounts on the basis of primary vouchers and, therefore, were accepted by the AO. The A.O. has thus ignored the book results based on audited accounts, without rejection of the method of accounting or the book results of the assessee company, although AR has argued that the additions were made without any basis.*

*On the issue of unexplained expenditure of Rs.50,00,000/- was also found to have been made by the A.O without verifying the concerned transactions or material on record, although explained by the assessee as duly reflected in its audited accounts for the relevant period and, therefore, no addition could be made on the basis of mere admission without any corroborative evidence to account for the alleged unexplained expenditure. The retraction and supporting arguments, therefore, could not be held as an afterthought insofar as they had very much arisen from the finding of facts not controverted by the AO. The assessee has relied upon the ratio of several judicial decisions, including by the jurisdictional Calcutta High Court in the case of Commissioner of Income Tax, Kolkata-I v. M/s Neo Carbons Pvt. Ltd in ITAT No. 191 of 2013 G.A. No. 3286 of 2013:*

*"With regard to the other aspect of the matter, the CIT(Appeal) deleted the addition on the basis that the assessee was entitled to value, the closing stock either at cost or on the market rate, whichever is lower. The Assessing Officer had proceeded to make the*

addition on the basis of the valuation furnished by the assessee to the banker. The CIT(Appeal) held that such valuation is not material for the purposes of the Income Tax Act. The Revenue unsuccessfully challenged the order of the CIT before the Tribunal and has ultimately come up before this Court.

We are satisfied that the issues raised are essentially questions of fact and have been concurrently answered in favour of the assessee both by the CIT(Appeal) and the Tribunal. We, therefore, refuse to admit the appeal, which is accordingly dismissed."

The assessee's A.R has also relied upon the decision of the jurisdictional ITAT, Kolkata in the case of ACIT vs., Smt. Usha Agarwal I.T.A. No. 142/Kol/2014 for A.V. 2010- 11 where in the ITAT had upheld the deletion of addition of Rs. 1 crore made on the merely basis of disclosure. It was held, that: "we have heard the rival submissions and perused the materials available on record. We find that the entire addition of Rs.1 crore made by the Learned Assessing Officer was merely based on the disclosure made by the assessee's husband while, making total disclosure of Rs. 7.5 crores for the total group as a whole and the assessee's name has been included in the figure of Rs. 1 crore only in order to make the, total disclosure to Rs. 7.5crores. We find that no incriminating materials whatsoever was found during the course of search representing undisclosed income or undisclosed assets belonging to the assessee justifying the disclosure made in the sum of Rs.1crore. Under these circumstances, it is right on the part of the assessee to have restricted from the earlier disclosure while filing her return of income for the Asst. Year 2010-11. We draw support from the following case laws in this regard:-

(I) Pullangode Rubber Produce Co. vs State of Kerala and Anr (1973) 91ITR 18 (Se) The Hon'ble SC has observed that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect..."

In view of the above discussion and the totality of facts of the case, it is found that the assessee's contentions are fortified by the ratio of decision of the Hon'ble Supreme Court in CIT vs. S. Kader Khan Son in 352 ITR 480 (SC) and by the jurisdictional ITAT in Usha Agarwal in ITA No. 142/Kol/2014 dated 08.06.2016, which supports the proposition that the amount of alleged discrepancy in closing stock was by way of regular business transaction and not income having remained undisclosed during the relevant period. Therefore, we are of view that the Assessing Officer was not justified in making the impugned additions of Rs. 1,50,00,000/- on account of stock difference and Rs.50,00,000/- as unexplained expenditure. In view thereof, the Assessing Officer is directed to delete the impugned addition of Rs. 2,00,00,000/-."

We have carefully gone through the above findings of the Id CIT(A) and note that Id CIT(A) has dealt the issue in a judicious way covering all the aspects. The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. On this particular issue, we, approve and confirm the order of the CIT(A).That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the ground nos. 1 and 2 raised by the Revenue is dismissed.

8. Ground No. 3 raised by the Revenue relates to deletion of addition on account of employee's contribution to PF.

9. Brief facts qua the issue are that from the tax audit report submitted by the assessee it has been noted by AO that Employee's Contribution to Provident Fund amounting to Rs. 17,961/- for the month of July 2011 has been paid after due date which does not qualify for deduction u/s 2(24)(x) r.w.s. 36(1)(va) of the Act. In view of the above the amount of Rs.17,961/- was disallowed by AO.

10. On appeal, Id CIT(A) deleted the addition. Aggrieved by the order of the Id. CIT(A) the revenue is in appeal before us.

11. Before us, Id. DR for the revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the Id. Counsel for the assessee has defended the order of the Id. CIT(A).

12. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that the issue under consideration is no longer *res integra*. We note that Hon`ble Supreme Court in the case of CIT vs. Alon Extrusions Pvt. Ltd. in Civil Appeal no. 7771 of 2009 supports assessee`s case that payments made before due date of furnishing of the return of income u/s 139(1) are allowable as deduction. Therefore, Id CIT(A) has rightly directed the Assessing Officer to allow the assessee's claim after due verification of the actual date of payment of the Employee's Contribution to Provident Fund amounting to Rs.17,961/-. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the ground no. 3 raised by the Revenue is dismissed.

13. The cross objection filed by the assessee is only supportive to the order of the Id. CIT(A). Since, we have confirmed the order of Id CIT(A) therefore, the cross objection filed by the assessee becomes infructuous.

14. In the result, the appeal filed by the Revenue is dismissed and cross objection filed by the assessee is also dismissed being rendered as infructuous.

**Order pronounced in the Court on 23.10.2019**

**Sd/-**  
**(A.T. VARKEY)**  
**न्यायिकसदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(A.L.SAINI)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

दिनांक/ Date: 23/10/2019  
(SB, Sr.PS)

Copy of the order forwarded to:

1. DCIT, Circle-1(2), Kolkata
2. M/s Wilson Eng. Industries Pvt. Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By Order

Assistant Registrar  
ITAT, Kolkata Benches