

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.227/Coch/2018 : Asst.Year 2011-2012

The Asst.Commissioner of Income-tax, Circle – 1 Kollam.	Vs.	M/s.Baby Marine International, Kalluvila Thangassery, Kollam PAN : AAafb9937f.
(Appellant)		(Respondent)

Appellant by : Sri.Shanthom Bose
Respondent by : Sri.lype Mathew

Date of Hearing : 07.11.2019	Date of Pronouncement : 20.11.2019
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ORDER

Per Chandra Poojari, AM :

This appeal by the Revenue is directed against the order of the CIT(A) dated 15.03.2018 for the assessment year 2011-2012.

2. The grounds raised by the Revenue read as under:-

"1. The order of the Commissioner of Income tax I (Appeals), Thiruvananthapuram is opposed to law on the facts and circumstances of the case.

2. The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that "quantitative details of closing stock as mentioned in Form 3CD of the audit report need not be relied upon"

3. The basis of addition of Rs.13,47,71,926/- is the closing stock value of 775398 Kg of shrimp stated in schedule 28b-B of Form No. 3CD. In para 10.3, the CIT(A) stated that "the quantitative details of the closing stock as mentioned in Form 3CD of the audit

report need not be relied upon since a mistake had crept inadvertently as a result of which the same has wrongly been mentioned as 7,75,398 Kg instead of 90,620 Kg. In this connection, the CIT(A) ought to have noticed the scope and effect of the provisions of section 44AB of the Income tax Act 1961, at the time of insertion of this section, which is explained by the Board in the Circular no.387 dated 06.07.1984:

"17.2. A proper audit for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully reflect the income of the tax payer and claims for deduction are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the assessing officers thus saved could be utilized for attending more important investigational aspects of a case."

From this it is apparent that the objective of making the tax audit compulsorily was to help the Assessing Officer in checking fraudulent practices. The AO, therefore, has to rely on the figures submitted along with the Return of income and certified by the Chartered Accountant as defined u/s 288(2) of the Act.

2. The CIT(A) ought to have held that the Chartered Accountant is bound to look in to figures and certify the correctness thereof, when the legislature desires the Chartered Accountant to certify the figures as true and correct.

3. The CIT(A) ought to have noticed that the assessee did not file any revised return with revised auditor's report to rectify mistakes within the time limit prescribed as per the Act.

4. The CIT(A) ought to have noticed that the letter from assessee and Auditor were received only in July 2014, that is, after receiving the communications from the AO regarding the valuation of closing stock. This was made after a lapse of almost 2yrs, by the time which the audit of next assessment year was over. Till then the assessee did not file any communication to the AO that such a mistake was crept in its accounts.

5. The CIT(A) at para 10A of the order stated that "..... the undervaluation involved is Rs.173.81/ - per Kg is also factually incorrect since the assessee has adopted the value of Rs.275.39/ - per Kg which is more than Rs.206/ - per Kg considered by the Assessing officer". This is totally against the facts of the case. The CIT(A) ought to have noticed that as per Annexure B submitted by the appellant along with the return of income, the value adopted by the assessee for the closing stock of shrimp is only Rs. 32.19/Kg. (Rs.2,49,56,300 / 7,75,398 Kg) Considering the facts, the accounts produced by the appellant before the CIT(A) cannot be relied upon and the AO had rightly relied on Auditors report.

6. The CIT(A) ought to have verified the ledger for purchase of raw material, ledger for sales and percentage of yield as the quantitative figures for purchase and sale and percentage of yield vary in the original and revised auditor's report.

7. The CIT(A) ought to have noticed that in the revised report filed before him, the assessee suppressed the quantity of shrimp purchased, by 3,69,516 Kg (1459106-1089590) and inflated the quantity of shrimp sold, by 4,84,481 Kg (859705-375224) without changing the purchase and sale values in the P&L account. This ought to have been taken as a wilful attempt to suppress the quantity of shrimp at the closing stock.

8. For these and other grounds that may be advanced at the time of hearing the order of the

*learned Commissioner of Income tax (Appeals),
Thiruvananthapuram on the above points may be set
aside and that of the Assessing Officer restored."*

3. Briefly stated the facts of the case are as under:-

3.1 It all started with reopening the assessment u/s 148 which in turn has resulted in making an addition of Rs.13,47,71,926/- on account of under valuation of closing stock. The assessment got reopened based on the observation that the closing stock as per the audit report is 7,75,398 kg and its value was taken at Rs.2,49,56,300/-. The assessee had valued the same at Rs.32.19 per kg which is very much on the lower side. As per the method of valuation regularly followed by the assessee, the closing stock should have been valued atleast at Rs.206/- per kg. Instead, the stock was valued at Rs.32.19/- per kg leaving a difference of Rs.173.81/- per kg which in turn had resulted in under valuation of closing stock to the tune of Rs.13,47,71,926/-. Contradicting the Assessing Officer, the case of the assessee is that the different quantity of 7,75,398 shown in the audit report is an outcome of typographical error committed by the staff of their Auditor. The inexperience of the staff of the assessee's Auditor led to furnishing inaccurate quantitative particulars as shown in the return of income and audit report. According to them, the quantitative details of the closing stock as mentioned in Form 3CD of the audit report need not be relied upon since a mistake had crept inadvertently as a result of which the same has wrongly been mentioned as 7,75,398 kg instead of 90,620 kg. The inflation in the closing stock as 7,75,398 kg instead of 90,620 kg had

occurred due to mistake in the figures of production which was mentioned as 13,14,811 kg and export sales as 7,27,025 kg instead of the actual production of 11,14,514 kg and export sales of 12,11,506 kg. If the actual production quantity was added to the opening stock 1,87,612 kg, the resultant figure would have been to 13,02,126 kg and when the export sales of 12,11,506 kg was deducted therefrom then, the correct closing stock would have been 90,620 kg only but not 7,75,398 kg as mistakenly mentioned in the audit report. The quantitative details of opening stock, sales and closing stock filed to the Assessing Officers during the course of original and reassessment proceeding as claimed by the assessee, has also been filed during the course of appeal hearing as well which in turn confirms the fact of closing stock of 90,620 kg as under:-

Quantity in kgs.	Shrimps (kg.)	Squid (kg.)	Cuttlefish (kg)	Fish (kg)	Total (kg.)
Raw materials					
Opening stock					
Purchases	1089590.000	262863.000	16666.670	155195.880	1524315.550
Consumption					
Sales					
Closing Stock					
Yield of Finished Products					
Percentage of Yield	70%	72%	72%	97%	
<u>Finished Products</u>					
Opening Stock PUD 8100 Tiger 106612	187612.000	Nil	Nil	Nil	187612.000
Purchases					
Quantity manufactured during the year	762713.000	189261.000	12000.000	150540.000	1114514.000

Total	950325.000	189261.000	12000.000	150540.000	1302126.000
Sales during the year	859705.000	189261.000	12000.000	150540.000	1211506.000
Closing Stock at the end of the year PUD 56000 Tiger 34620	90620.000	Nil	Nil	Nil	90620.000

3.2 The item wise production and sales detailed filed to the Assessing Officer during the course of re-assessment proceeding as claimed by the assessee, has also been filed during the course of appeal hearing as well which in turn confirms the fact of closing stock of 90,620 kg as under:-

Shrimp Total				
1) PUD	Opening Stock (kg.)	Production	Sales	Balance (kg.)
April 2010	81000	108000	50000	139000
May 2010	139000	11880	15880	135000
June 2010	135000	60120	24000	171120
July 2010	171120	2240	14240	159120
August 2010	159120	12000	6000	165120
September 2010	165120	9915	15215	159820
October 2010	159820	10700	37340	133180
November 2010	133180	3555	31055	105680
December 2010	105680	1000	23000	83680
January 2011	83680	0	18500	65180
February 2011	65180	41500	42000	64680
March 2011	64680	83660	92340	56000
		344570	369570	

Shrimp Total				
2) Tiger H/O	Opening Stock (kg.)	Production	Sales	Balance (kg.)
April 2010	106612	19515	9000	117127
May 2010	117127	10000	35928	91199

June 2010	91199	32335	27500	96034
July 2010	96034	18378	30400	84012
August 2010	84012	73261	24542	132731
September 2010	132731	37200	32750	137181
October 2010	137181	1612	20400	118393
November 2010	118393	0	21600	96793
December 2010	96793	8188	14188	90793
January 2011	90793	17237.6	17000	91030.6
February 2011	91030.6	18589	18000	91619.6
March 2011	91619.6	4300	61300	34620
		240616	312608	

3.3. The crux of the issue to be answered in the background of foregoing is whether the assessee has had 7,75,398 kg of shrimps as closing stock at the end of the year under consideration or not. As long as the opening stock (187612.000 kg), purchases of raw shrimps (1089590.000 kg), processing & production (762713.000 kg) and export sales (859705.000 kg) quantity as mentioned in the 1st chart of this order are not in dispute then, there won't be 7,75,398 kg of closing stock of shrimps the assessee can have. The Assessing Officer has not all disputed the opening stock, purchases of raw shrimps, production and export sales but simply disputed the closing stock because in Form 3CD report different quantity of closing stock has reportedly been mentioned as held by the assessee. Without disputing the opening stock, purchases of raw shrimps, production and export sales, the Assessing Officer cannot say that the assessee has had 7,75,398 kg of closing stock of shrimps. The assessee can have closing stock of 7,75,398 kg shrimps only in the event of purchasing additionally 11,07,711 kg raw shrimps without which no such closing stock is possible.

Only when assessee purchases 21,97,301 kg of raw shrimps (10,89,590 kg actually purchased + 11,07,711 kg equivalent to 7,75,398 kg of closing stock to be purchased), they can have closing stock of 7,75,398 kg. In the absence of no such additional purchases ever been made by the assessee, no additional income to the tune of Rs.13,47,71,926 towards suppressed closing stock could be brought to tax. It is not the case of the Assessing Officer that the assessee really had purchased during the year under consideration raw shrimps of 21,97,301 kg. It is also not the case of the Assessing Officer that the quantity considered for opening stock, production and export sales are in dispute and never been taken into account. Even from the item wise production and sales details filed during the course of appeal hearing as mentioned in the above last two charts, it could be made out that no additional quantity of raw shrimps had ever been purchased by the assessee and therefore, no possibility of having 7,75,398 kg of closing stock during the year under consideration could ever be thought of. In the background of foregoing, I am also convinced with the figures of production and sales furnished originally were wrong and the total production and sales as per the copies of the registers and documents furnished for further consideration during the course of appeal hearing leaves behind only a closing stock of 90,620 kg as on 31.03.2011. When the production quantity is added to the opening stock and the export sales quantity is reduced therefrom then, the resultant quantity is 90,620 kg only which is nothing but the closing stock as on 31.03.2011 but not 7,75,398 kg as considered for making the addition of

Rs.13,47,71,926/-. Accordingly the CIT(A) was of the opinion that the quantitative details of the closing stock as mentioned in Form 3CD of the audit report need not be relied upon since a mistake had crept inadvertently as a result of which the same has wrongly been mentioned as 7,75,398 kg instead of 90,620 kg. Hence, the addition made on account of difference in closing stock need be deleted since the same has not been justified by the Assessing Officer.

3.4 Another argument of the Assessing Officer that the assessee had valued the closing stock at Rs.32.19/- per kg which is very much on the lower side and as per the method of accounting regularly followed by the assessee, the closing stock should have been valued atleast at Rs.206/- per kg therefore, the under valuation involved is Rs.173.81/- per kg, is also factually incorrect since the assessee has adopted the value of Rs.275.39/- per kg which is more than Rs.206/- per kg considered by the Assessing Officer, for the closing stock of 90,620 kg which in turn has been worked out at Rs.2,49,56,300/-. Even on this basis, no additional income could be brought to tax. This apart, as mentioned in para 5 of the assessment order, the then Assessing Officer got convinced both with the closing stock of 90,620 kg and its value of 2,49,56,300/- but still went head with making the addition towards alleged difference in closing stock not because there is a discrepancy in closing stock but because he was unable to verify thoroughly all the registers and documents maintained by the assessee due to paucity of time. It could be made out from the above that no addition

was actually warranted but it was made since the registers and documents produced for verification have not been verified yet. As a result, the CIT(A) deleted the addition made by the Assessing Officer of Rs.13,47,71,926/- over the alleged under valuation of closing stock.

4. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us. The learned Departmental Representative supported the order of the Assessing Officer. The learned Counsel for the assessee, on the other hand, supported the order of the CIT(A).

4.1 The learned AR filed a quantitative statement. The details of which are as follow:-

As per Original Quantitative Statement

	Shrimpe (kg.)	Other products (kg.)	Total Qty. (kg.)
Opening stock as on 01.04.2010	1,87,612	Nil	1,87,612
Production during the year 2010-2011 (wrongly shown)	9,63,010	3,51,801	13,14,811
	11,50,622	3,51,801	15,02,423
Less : Export Qty wrongly shown during 2010-11 (FY)	(-)3,75,224	(-)3,51,801	(-)7,27,025
Closing stock as wrongly shown on 31.03.2011	7,75,398	Nil	7,75,398

As per Revised Quantitative Statement (Actual Quantity)

	Shrimpe (kg.)	Other products (kg.)	Total Qty. (kg.)
Opening stock as on 01.04.2010	1,87,612	Nil	1,87,612
Actual production during the year 2010-2011	7,62,713	3,51,801	11,14,514
	9,50,325	3,51,801	13,02,126
Less : Export (Actual Qty)	(-)8,59,705	(-)3,51,801	(-)12,11,506
Closing stock as on 31.03.2011	90,620	Nil	90,620

Original Purchases Qty shown	14,59,106	4,34,726	18,93,832
Actual Purchase Qty	10,89,590	4,34,725	15,24,315

There is no change in value. Difference is only in Quantity.

4.2 The learned AR has also filed a quantitative reconciliation statement as on 31.03.2011, as follows:-

Quantity of stock disclosed shrimps originally as on 31.03.2011		7,75,398 kg.
Actual quantity as per revised claim shrimps as on 31.03.2011		90,620 kg.
Difference in quantity of stock excess Qty disclosed between original return and revised return		6,48,778 kg.
Quantity of Shrimp		
Production quantity of shrimp as per original return	90,63,010 kg.	
Actual quantity of production of shrimp (Ref. revised claim) during the year	(-)7,62,713 kg.	
Excess quantity shrimp of production disclosed originally.	(A)	2,00,297 kg.
Quantity of shrimp exported shown wrongly as per original return	3,75,224 kg.	
Actual quantity of shrimp exported (Ref. revised claim)	(-)8,59,705 kg.	
Export quantity of shrimp short accounted in original return	(B)	4,84,481 kg.
Excess stock of shrimp originally shown as on 31.03.2011	(A) + (B)	6,48,778 kg.

5. We have heard the rival submissions and perused the material on record. In the present case, the closing stock of shrimps is amounting to 7,75,398 kgs. It was valued by the Tax Auditors in Form No.3CD at Rs.206 per kg. However, the assessee has shown the value at Rs.32.19 per kg. Thus, it was alleged by the Assessing Officer that there was under-valuation of stock at Rs.13,47,71,926. The contention of the AR is that the quantity of stock reflected in Form No.3CD was

a mistake and the assessee has given reasons for such difference and stated that at the time of hearing of the reassessment proceedings the assessee produced the registers mentioned above along with copies of purchase bills and copies of export invoices in support of their contention. As per the production register produced, the actual production during the year was 11,14,514 kgs and the Export Sales was 12,11,506 kgs. The production quantity of 11,14,514 kgs when added with the opening stock quantity of 1,87,612 kgs and the export sales quantity of 12,11,506 kgs deducted there from, the closing stock quantity would have been 90620 kgs only against the quantity of 7,75,398 kgs shown in Form No. 3CD. It may be noted that the Export Sales quantity of 12,11,506 kgs were certified by the customs before the goods are put on board the Ship on each occasion of Export Sales and therefore the quantity of exports as given in Form No. 3CD as 727,025 kgs cannot under any circumstances be correct. The production quantity as per Form No. 3CD of 13,14,811 kgs was also not correct since as per the original production register produced before the A.O. during the re-assessment proceedings, the quantity produced was only 11,14,514 kgs. The Export invoice copies and production register along with summary statements were produced in support of the above contentions. The learned AR further submitted that the assessee was also bound to submit the monthly stock position to their Banker's for availing Packing Credit Facilities by way of Stock statements. The A.O. during the re-assessment proceedings required the assessee's Bankers to submit a copy of the stock statement furnished by

the assessee and they have given the same to the Assessing Authority who verified the same before passing the re-assessment order. In fact, after verifying the purchase bills , export bills, production register, sales register and the bank stock statement, the A.O. was convinced that the quantitative particulars furnished in Form No. 3CD was a mistake itself. In para 5, page 4 and 5 , the A.O. specifically mentioned about this, however, as the Revenue Audit Party did not drop their Audit Query, he was compelled to proceed with the re-assessment, which is evident from page 5 of his re-assessment order itself. Further, the registers maintained in respect of production and exports along with bills, were produced as additional evidence to prove that the quantitative particulars in Form No. 3CD was wrong. The A.O's admission in the re-assessment order is also valid evidence in support of the assessee's contentions and it was only because of compelling situations, the re-assessment was completed by him making an addition of Rs 13,47,71,926/- to the income already assessed as per order dated 06/03/2014. The learned AR concluded that as there was no change in the closing stock value as per the original return and as per the return filed U/s 147, the re-assessment was itself not necessary.

6. Further, in the reassessment order, the A.O. accepted the contention of the assessee by observing as follows:-

"The assessee submitted before me that the reason for the alleged escapement of income for the assessment year 2011-12 was purely on account of the mistake in the quantitative particulars furnished earlier. The mistake was only in the quantity figures of finished goods produced and in the export sales of finished goods which figures were inadvertently inflated while entering the data in the relevant column. In order to prove that the date furnished of the quantity produced

and sold, the assessee has now furnished to me the stock register and the sales register which were the relevant original records, where the production and sales were originally entered day by day. Copy of these registers is also filed in the assessment records. The assessee also produced the daily purchase bills and export bills in support of the production and sales recorded in the respective registers. On a test check of these bills with the registers, I am convinced that the figures of production and sales furnished originally were wrong and the total production and sales as per this registers leaves behind only a closing stock of 90620 kilos as on 31.3.2011. The opening stock as on 1.4.2010 is the same quantity disclosed as inventory as on 31.3.2010. When the production quantity is added to the opening stock and the export sales quantity reduced there from, the resultant quantity is 90620 kgs only, which is the closing stock as on 31.3.2011. When this stock is valued applying the method of valuation followed by the assessee, the closing stock value as on 31.3.2011 was Rs.2,49,56,300 only. However, since only a test check of the basic records produced could be done due to shortage of time, I am not satisfied as all records to arrive the closing stock was verified hence I proceed with the re-assessment to assess the difference in closing stock as the income which has escaped assessment for the A.Y. 2011-12 as per this office proposal letter dated 5.12.2016. Accordingly, Rs.13,47,71,926 is added to the total income assessed vide this office order u/s.143(3) dated 6.3.2014."

7. In our opinion, once the Assessing Officer agreed that the figures of production and sales furnished originally out of total production as per assessee's register is only 90,620 kgs. as on 31.3.2011, still he sustained the addition of Rs.13,47,71,926, which is not proper. The Assessing Officer, though, himself satisfied about the correctness of the value of stock shown by the assessee in its return of income, he still wants to sustain the addition on the basis of the objections raised by the Tax Auditors, which is improper and unjustifiable. Accordingly, we agree with the finding of the CIT(A) in deleting the addition on this count.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 20th day of November, 2019.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 20th November, 2019.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (Appeals) Thiruvananthapuram.
4. The Pr.CIT Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin

		Date	Initial	
1.	Draft dictated on	13.11.2019		Sr.PS
2.	Draft placed before author	13.11.2019		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Draft dictation sheets are attached			Sr.PS