

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G" MUMBAI**

**BEFORE SHRI RAJESH KUMAR, HON. ACCOUNTANT MEMBER &
SHRI AMARJIT SINGH, HON. JUDICIAL MEMBER**

**ITA No. 1203/MUM/2018
(Asst. Year : 2011-12)**

Shree LTC Export India Pvt.
Ltd., 4th Floor, Arihant
Mension, 29, K.N. Road,
Bhat Bazar, Mumbai.

Vs. ITO-8(2)(1), Aayakar
Bhawan, Maharshi
Karve Road,
Churchgate, Mumbai.

PAN No. AAMCS 6411 Q
(Appellant)

(Respondent)

Assessee by : Shri Piyush Chhajed- CA
Department By : Shri V. Vinod Kumar - Sr. DR

Date of hearing : 02/12/2019.
Date of pronouncement : 03/12/2019.

ORDER

PER RAJESH KUMAR, ACCOUNT MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-14, Mumbai, dated 22/12/2017.

2. The assessee has raised the following grounds of appeal:-

"1. *On the facts and circumstance of the case, the Ld. Commissioner of Income Tax (appeal) erred in addition of Rs.3,11,53,8761- on account of closing stock without appreciating the Revised Return of Income filed by the appellant and same is approved by the Ld. Assessing officer*

in the Remand report stating "appears to be correct and the same may now be accepted".

2. *On the facts and circumstances of the case, the Ld. Commissioner of Income Tax (appeal) erred in making adhoc disallowance of Rs.9,29,167/- without appreciating that expenses are incurred wholly and exclusively for business purpose and also failed to pin point any specific issues in the Expenses incurred."*

3. The issue raised in ground No.1 is against the order of the Id.CIT(A) in confirming the addition of Rs. 3,11,53,876/- made by the AO on account of closing stock.

4. Facts of this issued in brief are that assessee filed e-return of income on 31/03/2012, declaring total income of Rs.3,29,61,000/- The said return was belated return. Thereafter, the assessee has filed another return on 29/03/2013 declaring total income of Rs.17,81,124/-. Accordingly, the AO called for explanation for the difference in net profit as per original return vis-a-vis revised return which was not replied by the assessee during the course of assessment proceedings. The AO took the income as per original return of income which was Rs. 3,29,61,000/- and framed the assessment.

5. In the appellate proceedings, the Id.CIT(A) dismissed the appeal of the assessee after taking into consideration of the contentions as raised and also calling for the remand report. The AO submitted remand report to the Id.CIT(A) on 24/03/2017

wherein the AO has stated that revised return dated 29/03/2013 showing the total income of Rs. 17,81,124/- is correct after considering the contention of the assessee and various documents/certificates produced. However, Id.CIT(A) dismissed the appeal of the assessee by observing and held as under:-

“4. I have considered the submission made by the appellate, the reasons recorded by the AO, the remand report of the AO and the comments of the appellant on the remand report of the AO. After consideration of the material on record, various grounds of appeal raised by the appellant are decided as under:-

4.1. So far as first ground of appeal challenging the action of the AO in not considering total income of Rs. 17,81,124/- as per second return of income filed by the appellant and computing income as per original return of income filed by the appellant is concerned, it is seen that the AO did so because total income as per original return of income was Rs. 3,29,61,000/- and the appellant did not provide any explanation during the course of assessment proceedings regarding the drastic reduction in total income as per the second return of income vis-a-vis the original return of income filed by the appellant. The second return of income filed by the appellant was not a valid revised return of income, therefore, the AO could not be faulted for starting the computation by taking total income as per original return of income as a base. In any case, starting point of computation of total income need not be the total income as per the return of the appellant. The AO can take profit as per profit and loss account or any other figure in the accounts of the appellant as a starting point, what is relevant is that which are the allowable expenses and which are the amounts to be included in the total income. From the submission of the appellant it is seen that the difference in total income as per both the returns was due to following reasons: -

1. Closing stock as per original return of income, as declared by the appellant was Rs. 33,77,92,000 whereas the same as per the second return of income was Rs. 30,66,38,124 which resulted in reduction of total income by an amount of Rs. 3,11,53,876

2. Second reason of difference was not claiming the depreciation under section 32 of the IT Act amounting to Rs. 26,000 which was discernible from audited balance sheet of the appellant.

We have to examine whether the appellant is entitled for these deductions. As per the report of the AO, working of closing stock as reported in original and revised return is as under:-

Name of the godown	Particulars	Quantity as per original and the revised return (MT)	Rate as per original and revised return Rs. perMT	Amount as per original and revised return Rs
C Godown, Gandhidham	Barley	9810.45/ 9810.45	12000/ 11000	11,77,25,400/ 10,79,14,950
Pl No. 91 Vashi	Maize	6064/ 6064	13500/ 12100	8,18,64,000/ 733,74440
Trinity Godown, Gandhidham	Barley	5047.50/ 5047.50	12000/ 11000	6,05,70,000/ 5,55,22,500
Himachal, Vashi	Maize	2024.43/ 2024.43	11747/ 10650	2,37,82,000/ 2,15,60,221
Vaibhav Lakshmi, Vashi	Maize	2428.93/ 2428.93	13500/ 12100	3,27,90,600/ 2,93,90,093
Almighty, J	Maize	1560/ 1560	13500/ 12100	2,10,60,000/ 1,88,76,000
	Total	26935.32/ 26935.32		33,77,92,000/ 30,66,38,164

The AO has further stated as under:-

"In support of the above assessee has furnished closing stock certificate (signed by the auditor) as on 31/03/2011 which certified that the closing stock was physically taken by the auditor and also valuation is made by the auditor. Assessee has also furnished purchase invoice copies in support of the rate of items along with the reconciliation statement showing opening stock, purchases, sales and closing stock. Considering the supporting documents furnished in support of its value of revised closing stock shown in the revised return filed on 29/03/2013 showing the total income at Rs.17,81,124/- appears to be correct and the same may now be accepted".

The certificate of the auditor, showing valuation of closing stock is as under: -

Item	M.T.	Cost	Market Rt.	Lower Rt.	Value- Amt
Barley	14857.95	11000	12000	11000	163437450
Maize	10052.93	12100	13500	12100	121640493
Maize	2024.43	10650	11747	10650	21560221
Total	26935.32				306638164

Thus, value of closing stock as per auditor's report is Rs. 30,66,38,164/- whereas the appellant is stating that the value adopted in the revised return of income is Rs. 30,66,38,124/- which is marginally different. If we consider the fact that the books of account of the appellant are audited (audit report is dated 05/09/201 and the auditor has valued closing stock as per cost only and he has not made any calculation showing the value of closing stock as per market rate (if that is the market rate as claimed

in the report), then it is not clear as to how the appellant adopted market value of the stock in its return of income that too by mistake. Therefore, explanation given by the appellant in this regard is not bona fide. Secondly, looking to the round figures adopted in valuation of closing stock as per cost price, the appellant was asked to produce supporting bills in respect of the values adopted as cost price of the purchases. Despite ample opportunity being given, the appellant could produce only one bill each in respect of all three rates adopted by the auditor. The appellant has also shown its inability to produce any more bills. Bill in respect of Barley produced by the appellant is dated 06/11/2010 and the same is for 263.87 quintals. Similarly, the bill for Maize is dated 29/11/2010 and the same is for 205.17 quintals. The other bill for-Maize at the rate of 1065 per quintal is dated 02/01/2011 and quantity is 155.10 quintals. (10 quintals = 1 MT). Thus, it can be seen that the bills submitted by the appellant represent very small quantities as compared to the closing stock shown by the appellant and they are also not close to the date of valuation of closing stock. Thus, it is clear that the appellant has failed to support the valuation of closing stock as adopted in the second return of income filed by it. Accordingly, I'm of the opinion that the closing stock valuation should be adopted as per the original return of the income filed by the appellant, however, the appellant is entitled to the benefit of deduction of Rs. 26,000 towards depreciation not claimed in the original return of income filed by it. First ground of appeal is decided accordingly."

6. After hearing the rival contentions of both the parties and perusing the material on record including the tax audit report, original return as well as revised return, we observe that the assessee has inadvertently mentioned the wrong figures of stock in the original return which has lead to corresponding increase in the net profit of the assessee resulting into high and unrealistic net profit, which was rectified by filing revised return on 29/03/2013. After examining the original as well as revised return along with tax audit return and audited financial accounts, we are of the view that there is an inadvertent mistake on the part of the assessee while preparing the original return which was

correctly rectified by way of revised return on 29/03/2013. Moreover, the AO, in the remand report dated 24/03/2017 which was called for during the course of appellate proceedings before the Id.CIT(A), submitted that after considering the details and evidences filed during the course of remand proceedings, the revised return of income Rs. 17,81,124/- appears to be correct. In view of these facts, we are inclined to set aside the order of the Id.CIT(A) and direct the AO to delete the said addition made on account of closing stock. Thus, this ground of appeal raised by the assessee is allowed.

7. The issue raised in ground No.2 is against the order of the Id.CIT(A) in confirming the *ad hoc* disallowance to the extent of Rs. 9,29,167/- without appreciating that these expenses are incurred wholly and exclusive for the business purpose.

8. Facts of this issue in brief are that during the course of assessment proceedings, the AO called upon the assessee to furnish month-wise and party-wise details of major expenses exceeding Rs.50,000/- charged to the Profit & Loss account with names and addresses of the parties which was not submitted by the assessee and finally the AO disallowed 20% of the total expenses of Rs.12,01,95,400/- which worked out to Rs. 2,40,39,080/- and added the same to the income returned.

9. In the appellate proceedings, the Id.CIT(A) restricted the said disallowance to Rs. 9,29,167/- thereby deleting the addition to the extent of Rs. 2,31,09,913/- after calling the remand report from the AO. The details of the remand report is as under:-

“On verification of the ledger acc and supporting proof of travelling expenses claimed ors 44,47,962/- it is noticed that the entire expense are not fully supported by vouchers/bills/receipts etc. Therefore, the same cannot be verifiable and the entire expenses were wholly and exclusively for its business or not. Therefore, disallowance to the extent of 10% of this expenses requires to be retained. The disallowance retained on this account worked out to Rs. 4,44,796/-.

In view of the above, the disallowances out of various expenses may be restricted to the amounts as under:-

Sr.No.	Heads of major expenses		Amount (Rs.)
1	<u>Other expenses</u>		4,84,371
	(i) 20% of miscellaneous expenses of Rs. 7,16,256/-	1,43,251	
	(ii) 10% of labour expenses of Rs. 29,21,204/-	2,92,120	
	(iii) 10% of gift to parties of Rs. 4,90,000	49,000	
2	<u>Travelling expenses</u>		4,44,796
	10% of the travelling expenses of Rs. 44,47,962		
	Total		9,29,167

10. After hearing the rival contentions of both the parties and perused the material on record, the AO made the *ad hoc* disallowance of Rs. 2,40,39,080/- which was restricted by the Id.CIT(A) to Rs.9,29,167/- on the basis of remand report called for during the appellate proceedings. The details of the disallowance upheld by the Id.CIT(A) has been given hereinabove in the table.

We have examined the orders of the lower authorities and also the remand report and observe that the disallowance was made purely on *ad hoc* basis without assigning any specific reason or giving any finding that the expenses were not incurred in connection with the business of the assessee wholly and exclusively. We are of the view that the disallowance made by the Id.CIT(A) needs to be restricted to 10% of the miscellaneous expenses and 5% of the labour expenses and gift to the parties and 5% of the travelling expenses. Consequently, the assessee gets relief of Rs. 71,625/- under the head 'miscellaneous expenses' and Rs.3,92,958/- under the head 'labour expenses', 'gift to the parties' and 'travelling expenses'. Accordingly, this ground of appeal raised by the assessee is partly allowed.

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

Order Pronounced in the open Court on 03rd December, 2019

Sd/-
(AMARJIT SINGH)
Judicial Member

sd/-
(RAJESH KUMAR)
Accountant Member

Dated : 03rd December, 2019.

vr/-

Copy to:

1. *The Assessee – Shree LTC Export India Pvt. Ltd., 4th Floor, Arihant Mension, 29, K.N. Road, Bhat Bazar, Mumbai.*
2. *The Revenue - ITO-8(2)(1), Aayakar Bhawan, Maharshi Karve Road, Churchgate, Mumbai.*
3. *The CIT-8, Mumbai.*
4. *The CIT(A)-14, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai