

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

**Before Shri P.M. Jagtap, Vice-President  
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2696/KOL/2018  
Assessment Year: 2015-2016**

**M/s. Plywood House,.....Appellant  
191/3, N.S.C. Bose Road,  
Bansdroni, Kolkata-700040  
[PAN: AADFP3813D]**

**-Vs.-**

**Assistant Commissioner of Income Tax,.....Respondent  
Circle-25, Kolkata,  
Aayakar Bhawan Dakshin,  
2, Gariahat Road (South),  
Kolkata-700068**

**Appearances by:**

*Shri A.K. Tulsian, FCA, for the Appellant  
Shri Dhrubojyoti Roy, JCIT, for the Respondent*

Date of concluding the hearing : January 22, 2020  
Date of pronouncing the order : February 28, 2020

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President:-**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-7, Kolkata dated 22.11.2018.

2. At the time of hearing before the Tribunal, the Id. Counsel for the assessee has not pressed Ground No. 1 raised by the assessee in this appeal. The same is accordingly dismissed as not pressed.

3. The issue raised in Ground No. 2 relates to the addition of Rs.4,34,700/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of gross profit @ 10% on the shortage of stock found during the course of survey.

4. The assessee in the present case is a partnership firm, which is engaged in the business of trading of Plywood. The survey under section 133A was carried out at the business premises of the assessee on 27.02.2015. Thereafter the return of income for the year under consideration was filed by the assessee on 01.09.2015 declaring total income of Rs.94,19,640/-. During the course of survey, the inventory stock on physical verification was found to be Rs.3,81,61,309/-. The assessee, however, pointed out certain mistakes in the valuation of stock as physically inventoried during the course of survey and after correcting the said mistakes, the value of stock was arrived at Rs.2,86,11,177/-. As found by the Assessing Officer, the value of stock as per the books of account of the assessee on the date of survey, however, was Rs.3,29,58,186/-. When the assessee was called upon to explain this difference of Rs.43,47,009/-, it was submitted on behalf of the assessee that the shortage in stock as found during the course of survey could be assumed to be the sales and only profit thereof could be taxed. Accordingly the Assessing Officer applied the gross profit rate of 10% on the undisclosed sales of Rs.43,47,009/- and made an addition of Rs.4,34,700/- to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 28.12.2017. On appeal, the Id. CIT(Appeals) confirmed the said addition made by the Assessing Officer for the following reasons given in paragraph no. 4.2 of his impugned order:-

*"4.2. I have considered the submission of the AR of the appellant in the backdrop of the assessment order. I find that in the instant case-a survey was conducted on 27.02.2015 at the business premises of the appellant. During the course of survey, the survey team has physically found and inventoried the stock and calculated the value at Rs.3,81,61,309/-, later on 26.05.2015 the appellant had objected to the calculation citing some arithmetical and calculation mistakes, after correction of cited calculation mistakes the value of stock came to Rs.2,86,11,177/-. However, in the books of assessee the value of stock was shown Rs.3,29,58,186/-. Therefore, it was a clear case of out of books sale amounting to Rs.43,47,009/- (i.e. Rs.3,29,58,186/- minus Rs.2,86,11,177/-). I find that the AIR of the appellant could not explain the discrepancy before the AO as well as before me. In fact the AR*

*has emphasized upon the fact that entire sales cannot be taken as income and only the profit embedded in such out of books sales can be taxed as income of the appellant. Thus I find that, the difference of value of stock is nothing but out of books sales only and remains unexplained by the appellant. I find that the AO has scientifically and considering the previous year data by going through three years of gross profit of the assessee firm and taking the trade standards comparable in the same business, applied G.P. rate of 10% on the unexplained sale proceed and added a sum of Rs.4,34,700/- to the income of the assessee from business. In view of the detailed reasoning given by the AO and no material brought on record by the appellant, the action of AO is held to be justified. This ground is dismissed".*

5. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The Id. Counsel for the assessee has contended that the method of valuation adopted by the survey team for determining the value of stock as found during the course of survey was disputed by the assessee. He has contended that the quantification and valuation of stock made during the course of survey was improper and specific mistakes in this regard were pointed by the assessee. However, as rightly submitted by the Id. D.R., such mistakes pointed out by the assessee, wherever found acceptable, were taken into consideration and accordingly the valuation of stock as made during the course of survey at Rs.3,81,61,309/- was reduced to Rs.2,86,11,177/-. Moreover a specific opportunity was given by the Assessing Officer to the assessee to explain the difference in stock as finally worked out after correcting the mistakes pointed out by the assessee and it was submitted on behalf of the assessee that such difference to the extent of Rs.43,47,009/- could be treated as undisclosed sales and only profit thereof could be brought to tax. Keeping in view all these facts and circumstances of the case, we are of the view that the addition of Rs.4,34,700/- made by the Assessing Officer by applying the gross profit rate of 10% to the shortage in stock as found during the course of survey by treating the same as undisclosed sales of the assessee was fair and reasonable. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) in confirming the said addition made by the Assessing

Officer and upholding the same, we dismiss Ground No. 2 of the assessee's appeal.

6. The issue raised in Ground No. 3 relates to the addition of Rs.2,06,874/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of difference in cash as found during the course of survey.

7. During the course of survey, cash of Rs.7,84,349/- was found in the business premises of the assessee as against the cash balance of Rs.11,72,925/- appearing in the books of account of the assessee. Since no satisfactory explanation could be offered by the assessee in respect of the difference of Rs.2,06,874/- in cash, the Assessing Officer treated the same as the income of the assessee and an addition of Rs.2,06,874/- was made by him to the total income of the assessee. On appeal, the Id. CIT(Appeals) confirmed the said addition made by the Assessing Officer.

8. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The Id. Counsel for the assessee has submitted that some of the cash belonging to the assessee-firm was lying with the partners at their residence at the time of survey and, therefore, the physical cash as found during the course of survey was less than the cash balance appearing in the books of account of the assessee-firm. Moreover, as rightly contended by him, the shortage in cash as found on physical verification during the course of survey cannot be treated as income of the assessee by any stretch of imagination and no adverse inference can be drawn against the assessee on the basis of such shortage in cash. There is no provision in the Income Tax Act, which would enable to treat such shortage in cash as income of the assessee. We, therefore, hold that the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by treating the shortage in cash as found during the course of survey on physical verification is not

sustainable and deleting the same, we allow Ground No. 3 of the assessee's appeal.

9. The issue involved in Ground No 4 relates to the disallowance of Rs.41,651/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) out of various expenses claimed by the assessee.

10. During the course of assessment proceedings, it was found by the Assessing Officer on verification of the relevant bills and vouchers produced by the assessee that the expenses claimed by the assessee under various Heads aggregating to Rs.4,16,513/- were not fully verifiable and some of the said expenses were personal in nature. He, therefore, disallowed the said expenses to the extent of 10%, which the Id. CIT(Appeals) confirmed.

11. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that going by the nature of the expenses claimed by the assessee on business promotion, local conveyance, telephone, staff welfare etc., the involvement of personal element cannot be ruled out and since the disallowance made by the Assessing Officer to the extent of 10% of the expenses claimed by the assessee for such personal element is fair and reasonable we find no justifiable reason to interfere with the impugned order of the Id. CIT(Appeals) and confirm the same. We accordingly find no merit in Ground No.4 and dismiss the same.

**12. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on February 28, 2020.

**Sd/-**  
**(A.T. Varkey)**  
**Judicial Member**

**Sd/-**  
**(P.M. Jagtap)**  
**Vice-President)**

**Kolkata, the 28<sup>th</sup> day of February, 2020**

- Copies to :
- (1) **M/s. Plywood House,  
191/3, N.S.C. Bose Road,  
Bansdroni, Kolkata-700040**
  - (2) **Assistant Commissioner of Income Tax,  
Circle-25, Kolkata,  
Aayakar Bhawan Dakshin,  
2, Gariahat Road (South), Kolkata-700068**
  - (3) *Commissioner of Income Tax (Appeals)-7, Kolkata;*
  - (4) *CIT- , Kolkata*
  - (5) *The Departmental Representative*
  - (6) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**