

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A' KOLKATA

**[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER &
SHRI S.S. GODARA, HON'BLE JUDICIAL MEMBER]**

[THROUGH VIRTUAL COURT]

I.T.A. No. 1374/Kol/2019
Assessment Year: 2015-16

M/s. Mahaprabhu Brick Field.....Appellant
Parambhua, Chenchua, Dhaniakhali,
Hooghly - 714 402.
[PAN: AAQFM 1815 R]

VS.

ACIT, CIR - 24(1), HooghlyRespondent
G.T. Road, Khadinar More, Chinsurah,
Hooghly - 712 101.

Appearances by:

Shri Miraj D. Shah, AR appearing on behalf of the Assessee.
Shri Dhruvajyoti Roy, JCIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : December 09, 2020
Date of pronouncing the order : December 14 , 2020

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax-(A)-6, Kolkata dated 14.03.2019 passed u/s 250 of the Income Tax Act, 1961 (the 'Act ') relating to A.Y. 2015-16.

2. The assessee is a partnership firm engaged in the manufacturing of bricks. A survey was conducted u/s 133A of the Income Tax Act 1961 on 20.01.2015 on the assessee's business premises and its brick field. The

assessee filed its return of income for A.Y. 2015-16 on 24.09.2015 declaring a total income of Rs. 46,79,520/-. The return of income was taken up for scrutiny assessment by issue of a notice u/s 143(2) of the Income Tax Act, 1961 and the A.O. passed an order u/s 143(3) of the Income Tax Act, 1961 on 28/12/2017 determining the total income at Rs.61,25,721/- inter alia making the following additions: (i) Under valuation of closing stock of Rs. 11,05,651/- and (ii) Disallowance of pathrea expenses of Rs. 3,40,550/-. The assessee preferred an appeal before the Ld. CIT(A) – 6, Kolkata, who passed an order dated 13.03.2019 in which the addition of Rs. 3,40,550/- on account of disallowance of Patherea Expenses was deleted. The addition of Rs. 11,05,651/- on account of under valuation of closing stock was upheld.

3. Aggrieved the assessee is in appeal before us.

4. The assessee filed the following grounds:

"i. For that in the facts and circumstances of the case the Ld. CIT(A) erred in upholding the addition of Rs. 11,05,651/- on account of under valuation of closing stock. The addition was uncalled for an unjustified and the same be deleted.

ii. For that the estimated valuation made by the survey team and the statement recorded in the course of survey be ignored for the purpose of making assessment.

ii. Without prejudice to the above the addition be restricted to the gross profit i.e. 27.09% of the difference in stock.

iv. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal."

5. The assessee also filed the following additional ground:

"For that the assessing officer issuing the notice u/s 143(2) of the IT Act, 1961 did not have jurisdiction over the case of the assessee hence the said notice and the consequential assessment order is bad in law and hence the same be quashed."

6. The learned counsel for the assessee submitted that the jurisdiction of the assessee lies with ACIT, Circle – 24(1), Hooghly who had in fact completed the assessment, as per CBDT instruction No. 1-2011 (F No. 187/12/2010-IT(A-1) dated 31.01.2011, as the assessee is a non-corporate assessee and resides in a mofussil area and as the income declared is more than Rs. 15,00,000/-. He submitted that the notice u/s 143(2) of the Act was issued on 14.09.2016 by ITO, Ward – 24(2), Hooghly who was not the officer having jurisdiction over the assessee and this notice was duly served on the assessee. The file was then transferred to ACIT, Circle 24(1). He submitted that the ACIT, Circle – 24(1), Hooghly completed the assessment u/s 143(3) of the Act, without giving any notice u/s 143(2) of the Act. Thus he submits that the assessment is bad in law. For this proposition, he relied on the following decision:

i. 2020(11) TMI 310 – ITAT Lucknow ITO-6(1), Kanpur vs. M/s Arti Securities & Services Ltd. order dated 06.11.2020

ii. 2020 (3) TMI 418 – ITAT Kolkata K.A. Wires Ltd. vs. ITO, Ward-8(3), Kolkata order dated 22.01.2020

7. The assessee submits that in making the addition of Rs. 11,05,651/- on account of under valuation of closing stock, the Ld. Assessing Officer exclusively relied on the stock valuation made by the survey team on the date of survey. While doing so he failed to appreciate the fact that valuation of closing stock made by the survey team was based on guess work because the survey team followed rough, eye estimate due to absence of appropriate measuring procedure for finding out the exact quantity of earth and coal and absence of manpower for actual counting of kachha and pucca bricks. Further,

the survey team's valuation was based on average price, therefore, the stock value taken by them can never be tallied with that of the books of accounts maintained by the assessee and therefore the addition made by the Ld. Assessing Officer based on average pricing is not correct. The appellant submits that the addition made on the basis on an eye estimate without physical verification and proper scientific valuation was not justified and therefore the addition should be deleted.

8. On merits, he further submitted that the books of account of the assessee have been accepted and no defects have been found and when the books are not rejected, the stock should be valued as per the books of account. He submitted that the stock in this case has been valued on an rough eye estimate by the survey team physically on guess work. His case is that the cost as per books should be accepted, as the books have not been rejected.

9. The Ld. Departmental representative on the other hand submitted that, the PAN of the assessee was lying with ITO, Ward - 24(2), Hooghly and hence this ITO issued notice u/s 143(2) of the Act. He submitted that the ACIT Circle- 24(1), Hooghly also belongs to the same range as that of ITO, Ward-24(2), Hooghly and hence he need not give fresh notice u/s 143(2) of the Act. He argues that the assessment order is valid in law. On merits, the ld. DR submitted that stock valuation was done by the survey team and that at the time of survey and the assessee had not denied the valuation done, with cogent material. He submitted that burden of proof lies on the assessee to refute the conclusion done by the survey team with evidence and that the

assessee did not discharge this burden of proof. He took this bench to page 2, para 2 of the assessment order and relied on the same. He also relied on the order of the Ld. CIT(A) and prayed that the appeal of the assessee be dismissed.

10. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of papers on record and the orders of authorities below, we hold as follows.

11. On merits, we find that the assessee is engaged in the business of manufacturing and trading in bricks. Action u/s 133A of the Act was conducted in the business premises of the assessee on 20th January, 2015. The survey team has adopted rough method through guess work, to estimate virtually the closing stock of the assessee, as on the date of survey. The quantity of kachha and pucca bricks cannot be physically counted, when there is no such expertise in the members of the survey team and when there is no required manpower. The exact quantum of earth and coal was not available. Above all the stock valuation was done by the survey team on 20.01.2015 and this is extrapolated to value stock as on 31.03.2010. Such an exercise is arbitrary and erroneous. When the assessee is maintaining proper books of account and when the Assessing Officer has not pointed out any defects in these books and when he did not reject them, it is not open for the AO to ignore these books of account and adopt the value of stock as estimated by the survey team. Such an addition cannot be upheld. Thus we delete the same.

12. Coming to the issue of jurisdiction at page 1 of the assessment order, it is stated that the ITO, Ward - 24(1), Hooghly and issued notice u/s 143(2) of the Act. It can be seen from the assessment order that the ACIT, Circle - 24(1), Hooghly completed the assessment. The ACIT, Circle - 24(1), Hooghly has not issued a notice u/s 143(2) of the Act. The issue is whether such an assessment order is valid in the eyes of law when the jurisdictional assessing officer has not issued a notice u/s 143(2) of the Act.

13. This issue is no more res integra. The Lucknow Bench of the Tribunal in the case of Arti Securities & Services Ltd. (supra) and Kolkata Bench of the Tribunal in the case of K.A. Wires Ltd. (supra) have adjudicated, a similar issue, in favour of the assessee. Respectfully follow the same we hold that the assessment order is bad in law.

14. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on November 14 , 2020.

Sd/-

(S.S. Godara)
JUDICIAL MEMBER

Sd/-

(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 14/12/2020
Biswajit, Sr. PS

*ITA No. 1374/Kol/2019
A.Y. 2015-16
M/s. Mahaprabu Brick Field*

Copy of order forwarded to:

1. M/s. Mahaprabu Brick Field.
2. ACIT, CIR – 24(1), Hooghly.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata