

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

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI O.P. KANT, AM

ITA No. 120/NAG/2020
Assessment Year: 2016-17

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	M/s Karan Kothari Jewellers Private Limited, 475, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440001.
PAN No. AACCK 3221 C		
Appellant		Respondent

Revenue by : Shri Pradeep Hedao (CIT-DR)
Assessee by: Shri Hitesh P Shah (CA)

Date of Hearing: 27/10/2021
Date of Pronouncement: 20/12/2021

ORDER

PER: SANDEEP GOSAIN, J.M.

This is the appeal filed by the Revenue against the order of the Id. CIT(A)-3, Nagpur dated 23/09/2020 for the A.Y. 2016-17 wherein following grounds have been taken.

- “1. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.33,18,94,091/- made by the AO as unexplained investment in closing stock without going into the merit of the case.*
2. *On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding that AO is not empowered to making addition u/s 69 without rejecting books of account ignoring the merit of the case.*
3. *On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding the findings of the AO that the <salvalue> column in the Jilaba software represent*

purchase price of the assessee is misplaced and' erroneous and without giving cogent reasons.

4. *On the fact and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the appellant before the AO had not submitted any letter from the Jilaba manufacturer which clarified that the value of purchase / stock cannot be obtained from Jilaba data as purchases were not entered in the Jilaba system.*
5. *On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding that the valuation of stock as arrived by the AO which forms the basis of addition made u/s 69 is not based on any evidence and is merely based on presumption of the AO overlooking the fact that the <salvalue> column in Jilaba software is purchase price to the assessee.*
6. *On the fact and circumstances of the case in law, the learned CIT(A) erred relying on the fact that the stock has been verified by the Bank by appointing independent auditors which was not placed by assessee before AO, tantamounting to admission of additional evidence in violation of Rule 46A of Income Tax Rule 1962.*
7. *On the fact and circumstances of the case, the learned CIT(A) failed to appreciate that inadvertent credit of Rs.5,14,29,709/- on account of addition on unexplained stock for A.Y. 2015-16 was rectified by order u/s 154 of the I T Act dated 21.01.2019.*
8. *On the fact and circumstances of the case, the learned CIT(A) failed to appreciate that the order of ITAT for A.Y. 2015-16 relied has not been accepted by the Department and appeal against the same is filed in Hon'ble Bombay High Court, Nagpur Bench, Nagpur.*
9. *On the facts and circumstances of the case, the Ld. CIT(A) at best should have kept the adjudication of appeal in abeyance till the decision of jurisdictional High Court.*
10. *Any other grounds to be raised at the time of hearing?*

11. *It is humbly prayed to set aside the order of CIT(A) and restore the order of AO."*

2. Having considered the rival contentions and carefully perused the material placed on record. We have also perused the orders of the revenue authorities. The Id. AR of the assessee has stated at bar that the similar identical issue had already been decided by the Coordinate Bench this Tribunal in assessee's own case for the A.Y. 2009-10 to 2015-16 vide its order dated 03/12/2018 in favour of the assessee and against the Revenue.

3. On the contrary, the Id. CIT-DR has vehemently supported the order of the A.O.

4. We have considered the rival contentions and carefully perused the material placed on record. We have also perused the orders of the authorities below. From perusal of the record, we observed that the Id. CIT(A) has dealt with the issue in para 4 of his impugned order and the same is reproduced as under:

"4. *Discussion and decision*

Undersigned has carefully considered order of AO, written submissions of the appellant and other materials on record. Hon'ble CIT(A) vide her order date 30.09.2019 for A.Y. 2016-17 has observed as under:

"Also, the whole of the said addition made in earlier years has been deleted by the then Hon. CIT(A) and the said deleted addition has been confirmed by the Hon. ITAT. Further, the AO during the year under consideration has also not rejected the book results nor has brought on

record any unaccounted sales or purchases. It is also a fact on record that though the AO has made huge addition of Rs.33,18,94,091/- to the income of the appellant, he has not brought on record any quantitative difference and the said addition is only on estimate basis. Further, he has also given credit of Rs.5,14,29,709/-, being addition made on account of unexplained stock made in AY2015-16, which has been already deleted by the Hon. ITAT."

It is a matter of records that the addition of Rs. 38,33,23,800/- includes the addition of Rs. 5,14,29,709/- which were set off as opening stock in arriving at net addition of Rs. 33,18,94,091/- for this relevant A.Y. 16-17. The addition made is on account of unexplained investment in stock derived from the Jilaba software maintained by the appellant. It is a matter of fact that a search operation was conducted on the appellant on 10.09.2014 and no excess stock was found from the physical inventory undertaken during search operation. It is also a matter of fact that excess stock worked out by AO on the basis of Jilaba software was deleted by learned CIT(A) in her order dt. 30.09.2019 for A.Y. 2016-17. Hon'ble ITAT has confirmed the deletion of similar addition in its order dt. 03.12.2018 for A.Y 2009-10 to A.Y. 2015-16 in appellant's own case. Thus what has been added by AO u/s 154 stands deleted by my learned predecessor vide appeal order dt. 30.09.2019. Also similar additions for earlier years stands deleted by jurisdictional ITAT, Nagpur vide order dated 03.12.2018. Hence as on today no addition stands alive on account of excess stock.

It is a matter of fact that, AO during the year under consideration has also not rejected the book results nor has brought on record any unaccounted sales or purchases. It is also a fact on record that though the AO has made huge addition of Rs.33,18,94,091/-

to the income of the appellant, he has not brought on record any quantitative difference and the said addition is only on estimate basis. Further, he has also given credit of Rs.5,14,29,709/-, being addition made on account of unexplained stock made in AY2015-16, which has been already deleted by the Hon. ITAT.

The above facts clearly show that the said addition of Rs. 38,33,23,800/- should not have been made in the first place as the certified copy of the Order of the Hon'ble ITAT, which was already pronounced on 03/12/2018, was available with AO during the assessment proceedings. Ld. A.O. was not at all justified in giving set off of the said amount of closing stock of Asst. Year 2015-16 of Rs. 5,14,29,709/- and thereafter withdrawing it u/s154. It is uncontroverted fact that all the addition on account of excess stock stands deleted by CIT(A) and confirmed by H'ble ITAT, Nagpur. Thus, the addition made by AO u/s154 does not stands on its own merits and deserves to be deleted. Hence, ground No. 1 to 3 of the appellate are hereby allowed."

5. From perusal of the record, we observed that the addition of Rs. 38,33,23,800/- includes the addition of Rs. 5,14,29,709/- which were set off as opening stock in arriving at net addition of Rs. 33,18,94,091/- for this relevant A.Y. 2016-17. The addition made is on account of unexplained investment in stock derived from the Jilaba software maintained by the assessee. It is a matter of fact that a search operation was conducted on the assessee on 10.09.2014 and no excess stock was found from the physical inventory undertaken during search operation. It is also a matter of

fact that excess stock worked out by AO on the basis of Jilaba software was deleted by Id CIT(A) in her order dt. 30.09.2019 for A.Y. 2016-17. The Coordinate Bench of the Tribunal had confirmed the deletion of similar addition in its order dated 03.12.2018 for A.Y. 2009-10 to A.Y. 2015-16 in assessee's own case. Thus, what had been added by AO u/s 154 stands deleted by Id. the then CIT(A) vide appeal order dated 30.09.2019. The identical additions for earlier years had been deleted by Coordinate Bench of the Tribunal vide order dated 03.12.2018. It is a matter of fact that, AO during the year under consideration has also not rejected the book results nor has brought on record any unaccounted sales or purchases. It is also a fact on record that though the AO has made huge addition of Rs.33,18,94,091/- to the income of the assessee, he has not brought on record any quantitative difference and the said addition is only on estimate basis. Further, he has also given credit of Rs.5,14,29,709/-, being addition made on account of unexplained stock made in AY 2015-16, which has been already deleted by the Coordinate Bench of this Tribunal in assessee's own case. Considering the totality of facts and circumstances of the case, order of the Id. CIT(A) and the decision of the Coordinate Bench of this Tribunal in assessee's own case, we do not find

any reason to interfere or to deviate from the findings so recorded by the Id. CIT(A), accordingly, we uphold the same.

6. In the result, this appeal of the Revenue stands dismissed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(O.P. KANT)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Nagpur
Dated:- 20/12/2021
*Ranjan

*Ranjan

Copy of the order forwarded to:

1. The Appellant- The A.C.I.T., Central Circle-2(2), Nagpur.
2. The Respondent- M/s Karan Kothari Jewellers Private Limited, Nagpur.
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 120/Nag/2020)

By order,

Asst. Registrar