

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No: **3018/CHNY/2019**
निर्धारण वर्ष /Assessment Year: 2014-15

Income Tax Officer,
Corporate Ward -2(3),
Room No. 504, 5th Floor,
Wanaparthy Block,
No. 121, M.G. Road,
Chennai – 600 034.

M/s. Hallmark Infrastructure
v. **Pvt. Ltd.,**
Suite-A, No. 43, Old No. 62/2,
United Plaza, Usman Road, T
Nagar, Chennai – 600 017.

PAN: AABCH-5970-J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N. V. Balaji, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing : 02.03.2022

घोषणा की तारीख/Date of Pronouncement : 04.03.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal of the Department is arising out of the order of Commissioner of Income Tax (Appeals)-6, Chennai in ITA No. 453/CIT(A)-6/2016-17 dated 02.08.2019 against the assessment order made by ITO, Corporate Ward -2(3), Chennai u/s. 143(3) of

the Income Tax Act, 1961 (herein after referred to as "the Act") for the assessment year 2014-15.

2. The Department is in appeal before the Tribunal challenging the deletion of addition made u/s. 69 of the Act as unexplained investments of Rs. 13,87,37,363/- by relying on the submission made by the assessee that an error was committed in furnishing the details for the value of Gold and Diamond in Form 3CD. The Department has also taken ground that the Ld. CIT(A) ought to have called for examining the veracity of the purchases of Gold and Diamond and ought to have remanded the issue to the Ld. AO before adjudicating the appeal before him.

3. Facts briefly stated from the records are that the assessee has filed its return of income on 16.04.2015 reporting an income of Rs. 21,45,200/-. A survey was conducted u/s. 133A of the Act in the case of assessee on 20.09.2016 on the basis of which the case for scrutiny was converted into complete scrutiny. In the course of assessment proceedings, Id. AO noted as under:

“ 5) As per the Return of income filed for the A-Year 2014-2015 vide Part-A-QD, the following opening stock, purchases sales during the previous year and closing stock were shown as follows:

	<i>Opening Stock</i>	<i>Purchases during the year</i>	<i>Sales during the</i>	<i>Closing stock</i>

			year	
Gold	72,04,186	78,40,581	-----	1,50,44,767/-
Diamond	9,53,10,206	6,15,28,100	-----	15,68,38,306/-
Land	44,00,51,445	6,93,68,682	-----	50,94,19,309/-

During the course of survey, the stock Register, Purchase Register, Sales Register, Sales Bills and Purchase Bills were called for. As per the Rules and Regulation of the Income Tax Act these Registers and Bills have to be maintained at the Registered Office and to be produced if called for. Whereas the above Registers and Bills were not produced to the survey team. Instead Sri C. Anand Jain, the Managing Director furnished his answer as follows and which is reproduced below:

“ANS: In the return of income, there is a difference between the figures shown in the financials and the relevant schedule. I reconcile it and provide the details within a week.”

It is hereby informed that more than three months lapsed, till date the Registers and Bills were not furnished for verification.

Due to the non submission of the above details/evidences called for it is proposed to treat the value of purchases made during the year to the extent of Rs.13,87,37,363/- as unexplained investment u/s69 of the Income Tax Act, 1961.”

From the perusal of the assessment order it is noted that the Ld. AO provided several particulars to the assessee to make its submission and furnish the relevant details, failing which the Ld. AO proceeded to make the addition as noted below:

5. UNEXPLAINED INVESTMENTS

Since the assessee failed to submit any details/evidences Bills, and Registers in respect of purchases made to the extent of Rs. 13,87,37,363/- as proposed vide above proposal the investment made to the extent of Rs. 13,87,37,363/- is treated as unexplained investments u/s. 69 of the Income Tax 1961.”

Aggrieved, the assessee went into appeal before Ld. CIT(A).

4. Before the Ld. CIT(A), the assessee submitted its explanation and claimed as noted below in 4.5.1, 4.5.4 & 4.5.5:

“ 4.5.1 in column No.35(a) of Form No.3CD, only quantitative details of opening stock, purchases, sales and closing stock are to be given and not (Rs.78,40,581) and diamonds (Rs.6,15,28,100), totaling to Rs.6,93,68,681/-, made during the year in the quantitative details

of purchases column. The auditors again erroneously entered this total in the purchases column of the land. The assessee further submitted that once these amounts are entered in the purchases column the closing stock figures got automatically calculated, as per the preprogrammed software, and erroneously reflected in the Form No.3CD report. Thus the assessee stated that the figures mentioned in the Form No.3CD report at Column 35(a) are not correct, and hence need not be considered.

4.5.2.....

4.5.3.....

4.5.4 Further, as explained by the assessee, in column No.35(a) of Form No.3CD only quantitative details of opening stock, purchases, sales and closing stock are to be given and not their values. However, the values of purchases of gold (Rs.78,40,581) and diamond (Rs.6,15,28,100) are entered in the quantitative details of purchases column. The total of these two items comes to Rs.6,93,68,681/-, which is again entered against column 'purchase of land'. With no sales mentioned in the next column, the closing stock column got automatically filled up.

	Opening Stock	Purchases during the year	Sales during the year	Closing stock
Gold	72,04,186	78,40,581	-----	1,50,44,767/-
Diamond	9,53,10,206	6,15,28,100	-----	15,68,38,306/-
Total		6,93,68,681		
Land	44,00,51,445	6,93,68,682	-----	50,94,19,309/-

4.5.5. Further, as could be seen from the financials of the assessee company, the actual opening stock, purchases, sales and closing stock, as shown in the P&L account and balance sheet (see schedule 23 therein), are as under:-

	Opening Stock	Purchases during the year	Sales during the year	Closing stock
Stock-in-trade (i.e. gold & diamonds)	10,25,14,392	6,93,68,681	6,70,45,222*	6,93,68,681
Process Stock (i.e., Land/flats)	44,00,51,445	Various expenses	8,21,19,170	44,81,78,637

Note: *Entire opening stock is sold during the year for Rs.6,70,45,222/- and only the purchases are remaining as closing stock as on 31.03.2014."

Considering the above submissions, Ld. CIT(A) opined that the AO is not justified in considering and treating the amount of Rs. 13,87,37,363/- reflected in Column No. 35(a) of Form 3CD as unexplained investments u/s. 69 of the Act. Accordingly, the Ld. CIT(A) deleted the addition so made by the Ld. AO.

5. Ld. CIT(DR) Mr. M. Rajan, vehemently argued the matter and submitted that the assessee had furnished the details for the first time before the Ld. CIT(A) for which he ought to have called for and examine the veracity of the purchases of Gold and Diamond as claimed by the assessee and ought to have given an opportunity to the Ld. AO for explaining his case by calling a remand report on the submissions made by the assessee.

6. Ld. Counsel of the assessee Shri. N.V. Balaji, Advocate, represented the matter before us and furnished a paper book containing 24 pages in the course of hearing. Ld. Counsel demonstrated through the balance sheet Schedule-15 and Form 3CD Clause 35(a) that it was a typographical mistake in filling the Form 3CD and resulted into a discrepancy leading to the addition. Ld. Counsel also took us to page 24 of the paper book, which is a certificate issued by Chartered Accountant (CA) Shri. T.S. Srinivasan dated 22.07.2019 to demonstrate that the tax audit report was modified owing to the typographical mistake occurred at the time of filling the Form 3CD.

7. We have heard the rival contentions, perused the material on record and gone through the paper book placed before us by the Ld.

Counsel. We note that the certificate of the CA is dated 22.07.2019 and the impugned order of the Ld. CIT(A) was passed on 02.08.2019, which clearly suggests that this certificate was not before the Ld. AO, also the claim of the Ld. Counsel in respect of typographical mistake and explanation given thereto were never made available to the Ld. AO. We find that the claim of the Ld. CIT(DR) calling for examining of the veracity of purchase of Gold and Diamond by taking a remand report from the AO is justified. On a specific query by the Bench to the Ld. Counsel of the assessee to remit the matter back to the file of the Ld. AO for the purpose of verification of purchase of Gold and Diamond from the books of accounts and the audited financial statements and getting the assurance that the claim of typographical mistake is bonafide one, Ld. Counsel unhesitantly agreed for the same. Accordingly, considering the factual matrix and the contentions of the Ld. CIT(A) and the consent of Ld. Counsel of the assessee, we set aside the order of the Ld. CIT(A) and remit the matter back to the file of the Ld. AO, on this issue of addition made u/s. 69 of the Act as unexplained investments of Rs. 13,87,37,363/- and pass the order in accordance with law. Accordingly, the appeal of the Revenue is allowed for statistical purposes.

8. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the court on 04th March, 2022 at Chennai.

Sd/-
(गिरीश अग्रवाल)
(GIRISH AGRAWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 04th March, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |