

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "SMC", KOLKATA**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

**ITA No.2570/Kol/2018
Assessment Year: 2014-15**

Shri Akashoy Das, L/R of Late Amal Das (Deceased)	Vs.	ITO, Ward-43(3), Kolkata
26/1, Roy J.N. Chowdhury Lane, Kolkata - 700036		
PAN: ADUPD 6193 N		
(Appellant)		(Respondent)

Present for:

Appellant by : Shri U. Dasgupta, Advocate.
Respondent by : Shri Manas Mondal, ACIT.

Date of Hearing : 24.02.2022
Date of Pronouncement : 11.03.2022

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The present appeal has been preferred by the assessee against the order dated 30.08.2018 passed by Ld. CIT(A)-13, Kolkata which in turn arises out of the assessment framed u/s 143(3) of the Act dated 26.12.2016.

2. The assessee has raised two effective issues in the various grounds of appeal. The first issue raised by the assessee is against the confirmation of addition of Rs. 22,62,597/- by Ld. CIT(A) added by AO on account of stock discrepancy u/s 69 of the Act and the second issue raised in respect of confirmation of addition of Rs. 1,23,067/- by Ld. CIT(A) as has been made by the AO on account of suppressed sales.

3. So far as the addition of Rs. 22,62,597/- u/s 69 of the Act is concerned, the facts are that during the course of survey u/s 133A of the Act conducted on the premises of the assessee on 31.10.2013, the survey team found discrepancy in stock of Rs. 22,62,597/-. The physical stocks found in the premises were Rs. 35,85,955/-

based on the price list (sale price) provided by the assessee and confirmed on oath which was inclusive of 30% towards profit embedded in selling price. The assessee filed the return of income without disclosing the excess of stock found during the course of survey. Besides the sales discrepancy of Rs. 1,23,067/- was also not disclosed in the return as noted by the AO during the assessment proceeding. The AO called for the explanation of the assessee on the same failing which why the same should not be added to the income of the assessee. The assessee replied show cause notice by submitting that all these stocks and sales were duly accounted for in the books and accordingly the books of account were prepared and profit and loss account and balance sheet were drawn up and only on that basis income tax return was filed. The AO was not satisfied with the contentions of the assessee and made additions to the income of the assessee of both these amounts.

4. In the appellate proceeding, the Ld. CIT(A) dismissed the appeal of the assessee by holding that the assessee has admitted on oath and signed the excess stock and unrecorded sales found during the course of survey and thus justified the additions made by the AO.

5. After hearing rival contentions and also perusing the material available on record, we find that the survey u/s 133A of the Act was on the business premises of assessee on 31.10.2013. During the course of survey, excess stock was determined at Rs. 35,85,955/- and after making allowance towards profit as the inventory was taken at selling price, a net addition of Rs. 22,62,597/-, was made. Similarly the unaccounted sale of Rs. 1,23,067/- found during survey were added by the AO. We note that the AO could not pin point any discrepancy in the books of accounts produced by the assessee during the assessment proceeding. It was also brought to the notice of the AO that inventory taken by the survey team was taken on estimation and was not correct. We note that the AO simply brushed aside the plea of the assessee that these stocks and sales as found during the survey were duly recorded in the books and income was determined and return of income was filed accordingly. We further find that the AO has not rejected the books of accounts of the assessee and AO failed to point out any defect or deficiency in the same. In our opinion, the AO

cannot make the additions without rejecting the books of accounts and without pointed out specific defects. The assessee has been claiming that correct amount of stocks and sales were recorded in the books which were produced before the AO and the AO has failed to point out as to how the books of account were not correct. Similarly the Ld. CIT(A) has held that amount of undisclosed stock and sale were not accounted by the assessee without giving any findings as to how the books of account produced by the assessee were not correct. In our opinion, the addition of such types which are made during the course of survey on oath cannot be made unless there is a supporting material. In our opinion, the addition on estimated basis cannot be justified for reasons, the AO has not rejected the books of account. Under these circumstances, we are inclined to set aside the order of CIT(A) and direct the AO to delete the addition of Rs. 22,62,597/- in respect of stock discrepancy and Rs. 1,23,067/- in respect of suppressed sales.

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

Order pronounced in the open court on 11.03.2022.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Kolkata, Dated: 11.03.2022.
 Biswajit

Copy to: The Appellant
 The Respondent
 The CIT, Concerned, Kolkata
 The CIT (A) Concerned, Kolkata
 The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata