

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2529/PUN/2017
निर्धारण वर्ष / Assessment Year: 2014-15

ACIT, Circle-3, Aurangabad.	Vs.	M/s. Shyam Trading Company, 432, TPS Road, Shivaji Nagar, Varli (V), Dist.- Beed- 431515. PAN : ABJFS5207R
Appellant		Respondent

आयकर अपील सं. / ITA No.2706/PUN/2017
निर्धारण वर्ष / Assessment Year: 2014-15

M/s. Shyam Trading Company, 432, TPS Road, Shivaji Nagar, Varli (V), Parli Vajjanth, Dist.- Beed- 431520. PAN : ABJFS5207R	Vs.	ITO, Ward-2, Beed.
Appellant		Respondent

Revenue by : Shri Piyushkumar Singh Yadav
Assessee by : Shri Chetan Karia
Shri Suhas Bora

Date of hearing : 10.03.2022
Date of pronouncement : 16.03.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross-appeals filed by the Revenue as well as by
the assessee directed against the order of Id. Commissioner of

Income Tax (Appeals)- 2, Aurangabad ['CIT(A)' for short] dated 23.08.2017 for the assessment year 2014-15.

2. Briefly, the facts of the case are that the assessee is a partnership firm engaged in the business of trading of cotton, cotton seeds and cotton lint. The return of income for the assessment year 2014-15 was filed on 25.11.2014 disclosing total income of Rs.Nil. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2, Beed ('the Assessing Officer') vide order dated 29.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.1,86,99,288/- after setting off of brought forward business losses for assessment year 2012-13 of Rs.1,03,06,020/-. While doing so, the Assessing Officer made addition of Rs.3,04,80,817/- on the ground that the value shown in the statement of stock furnished to the bank is higher than the value of closing stock shown in the Profit & Loss Account. During the course of assessment proceedings, the assessee was called upon to show cause as to why the difference between the value shown in the stock statements furnished to the bank and the value of closing stock shown in the Profit & Loss Account should not be added as 'unexplained investments' invoking the provisions

of section 69 of the Act. The Assessing Officer also recorded the statement of the assessee u/s 131 of the Act on the oath. In reply to the same, the assessee submitted that the figures of quantity and the valuation of stock given to the bank are imaginary and bogus in order to avail higher cash credit limits. It was further stated that the debtors list furnished to the bank was also imaginary figures. In order to verify the veracity of the statement given by the assessee, the Assessing Officer had cross-checked with the banker through e-mail on 19.12.2016. The bank, in turn, vide letter dated 22.12.2016 submitted that the In-charge bank manager had verified and satisfied with the correctness of the stock statements furnished to the bank. On the strength of the reply given by the bank, the Assessing Officer had not believed the explanation offered by the assessee for the discrepancies between the value shown in the stock statements furnished to the bank and the value shown in the Profit & Loss Account and, therefore, by invoking the provisions of section 145(3) of the Act had rejected the trading results and made the addition of Rs.3,04,80,817/- being the difference between the value of stock statements submitted to the bank and the value of stock shown in the Profit & Loss Account placing reliance on the decision

of the Hon'ble Punjab & Haryana High Court in the case of B.T. Steels vs. CIT, 328 ITR 741 (P&H). The Assessing Officer made another addition of Rs.3,03,383/- u/s 36(1)(iii) of the Act by holding that the borrowed funds have been diverted to non-business purpose by advancing a sum of Rs.20,22,552/- to M/s Rampal Lohiya & Sons.

3. Being aggrieved by the above action of the Assessing Officer, an appeal was filed before the ld. CIT(A), who vide impugned order upheld the action of the Assessing Officer by holding that the stock statements furnished to the bank cannot be overlooked placing reliance on the following decisions :-

- (i) Estee Exports (P.) Ltd. vs. ITO, 31 taxmann.com 70.
- (ii) Ramanlal Kacharulal Tejmal vs. CIT, 146 ITR 368.
- (iii) Coimbatore Spinning & Weaving Co. Ltd. vs. CIT, 95 ITR 375.
- (iv) Dhansiram Agarwalla vs. CIT, 201 ITR 192.

4. However, the ld. CIT(A) had granted relief to the assessee by directing the Assessing Officer to adopt the value shown in the stock statements furnished to the bank in its entirety and not to ignore the negative stock of the cotton lint by holding that the assessee would have made undisclosed sales. Thus, the ld. CIT(A) reduced the value of Rs.1,69,86,430/-. The ld. CIT(A) further

directed the Assessing Officer to bring to tax the gross profit rate on sale of cotton lint to the returned income by stating that the negative stock of cotton lint mean that the assessee would have sold the cotton lint out of the books.

5. Being aggrieved by the decision of the Id. CIT(A) partly allowing the appeal, the assessee is in appeal before us in ITA No.2706/PUN/2017 and the Revenue is in appeal before us in ITA No.2529/PUN/2017 being aggrieved by that part of the decision of the Id. CIT(A) which is against the Revenue.

ITA No.2706/PUN/2017 – By Assessee :

6. Now, we shall take up the assessee's appeal in ITA No.2706/PUN/2017.

7. The assessee firm challenges the decision of the Id. CIT(A) in confirming the addition on account of discrepancies between the value of stock statements given to the bank and the value shown in the Profit & Loss Account. It is contended before us that the value shown in the stock statements furnished to the bank were inflated so as to enable the assessee to avail higher cash credit limits. It was further stated that the Assessing Officer had verified total purchase

bills, purchase register, sales bills and sales register, the stock book generated from Tally accounting software etc, on verification of such record, the Assessing Officer had not pointed out any discrepancy in the books accounts, it is a common business practice to give inflated valuation to the banker in order to avail higher cash credit limits and no addition can be made merely based on the statements furnished to the bank placing reliance on the following judicial precedents :-

- (i) CIT vs. Prem Singh & Co., ITA No.88 of 1982 dated 09.07.1985 (Delhi – HC).
- (ii) ITO vs. Patel Proteins (P.) Ltd. in Tax Appeal No.278/2008 and 711/209 dated 08.07.2016 (Guj. – HC).
- (iii) ACIT vs. Smt. Neeta Sharma Prop., ITA No.286/Agr/2013 dated 19.08.2019 (Agra – Trib.).
- (iv) CIT vs. Das Industries, 303 ITR 199 (All. – HC).
- (v) Vrundvan Roller Floor Mill, TaxCorp (DT) 66108 (Guj. – HC).
- (vi) CIT vs. Relaxo Footwear, 259 ITR 744 (Raj. – HC).
- (vii) ITO vs. JagdipKanjibhai, 66 TTJ 199 (Ahmedabad – Trib.).
- (viii) CIT vs. Shib Shankar Das, TaxCorp (DT) 69304 (Cal. – HC).
- (ix) Ashok Kumar vs. ITO, 201 CTR 178 (J&K – HC).
- (x) CIT vs. Sri Padmavathi Cotton Mills, 236 ITR 340 (Mad. – HC).

8. It is further contended that the bank never carried out physical inspection of the stock. Therefore, it is submitted that the judicial precedents relied upon by the Assessing Officer has no application to the facts of the present case. It is further submitted that the decision of the Hon'ble Bombay High Court in the case of

Ramanlal Kacharulal Tejmal vs. CIT, 146 ITR 368 has no application to the facts of the present case, inasmuch as, the stock is hypothecated and not pledged.

9. On the other hand, ld. CIT-DR submitted that the stock statements submitted by the assessee to the bank was verified and found to be correct by the In-charge bank manager. The assessee has failed to discharge the onus of explaining the discrepancies between the stock statements submitted to the bank and value shown in the Profit & Loss Account. Thus, it was prayed that the order of the assessment should be confirmed.

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the addition on account of discrepancies between the stock statements submitted to the bank and value of stock as shown in the Profit & Loss Account. It is an admitted position that there is a discrepancy between the value shown in the statements submitted to the bank and the value of closing stock shown to the Profit & Loss Account for the purpose of availing the higher cash credit limits. When the Assessing Officer confronted the assessee on the discrepancy asked to explain the reasons for discrepancies, it was explained by the assessee that

the value shown in the stock statements furnished to the bank is imaginary and bogus and higher value deliberately shown in order to avail higher cash credit limits. From the findings of the Assessing Officer vide para 9 of the assessment order, it appears that the Assessing Officer had also verified the stock register maintained in the Tally software and no discrepancies were found. The Assessing Officer also cross-verified with the bank manager who, in turn, had stated that the stock statements submitted to the bank was verified and found to be correct by the In-charge bank manager. It is settled position of law that the onus lies on the assessee to explain the discrepancies between the stock statements submitted to the bank and value shown in the Profit & Loss Account. This onus was stands discharged by the assessee in the present case, as the assessee had furnished the stock statements maintained as per the books of account in the Tally software. Apparently, the Assessing Officer had not found any discrepancy in the stock register maintained by the assessee. Though the assessee has made a bald statement before the Assessing Officer that the value shown in the stock statements submitted to the bank is imaginary and bogus, but when this statement is considered

conjointly with the fact that on verification of stock statement, it was found to be correct by the Assessing Officer also. We find no reason to make any addition by the Assessing Officer. As regard to finding that the stock statements furnished by the assessee was verified and found to correct by the In-charge bank manager, it appears from the material on record that it was not confronted by the Assessing Officer to the assessee. The assessee had asserted before the Assessing Officer that the stock statement was not verified by the branch manager. In the backdrop of these facts, we are of the considered opinion that there is no conclusive evidence brought on record by the Assessing Officer in support of the case to say that the value shown in the stock statements furnished to the bank is correct. It is equally settled position of law that the stock statement submitted to the third party like banker *per se* cannot form the basis for the purpose of making addition especially in the light of the fact that the stock is the hypothecated and not pledged. The ratio of the Punjab & Haryana High Court in the case of B.T. Steels (*supra*) as relied upon by the Assessing Officer has no application to the facts of the present case as in the said case there is no satisfactory explanation was given by the assessee as to the

discrepancies found between the stock statements furnished to the bank and the value shown in the Profit & Loss Account. It is also equally settled position of law that when no discrepancies were found in the books of accounts maintained by the assessee, the book results cannot be rejected. Therefore, the Assessing Officer also is not justified in rejecting the books results.

11. In the light of the above discussion, we are of the considered opinion that the no addition on account of discrepancies between the value shown in the statements submitted to the bank and the value shown in the Profit & Loss Account can be made.

12. In the result, the appeal filed the assessee stands allowed.

ITA No.2529/PUN/2017 – By Revenue :

13. Now, we will take up the Revenue's appeal in ITA No.2529/PUN/2017.

14. In this appeal, the Revenue challenges the decision of the ld. CIT(A) in directing the Assessing Officer to consider the stock statements furnished to the bank in its entirety not to pick and choose the items of stock. Thereby, ld. CIT(A) directed the Assessing Officer to delete the addition on account of cotton lint of

Rs.1,69,86,430/-. In foregoing paragraphs of this order, we held that the stock statements furnished by the assessee *per se* cannot form the basis for making the addition on account of discrepancies between the value shown in the stock statements submitted to the bank and value shown in the Profit & Loss Account. In these circumstances, the ground of appeal filed by the Revenue does not survive. Hence, we dismiss the appeal filed by the Revenue.

15. Resultantly, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

Order pronounced on this 16th day of March, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16th March, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.