

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.108/Chny/2019
निर्धारण वर्ष /Assessment Year: 2015-16

The Dy. Commissioner of-
Income Tax,
Non-Corporate Circle-10(1),
Chennai.

v. M/s.Valarmathi,
No.4, SRP Colony,
Peravallur,
Chennai-600 082.
[PAN: AABFV 6189 L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Mr.P.Sajit Kumar, JCIT
Assessee by : Mr.T.N.Seetharaman, Adv.
सुनवाई की तारीख/Date of Hearing : 28.03.2022
घोषणा की तारीख /Date of Pronouncement : 31.03.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-12, Chennai, dated 31.10.2018 and pertains to assessment year 2015-16.

2. The Revenue has raised the following grounds of appeal:

1. *The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.*
2. *The Id. CIT(A) erred in deleting the addition of Rs.2,46,66,340/-made u/s. 69 as unexplained investments.*
 - 2.1 *The Id. CIT(A) erred in not considering the fact that the survey was conducted on 26.08.2015, which was during the financial year 2014-2015. During the survey the managing partner made a disclosure of Rs.3,07,94,175/- on account of excess stock. Hence,*

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the excess stock of Rs.3,07,94,175/- which was found and disclosed needs to be added in the assessment year 2015-2016.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer be restored.

3. The brief facts of the case are that the assessee is a partnership firm, carrying on business as a trader in textiles and readymade garments. A survey u/s.133A of the Act, was conducted in the assessee's case on 26.08.2015. During the course of survey, a value of closing stock as on that day as per the computer was found to be Rs.2,38,81,525/-. A statement of Mr.R.Mahendra Kumar, Partner, was recorded and in response to Q.No.9, he had accepted that the cost of goods as on 31.03.2014 was Rs.4,20,66,574/-. Further, the assessee firm has admitted additional income on account of unexplained investment in stock at Rs.3,07,94,175/- for the AY 2015-16. However, while filing the return of income for the AY 2014-15, the assessee has re-worked difference in closing stock by considering the cost of goods sold instead of sales price adopted by the AO, and determined the closing stock value as on 31.03.2014 and has arrived at closing stock value as on 31.03.2014 at Rs.2,46,66,430/- instead of Rs.4,20,66,574/- worked out during the course of survey. Further, on that basis, the total income for the AY 2014-15 was revised at Rs.78,51,990/- against Rs.24,94,600/- originally returned. The assessee has explained the reconciliation of stock difference worked out by the Department during the course of survey and stock difference arrived at by the assessee. The AO has accepted the assessee's revised working of income and has completed the assessment for the AY 2014-15.

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4. For the AY 2015-16, the AO has, once again, considered the difference in closing stock worked out during the course of survey and has made addition of Rs.2,46,66,430/- towards unexplained investment in stock in trade and further, addition of Rs.61,27,745/- towards business profit on the ground that although the assessee has declared additional income on account of difference in stock in trade for the AY 2014-15, but the same needs to be assessed for the AY 2015-16, because the survey took place on 30.08.2015.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged the additions made by the AO towards difference in value of closing stock along with reconciliation and submitted that the AO is erred in adding a sum of Rs.2,46,66,430/- as unexplained investment, even though, the assessee has considered the difference in closing stock worked out during the course of survey for the AY 2014-15. The Ld.CIT(A) after considering the relevant submissions of the assessee and also by following certain judicial precedents, has deleted the additions made by the AO towards unexplained investment on account of stock in trade and also addition on account of business profit on the ground that the assessee has reconciled stock in trade worked out by the AO during the course of survey at Rs.4,20,66,574/- to Rs.2,46,66,430/- and offered additional income of Rs.1,33,93,468/- for the AY 2014-15. The AO has accepted the revised closing stock worked out by the assessee for the AY 2014-15 vide order

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u/s.143(3) of the Act dated 08.08.2016 and therefore, further additions on the same issue for the AY 2015-16 is incorrect. The Ld.CIT(A) also deleted the addition towards business profit on account of difference in value of closing stock on the ground that there is no basis for the AO to work out the value of closing stock as on 31.03.2014, when the survey took place on 30.08.2015. If at all, there is any difference in closing stock found during the course of survey when compared to book stock, the AO should have worked out the difference in closing stock as on the date of survey, instead, the AO has determined the value of closing stock by adding and subtracting sales without considering the probable mark-up included in selling price of goods, which resulted in excess closing stock, without any discrepancy in stock details maintained by the assessee. Therefore, directed the AO to delete the addition made towards unexplained investment in closing stock as well as resultant business profit. The relevant findings of the Ld.CIT(A) are as under:

11. I have examined the facts of the case and the submissions of the appellant. In the course of the assessment proceedings for AY 2014-15, the appellant explained that in the accounts it was regularly employing the method of valuation of stock at cost or market price whichever is lower, urging that in valuing the stock as on 31.03.14 during the survey the sales figures were wrongly adopted. It was stated that the correct method is to adjust the "Cost of goods sold" by reducing the profit margin from the sale price of the goods. By adopting the average profit margin during the last three years which worked out to 25.65%, the "Stock Value on 31/03/2014" was worked out as Rs.2,46,66,430/- instead of Rs.4,20,66,574/- worked out during the Survey. On that basis the total income for assessment year 2014-15 was revised as Rs.78,51,990/- against Rs.24,94,600/- originally returned offering additional income of Rs.1,33,93,468/-. The above stock value working was accepted by the AO for AY 2014-15 and scrutiny assessment was completed accepting the offer of additional income.

12. For AY 2015-16, the appellant rightly adopted Rs.2,46,66,367/- as the opening stock as on 1/4/2014 since that was the closing stock as per assessment for AY 2014-15 as on 31/3/2014. It is mentioned in the assessment order by the AO that excess stock is worked at Rs.2,46,66,430/- after taking the cost price as the basis for goods sold. The income related to excess stock was already offered and assessed in AY 2014-15. However, the AO added the excess stock worked out for earlier year to the income of the current year under section 69 of the IT Act, stating as follows:

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"As per the provisions of Income-tax Act Itself Adjustment of loss of one head against income under another head is governed by the provisions of section 71 of the Income-tax Act. This section lays down the procedure for setting off of loss suffered under one head against income under another head. However, the deemed Income is not an income computed under any particular head of income. Therefore, the question of adjusting deemed income against loss of the current year or even the brought forward loss of earlier years is not in accordance with the provisions of the Act. This view is also supported by the provisions of section 14 of the Income-tax Act which enumerates the heads of income. Under this section income for the purpose of income-tax is to be computed under heads marked a to f under Ch. IV. However, the opening words of this section provide that there may be income chargeable to tax beyond these heads of income. Hence addition in respect of excess stock is to be made u/s 69 as unexplained investment separately in the computation of total income and no deduction is permissible against the income offered under this head. This view is upheld by the Gujarat High Court in the case of Fakir Mohamed Haji Hasan vs. CIT [2001] 247 ITR 290 and the Chattisgarh High court in Dhanush General Stores vs. CIT [2011] 339 ITR 651.

Hence this amount of Rs.2,46,66,430/- is added as unexplained investments u/s. 69 of the I.T. Act, 1961. Since the addition is u/s. 69 of the I.T. Act, 1961 Section 115BBE comes into play and the said amount is taxed accordingly. "

13. The Assessing Officer also added Rs.61,27, 745/- as business income (being the difference between the excess stock originally computed during survey before adjusting cost of goods sold and amount added under section 69 in this assessment year).

14. After examining the facts of the case, the contents of the Paper Book filed and submissions made by the AR of the appellant. I am of the view that the additions made in the impugned assessment order as "unexplained investments" and "Business Profit" are unsustainable. It is true that, as stated in the assessment order, in the course of the survey under section 133A of the Act carried out on 20.08.2015 in the appellant's case the Managing Partner offered a sum of Rs.3,07,94,475/- as excess stock computed on the basis of stock value worked out as Rs.4, 20,66,574/- as on 31.03.14 during the survey. However, in the course of the pending assessment proceedings for assessment year 2014-15 the appellant claimed that to arrive at the stock value at cost the profit margin has to be reduced from sales figures and submitted a reworking of the stock value as on 31.03.2014 as Rs.2,46,66,430/- and offered additional income of Rs.1,33,93,468/- being difference between revised stock value as on 31.03.2014 viz., Rs.2,46,66,367/- and the stock value of Rs.1,1 2,72,899/- as per computer accounts on that date. The assessing officer made the assessment for assessment year 2014-15 by order under section 143(3) dated 08.08.2016 accepting the appellant's revised working of stock value as on 31.03.2014. In my view, neither the working of the stock value as on 31.03.2014 excluding Gross Profit from sales for the period 01.04.2015 to 26.08.2015 and FY 2014-15 nor the addition of Rs.1,33, 93,468/- in the assessment for the assessment year 2014-15 can be faulted.

14.1 It is seen that after the completion of the assessment for assessment year 2014-15 on 08.08.2016, the appellant filed a revised return for the present assessment year 2015-16 on 15.11.2016 adopting the revised / assessed closing stock value as on 31.03.2014 of Rs.2,46,66,367/- as the opening stock as on 01.04.2014. In the impugned assessment order after reference to section 69 (unexplained investment) and section 71 (intra head adjustment of loss / income) and a passing mention of carry forward and set off of loss of earlier years and section 14 (enumeration of heads of income) and citing two judicial decisions Fakir Mohamed Haji Hasan vs. CIT (2001) 247 ITR 290 (Guj) and Dhanush General Stores vs. CIT (2011) 339 ITR 651 (Chhattisgarh), the assessing officer has added the amount of Rs.2,46,66,430/- as "unexplained investment" under section 69 of the Act.

14.2 As earlier stated, the sum of Rs.2,46,66, 430/- represents the closing stock value as on 31.03.2014 brought forward as the value of the opening stock as on 01.04.2014. The said amount had already rightly been considered in computing the income for assessment year 2014-15 vide assessment order under section 143(3) dated 08.08.2016. The same amount cannot be once again assessed as income of the assessment year 2015-16 under

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consideration invoking section 69 of the Act. The assessment of the amount as "unexplained investment" of this year is patently misconceived.

15. As regards the ruling of the Hon'ble Gujarat High Court cited by the Assessing Officer in the impugned assessment order, I find that it is a case where no explanation regarding source from which the investment in contraband gold had been made was given by the assessee and loss on account of confiscation of the gold was claimed as a deductible fading loss. Referring to various deeming provisions of the Act including section 69 the Hon'ble High Court held that –

"When the income cannot be so classified under any one of the heads of income under section 14, it follows that the question of giving any deductions under the provisions which correspond to such heads of income will not arise. If it is possible to peg the income under any one of those heads by virtue of a satisfactory explanation being given, then these provisions of sections 69, 69/4, 696 and 69C will not apply, in which event, the provisions regarding deductions, etc., applicable to the relevant head of income under which such income falls will automatically be attracted".

15.1 Unlike in the above case, in the case of present appellant, the additional income arising on account of understatement of the value of the closing stock was directly attributable to the business of textiles carried on by the appellant. Accordingly, the judgment of the Hon'ble Gujarat High Court is factually distinguishable.

16. In a written submission dated 01.10.2018, the AR of the appellant has dealt with the Dhanush General Stores' case relied on by the A.O, submitting that the said judgment is of no assistance in deciding the point at issue in the present appellant's case for the reasons stated in Paras 4.1 / 4.2 of the written submissions dated 01.10.2018 which I reproduced earlier in the order. After perusal of the judgment, I am inclined to agree with the appellant AR's submissions.

17. On the facts and circumstances detailed above, the addition of Rs.2,46,66,430/-made in the assessment as "unexplained investment" is deleted.

18. The other addition of Rs.61,27,745/- as "Business Profit" has been made stating: "Sales of undisclosed stock" are made out of books and the profits arising on sale of suppressed stock should be treated as business income and brought to tax".

19. On perusal of the sworn statement of the managing partner of the appellant firm, it is seen that the appellant had maintained computerized accounts and purchase and sales are duly recorded in the computer. In the course of the survey u/s 133A of the Act, no material has been found to suggest any sales are made outside the books. In fact, in arriving at the stock value as on 31.03.2014, the survey party has proceeded on the basis of sales / purchase figures as per the computerized accounts and the only discrepancy found was in respect of stock valuation. The statement in the assessment order that sales of undisclosed stock are made out of books is not backed by any instance of such sales found and appears as an unwarranted presumption. Admittedly, the amount added viz., Rs.61,27,745/- has no rational basis and has been made only to bring up the total addition to the sum of Rs.3,07,94,175/- being the amount offered by the managing partner in the statement recorded during the survey. On the above facts, the addition of Rs.61,27,745/-is unjustified and is hereby deleted.

6. The Ld.DR submitted that the Ld.CIT(A) erred in deleting the addition towards unexplained investment in closing stock as on 31.03.2014 without appreciating the fact that the managing partner of the firm made a disclosure of Rs.3,07,94,475/- on account of excess stock . The Ld.CIT(A)

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without considering the relevant facts simply deleted the additions made by the AO.

7. The Ld.AR for the assessee, on the other hand, referring to Paper Book filed by the assessee submitted that although, the AO has worked out stock in trade as on 31.03.2014 at Rs.4,20,66,574/-, but the assessee has filed a reconciliation by considering the cost of goods sold by the assessee and has arrived at closing stock value as on 31.03.2014 at Rs.2,46,66,430/- instead of Rs.4,20,66,574/- determined by the AO. Further, the assessee had also filed a revised return for the AY 2014-15 and has included additional income on account of difference in closing stock at Rs.1,33,93,468/-. The AO after considering the additional income offered by the assessee has accepted the return filed by the assessee for the AY 2014-15. Therefore, once again, addition on same difference in closing stock is unwarranted for the AY 2015-16.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The sole basis for the AO to make additions towards unexplained investment on account of difference in closing stock was survey conducted in the business premises of the assessee on 26.08.2015. During the course of survey, as per the tally account maintained by the assessee, closing stock was shown at Rs.2,38,81,525/-. On the basis of closing stock as per the books of accounts of the assessee, the AO has worked out the value of closing stock as on 31.03.2014 at Rs.4,20,66,574/-. The AO while working out the

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closing stock as on 31.03.2014 had considered the sales and purchases for the relevant period. The AO has added sales made by the assessee and deducted purchases for the above period and worked out the closing stock and then compared with closing stock shown in the return of income filed for the AY 2014-15 at Rs.1,12,72,899/- to arrive at difference in stock in trade at Rs.3,07,94,475/-. The assessee claimed that while working out the closing stock, the AO has considered sale price of goods instead of cost price and thus, has filed revised working explaining the difference. As per the said working, the difference in closing stock has been worked out as on 31.03.2014 at Rs.2,46,66,430/-. We have gone through the closing stock worked out by the AO in light of reconciliation filed by the assessee and we find that the AO made fundamental mistake in adopting sale price of goods instead of cost of goods to arrive at closing stock, which resulted in difference of Rs.4,20,66,574/-, whereas, the assessee has considered the cost of goods sold without any mark-up and has arrived value of closing stock as on 31.03.2014 at Rs.2,46,66,430/-. To this extent, we find that there is a clear mistake from the AO to work out the value of closing stock at Rs.4,20,66,574/-. The Ld.CIT(A) after considering the revised working filed by the assessee, has rightly considered the value of closing stock as on 31.03.2014 at Rs.2,46,66,430/-. To this extent, we find no infirmity in the reasons given by the Ld.CIT(A) to reject the working of closing stock by the AO.

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9. Having said so, let us examine the reasons given by the AO to make additions towards difference in stock in trade for the AY 2015-16. There is no dispute with regard to the fact that the assessee has admitted difference in closing stock at Rs.1,33,93,468/- for the AY 2014-15. In fact, the assessee had admitted the fact that there is a difference in closing stock as on 31.03.2014 when compared to book stock and thus, offered additional income of Rs.1,33,93,468/- as per the revised working for the AY 2014-15. Further, the assessee has revised total income at Rs.78,51,990/- against Rs.24,94,600/- originally returned. The AO has completed the assessment for the AY 2014-15 u/s.143(3) of the Act dated 08.08.2016 and has accepted additional income offered by the assessee on account of difference in stock in trade found during the course of survey. Therefore, we are of the considered view that once the AO has accepted the fact that the assessee has admitted difference in stock in trade as on 31.03.2014 and further, the same had been admitted for the AY 2014-15, he ought not to have made additions for the very same difference in stock in trade for the AY 2015-16. No matter, the survey must have taken place on 26.08.2015, but the fact needs to be considered, is difference in stock in trade pertains to which assessment year. In this case, the AO had worked out the difference in stock in trade for the AY 2014-15 (FY 2013-14) and the assessee had also admitted the additional income for the AY 2014-15. Therefore, we are of the considered view that the assessee has rightly offered additional income on account of difference in stock in trade for the

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AY 2014-15 and the AO has rightly assessed the same for the AY 2014-15. The Ld.CIT(A) after considering the relevant facts has rightly deleted the additions made by the AO towards unexplained investment on account of difference in stock in trade for the AY 2015-16 including business profit on account of difference in stock in trade. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 31st day of March, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st March, 2022.

TLN

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF