

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'B', NEW DELHI**

Before Sh. A. D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2583/Del/2018 : Asstt. Year : 2011-12

Uttam Sugar Mills Ltd., Malik & Co., 305/7, Thapar Nagar, Meerut, Uttar Pradesh-250001 (APPELLANT)	Vs	DCIT, Central Circle, Ghaziabad (RESPONDENT)
PAN No. AAACU2186Q		

**Assessee by: Sh. Sankalp Malik, Adv. &
Sh. Sanjay Malik, Adv.
Revenue by: Sh. K. A. Manu, Sr. DR**

Date of Hearing: 11.05.2022	Date of Pronouncement: 27.06.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-IV, Kanpur dated 20.02.2017.

2. Following grounds have been raised by the assessee:

"1. That on facts and in law the AO was wrong in addition of Rs. 30,966/- on a/c of Press Mud, the Ld. CIT (A) upheld the same by confirming the said addition and did not considered daily manufacturing report filed by the appellant. It is prayed that the addition of Rs. 30,966/- may please be deleted as correct facts have not been considered by A.O.

2. That on facts and in law the AO was wrong in addition of Rs. 2,65,46,540/- on a/c of Sugar (being difference between books of account and physical verification in various units), the Id. CIT (A) upheld the same by confirming the said addition and did not considered daily manufacturing report filed by the appellant. The Ld. CIT (A) did not consider the merits of the arguments filed by the appellant. It is prayed

that the addition of Rs. 2,65,46,540/- may please be deleted considering the material on record and facts of the case.

3. That on facts and in law the AO was wrong in addition of Rs. 9,79,336/- on a/c of Molasses (being difference between books of account and physical verification in various units), the Ld. CIT (A) upheld the same by confirming the said addition and did not considered daily manufacturing report and documents filed by the appellant. The Ld. CIT (A) did not consider the merits of the arguments filed by the appellant. It is prayed that the addition of Rs. 9,79,336/- may please be deleted on facts of the case.

4. That on facts and in law the AO was wrong in addition of Rs. 13,10,388/- (Rs. 10,6,360/- + Rs. 94,328/- + Rs. 1,99,700/-) on a/c of difference in cash as per books of accounts and physical cash balance. The Ld. CIT(A) upheld the same by confirming the said addition and did not considered reconciliation statement filed by the appellant. The Ld. CIT (A) did not consider the merits of the arguments filed by the appellant. It is prayed that the addition of Rs. 13,10,388/- may please be deleted on facts of the case."

3. The assessee-company is a Public Limited Company, engaged in the business of manufacturing sugar & other allied products.

4. A search action u/s 132 of the Income Tax Act, 1961 was conducted on the assessee company on 07.04.2010 and subsequently, an order dated 31.03.2013 u/s 153A of the Act was passed assessing the business loss at Rs.49,75,58,607/- against the returned loss of Rs. 52,65,55,831/-.

5. The issues sustained by the Id. CIT(A) and contested before us are as under:

Nature of Addition	Amount
Difference in Stock of Sugar from the books	Rs.2,64,06,668/-
Difference in Stock of Molasses from the books	Rs. 9,79,336/-
Sale of Press Mud	Rs. 30,966/-
Difference in cash found and Cash Book	Rs. 13,10,388/-

Difference in Stock:

6. The AO made an addition of Rs.2,65,46,540/- on account of difference between books of accounts and physical Stock of Sugar at different units. It was argued that there was no 'actual difference' in stock but only a discrepancy as Production on the day of search could not be entered in books which were seized.

7. The pertinent facts as per the revenue are as under:

Unit	Stock as per Physical Verification on 08.04.2010 (In Qtl.)	Opening Stock as per books on 07.04.2010 (day of search) (In Qtl.)	Alleged Difference (In Qtl.)	Calculation (Qty. X Sale Price and not G.P.)	Addition
Libberheri	5,42,032	5,36,696	5,336	5336X2914	1,54,90,824/-
Barkatpur	4,87,424	4,83,678	3,746	3746 X 2914	1,09,15,844/-
Khaikeri	2,52,892	2,52,940	(-48)	(-48) X 2914	1,39,872/-
	TOTAL				2,65,46,540

8. During assessment proceedings and during the appellate stage, the assessee explained that there was no actual difference in stock and clarified that production on 07.04.2010 could not be entered in the books, as the books were seized by

the search team, which is also evident from the copies of the Panchnama and other records.

Pg. 13 - 49	is the Copy of Panchnamas for Libberheri & Barkatpur, whereby it can be seen that the stock register (RG-1) was seized on 07.04.2010 and that stock of sugar was calculated on 08.04.2010, thereby, proving the inevitable discrepancy.
PB 101-109	Is the copy of the reply dated 01.03.2013, whereby the assessee submitted detailed explanation, reconciliation of stock along with supporting evidences with respect to position of stock of sugar and molasses.
Libberheri Unit:	
PB 110	is the copy of the Daily Manufacturing Report (DMR) of Libberheri Unit for 07.04.2010 showing production of 6000 Qtls. of Sugar, which could not be entered into the daily stock register because it was seized.
PB 111-113	is the copy of the Stock Register (RG-1) for Libberheri Unit for Season(s) 2009 - 10, 2008 - 09, 2007 - 08
Barkatpur Unit:	
PB 128	Is the copy of the Daily Manufacturing Report (DMR) of Barkatpur Unit showing production of 5700 Qtls. of Sugar, Molasses which could not be entered into the daily stock register, which was seized.

PB 129-132	Is the copy of the Stock Register (RG-1) for Barkatpur Unit for 2009 - 10 & 2008 - 09

9. The production of sugar, which is a continuous and requires multiple simultaneous processes leads to regular inflow of sugar, and the entry in the books is done for a day as a single entry.

10. In the instant case, the said entry of sugar production on 07.04.2010 could not be done, due to the seizure of books by the department, whereas the stock was taken on the morning of 08.04.2010 leading to this discrepancy. The said circumstance caused to the assessee by the action of the Department which was considered.

11. When all the facts & circumstances and evidences are taken on record and duly considered, it is clear that there was no 'actual' difference in stock but merely a discrepancy, which naturally and inevitably ought to occur when stock of a day of search when compared to opening stock of a day before. During the search, no other document was found, which could justify the difference of stock. Whereas, the purchase of raw material, its utilization and even the sales have been duly examined and no discrepancy has been found. It is pertinent to note that 5336 Qtl. & 3746 Qtl. which was allegedly extra at Libberheri & Barkatpur, respectively, is only 0.98% is 0.76% of the total sugar found during physical search, in the respective units. Even if it is assumed without admitting that the assessee-company had somehow been crushing & producing unaccounted sugar, the same would not have been in such minimal quantity, which is less than a day's production. Furthermore, during

search neither any incriminating evidence, nor any other document was found which could justify such an allegation. We have also gone through the annual production and find that the production on the day of search has not been taken into account owing to the search operation conducted at the premises. The amount and the quantum of sugar are in tune with average daily production. In view of the entirety of the facts narrated above, we hold that no addition is called for on account of difference in the stock of sugar.

Difference in Molasses:

12. The AO made addition on account of difference in the stock of molasses [(AO Page 11 , CIT(A) Page 130]

Stock (in Qtls.)	Libberheri, Roorkee	Barkatpur, Bijnore	Khaikeri, Muzaffarnagar	Shermau
As per Books	175,172	2,12,440	45,049	34,189
As per Physical Verification	1,75,711	2,14,444	45,586	34,300
Alleged Difference	538 (0.31%)	2004 (0.94%)	536 (1.1%)	110 (0.32%)

13. Molasses stored in a tank, is measured by taking a dip and a slight deviation is scientifically possible while taking the dip, due to bubbling/foaming effect on account of the Chemical Reaction. The product in question is 'molasses' which was found to be in excess at the aforesaid 4 units of the assessee-company is a highly volatile chemical which changes its shape, weight, and texture when in different temperature. When heated, while production would tend to show more quantity and would become more fluid, however, when kept cool, would compress into a thick jelly like substance. It is to be noted that while taking the stock in April, the weather was hot and the product under production and there is strong possibility of

chemical reaction resulting in foaming in the molasses, which cannot be ruled out. The said fact of the discrepancy arising due to chemical reaction was even confirmed by the Chief Engineer at the time of search itself (PB 84) which could not be disputed. Molasses is kept under the control of the excise department and can be removed only under the supervision of the Excise Inspector who is stationed at the factory. Daily production records (RG-1) pertaining to daily production of molasses as on 07.04.2010, the date of search have also been taken into consideration. Therefore, there is no chance of excess production of Molasses or sugar, as is being alleged. Hence, we hold that no addition on account of difference in molasses is called for.

Unaccounted Cash:

14. The AO made addition on account of the difference between cash as per the books and physical cash found at different premises of the assessee-company {(AO Pg. 14, 15, 16, CIT(A) Pg 20)}.

15. Before us, it was submitted that certain vouchers pertaining to cash transactions undertaken on 06.04.2010 (day prior to search) were not updated in the cash book which led to the difference in cash found and the books.

16. The said fact of the vouchers not being updated in the cash book was even confirmed by an employee of the assessee-corporation, Sh. Mahesh Patel, at the time of recording of his statement u/s 132(4) itself (Pg. 158 PB). However, the same was not considered while making the assessment. The assessee before the AO and Id. CIT(A) submitted a reconciliation justifying that there was no 'actual difference'.

Libberheri:

17. Cash as per books was Rs. 13,12,924.69/- whereas cash found was Rs. 23,29,284/-. The difference of Rs. 10,16,360/-. The reconciliation statement is as under:

Cash as per books:	
Cash in Hand (Cane Account) (2009 - 10) - Rs. 12,69,229.47 (PB 117)	13,12,924.69/-
Cash in Hand (Cane Account) (2008 - 09) - Rs. 15,295.58 (PB 116,120)	
Cash at Factory - Rs. 28,399 (PB 115,119)	
(Add) Amount received back from Sh. Kant against imprest account on 06.04.2010 but voucher could not be entered in books (PB 121,122)	+ 10,45,508/-
(Add) Amount received back from Sh. R.K. Sethi against imprest account on 06.04.2010 but voucher could not be entered in books (PB 121,123)	+ 1,65,452/-
(Add) Advance against salary returned by Babloo Singh on 06.04.2010, but voucher could not be entered in books (PB 121,124)	+ 5,400/-
(Less) Cash sent to Noida Office, but voucher could not be entered in books (PB 125)	- 2,00,000/-
Physical cash found on 07.04.2010	23,29,284.69/-

Barkatpur:

18. Cash in books amounted to Rs, 5,45,648/-, whereas, physical cash found aggregated to Rs. 4,51,320/- and a Deficit of Rs. 94,328/- was added to the income of the assessee. The reconciliation statement is as under:

Cash as per books	Rs. 5,45,648/-
Less:- Payment Vouchers pending to be entered in the books (fact verified by the search team) (PB 139,140 -147)	-Rs. 94,912/-
Add: Cash received on 06.04.2010 from sale of press mud, which was pending to be entered into the books	+ Rs. 584/-
Physical Cash Found	Rs. 4,51,320/-

Noida:

19. Cash as per books amounted to Rs. 2,89,700/- and physical cash aggregating to Rs. 4,89,000/- was found. The difference of Rs. 1,99,700/- was added to the income. The reconciliation statement is as under:

Cash as per books	2,89,700
Add:- Cash received from Libberheri Roorkee Unit on 06.04.2010 but voucher was pending for entry In books (PB 127)	+ 2,00,000
Less:- Payment Vouchers pending to be entered in the books (110 + 90) (PB 155,156)	-300
Physical Cash	4,89,400/-

20. We have perused the reconciliation statements along with the details in the paper book. All these amounts are pertaining to expenses and transactions entered a day before the search which could not be updated as on the date of search. On going through the entire details, we find that the amounts to be reconciled except the amount of Rs.10,45,508/- received back from Sh. Kant, Libberheri plant against the imprest amount. The need and purpose of giving the imprest amount and the reason of receiving back the amount needs to be examined by the AO. Hence, the matter back to the file of the AO for limited purpose of examining the genuineness lending and receiving back of Rs.10,45,508/- from Sh. Kant.

21. The ground no. 1 pertaining to press mud of Rs. 30,966/- being a very minor amount has been chosen to be left for the revenue by the Id. AR. Hence, not adjudicated.

22. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order Pronounced in the Open Court on 27/06/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 27/06/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR