

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.5045/Del./2017
(ASSESSMENT YEAR : 2013-14)**

**ITA No.5582/Del./2017
(ASSESSMENT YEAR : 2014-15)**

ACIT, Circle 47 (1),
New Delhi.

vs.

Yogender Mohan Rustogi,
548-549, Katra Ishwar Bhawan,
Khari Baoli,
Delhi – 110 006.

(PAN : AGUPR9629J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri D.P. Bansal, CA
REVENUE BY : Shri Abhishek Kumar, Sr. DR

Date of Hearing : 06.07.2022
Date of Order : 13.07.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue against the orders of the Id. CIT (Appeals)-16, New Delhi dated 22.05.2017 & 27.06.2017 for the assessment years 2013-14 & 2014-15.

ITA NO.5045/DEL/2017 (AY 2013-14)

2. The Revenue has taken the following grounds of appeal:-

“1. On the facts and the circumstances of the case, Id. Ld. CIT (A) has erred in deleting the addition of Rs.5,33,57,196/- made by the Assessing Officer under section 68 of the I.T. Act, 1961 on account of difference between closing stock and opening stock.

2. The stand taken by the Id. CIT (A) that the inflated figures of opening stock is revenue neutral in nature and that the manipulated figures in audited balance sheet is for the purpose of taking higher loans for lending companies is bad in the eyes of law.”

3. Brief facts of the case are that return of Income has been filed declaring total income of Rs.18,43,050/-. Notice u/s 143(2) of the Income-tax Act, 1961 (for short ‘the Act’) was issued, served upon and complied with. The case was selected under CASS to examine the introduction of capital, low net profit shown from large gross receipts, different in closing stock of the previous year. AO further noted that during the year, the assessee has shown gross profit of Rs.1,97,62,316/- on sales of Rs.57,26,31,550/- which gives gross profit rate of 3.41% as against gross profit rate of 2.75% on sales of Rs.50,83,98,427/- in the immediately preceding year. AO asked the assessee following question :-

“A perusal of the balance sheet as on 31-03-2012,. it is seen that you have shown closing stock of Rs.6,95,81,348/-. However, the value of opening stock has been shown at Rs. 12,29,38,548/-. The opening stock has been shown on the higher side. Please reconcile the figures and show cause why the closing stock of the preceding year may be treated as opening stock for this year.”

4. AO noted the assessee’s response. Another notice given to the assessee is as follows :-

“In connection with above, I have to state that I have gone through the Return of Income for the assessment years 2012-13, 2013-14 and 2014-15 and I am giving below the details of Opening Stock and closing stock shown by you in different years.

Assessment Year	Opening Stock	Closing Stock
2012-13	5,93,02,314/ -	6,95,81,348/ -
2013-14	12,29,38,544/ -	13,31,59,920/ -
2014-15	13,31,59,920/ -	14,84,24,601/ -

1. As per the figures given in the Audit Report furnished by you had shown the value of closing stock as on 31-03-2012 at Rs. 6,95,81,348/- while you have taken the value of opening stock as on 01-04-2012 at Rs.12,29,38,544/ -. Please reconcile these figures.

2. It is seen from the file that you were given reasonable opportunities given and your compliance thereto as per details given here under :-

Sl.No.	Date of issue of questionnaire/notice u/s 143(2) or 142(1)	Date on which compliance desired	Details of compliance
1	Notice u/s dated 143(2) 02.09.2014	12.09.2014	None attended nor sought adjournment
2	Notice u/s 143(2) and 142(1) dated 09.04.2015 issued	23.04.2015	None attended nor sought adjournment
3	Penalty notice u/s 271(1)(b) dated 12.05.2015 issued	20.05.2015	Part information furnished.
4	Notice u/s 143(2) dated 02.07.15 issued	14.07.2015	None attended
5	Questionnaire issued on 23 rd July 2015	23.07.2015	None attended
6	Penalty notice u/s 271(1)(b) issued on 08.09.2015	15.09.2015	None attended
7.			Counsel Sr. R.K. Gupta attended on 14.10.2015. No information filed. Asked to file information as per questionnaire dated 16.07.2015
		26.10.2015	Sri R.K. Gupta, CA attended on 26.10.15 and filed details. Asked to file remaining details as per questionnaire dated 16.07.2015. Matter adjourned to

			02.11.2015.
8.		02.11.2015	Request adjournment. Adj. to 09.11.2015
		09.11.2015	None attended.
		18.11.2015	Part information furnished. Case adjourned to 26.11.2015.
		26.11.2015	None attended
9.	Notice u/s 143(2) along with questionnaire issued on 15.12.2015	23.12.2015	None attended
		28.12.2015	Part information filed. Case adjourned to 04.01.2016.
		04.01.2016	None attended
10		25.01.2016	Sri R.K. Gupta, CA attended. No details filed. Asked to file details as per query letter dated 15.12.2015. Case adjourned to 02.02.2016.
		02.02.2016	No details filed.

Further, I have also gone through the balance sheet as on 31-03-2012 and it is noticed that the credit balance in your capital was Rs. 72,98,743/- while the opening balance as on 01-04-2012 has been shown at Rs. 3,19,94,785/- Please furnish your clarification on this difference in Capital account.

4. It is seen that as per Balance Sheet as on 31-03-2013, you had unsecured loans amounting to Rs. 96,09,332/-. However, as per balance sheet filed. by you, you had sundry creditors of Rs. 3,00,000/- as on 31-03-2012 which has gone to Rs. 96,09,332/- as on 31-03-2013. Please file confirmations of the parties along with their copies of accounts as appearing in your books. Please also state as to how and when these accounts were squared up along with necessary evidence.

The above figures given are based on the Audit Reports for the A.Y. 2012-13 and 2013-14 The Audit Report for the A.Y. 2013-14 were furnished by you during the course of assessment proceedings. You are requested to make compliance to the above requirement as also the other pending information at your end on 12th Feb. 2016 at 11-00 AM.

Notice u/s 142[1] is enclosed"

-SD-
Income tax officer
ward- 47(2), New Delhi"

5. Assessee filed a list of sundry debtors at the dak counter, hence AO issued summons u/s 131 of the Act to the parties but following summons were received back from postal authorities with one remark 'left' :-

1. M/s. R.C. Cold Storage Private Ltd.
2. M/s. Apex Traders.
3. M/s. Silverline[India]
4. M/s. Jai Paras Trading Company.
5. M/s. V. G. International
6. M/s. Tanishqa International.
7. M/s. KishanDass Trading Co.
8. M/s. Shri Hari Impex

6. AO informed the same to the assessee. AO issued letters which were sent to the following parties regarding verification of sundry creditors calling for copy of ledger account of the assessee as appearing in their books of account, copy of purchase/ sales bills and when their account was squared up :-

- 1 M/s. BalGopal Traders.
- 2 M/s. S. S. Traders.
- 3 M/s. ASM Traxim Private Ltd.
- 4 M/s. Supari Wala& Co.
- 5 M/s. Suresh Enterprises.
6. M/s. Unigreen Global Private Ltd.

7. AO noted that no confirmations have been received till date from the above mentioned parties except one M/s. ASM Traxim Private Ltd. That on the perusal of confirmation filed by M/s.ASM Traxim Private Ltd , it is seen that M/s.ASM Traxim Private Ltd is a debtor of the assessee not a creditor. This proves that the assessee has manipulated its books of account in the manner to adjust the addition in capital account and stock.

Thereafter assessee gave a reply dated 14.03.2015 wherein it was sated that the figures given to the bank had been adopted. AO reproduced crux of the assessee's response as under :-

"It is kindly submitted that the opening stock shown as on 1st April 2012 of Rs.12,29,38,549/- had inadvertently been taken from the stock statement filed by the assessee with his banker on 31st March 2012 for taking/ obtaining financial assistance vis-a-vis C/C limit/OD facility and term loan on hypothecation of stocks and book debts. The statement of stock as of 31st March ,2012 was submitted to the bank on 31.03.2012 by the assessee was in fact the inflated value of the actual stock for taking advantage of OD facility, term loan etc."

8. Further considering the above, AO noted that assessee's books of account are audited and, therefore, assessee might have given different figures to the bank but there are certain figures which are verified by Chartered Accountants and mentioned in the audit that assessee had adopted opening and closing stock on the basis of manipulation done in the assessment year 2013-14 and figures for 2014-15 and 2015-16 has also been adopted on the basis of figures given in the ITR in the AY 2013-14. He further observed that these differences basically under the heads, viz., (i) sundry debtors; (ii) unsecure loan; and (iii) capital. As regards sundry debtors, he observed that on the basis of information furnished by the assessee, letters were addressed to certain parties but they were received back from the postal authorities. But AO noted that assessee neither filed any confirmation copy of account nor the information as to how and when these figures were reconciled. As

regards unsecured loan, AO noted that as on 31.03.2012, assessee had unsecured loan of Rs.3,00,000/- while this year, it has gone upto Rs.96,09,332/-. He invoked the provisions of section 68 of the Act and noted that despite several letters, assessee had not filed any letter to prove the loans. Assessee's response was that outstanding balance under the head of unsecured loan as on 31.03.2012 and 31.03.2012 were only Rs.3,00,000/- and not RS.96,09,332/- as shown in the provisional balance sheet as on 31.03.2012 being submitted to bankers. From this, AO inferred that assessee has manipulated books of account in the manner to adjust the addition in capital account and stock.

9. As regards the capital account, AO noted that as per balance sheet as on 31.03.2012, it was noticed that credit balance in capital account was Rs.72,98,743/- while in the opening balance as on 01.04.2012 assessee had shown Rs.3,19,94,785/-. Assessee was required to furnish clarification on this difference. Assessee again responded that figures have been brought from last year i.e. 31.03.2012 to the year ended on 31.03.2013 and that the figure of Rs.3,19,94,785/- has been brought forward on 01.04.2013 is based on the basis of provisional balance sheet filed by the assessee with their bankers for meeting out bank requirement of maintenance of D.P. (Disbursing Power) limit and other banking.

10. AO noted that assessee has increased its capital, unsecured loan on the liability side of the balance sheet and sundry debtors on the assets side

of the balance sheet. AO held that these figures are bogus sundry debtors and were shown only to tally the balance sheet which could not be tallied unless suitable adjustment is done in the asset side of the balance sheet, since the assessee had increased the value of opening stock as also the capital. He noted the auditor's report and Notes on accounts as under :-

"6. Stock of the unit have been valued at cost price plus all expenses duty, cess or fee actually paid as well as all the expenses incurred to bring the goods to the premises.

7. Unsecured loans sundry creditor, sundry debtors and loans and advances including all personal accounts, whether in debit or credit are subject to confirmation.

9. Previous year figures have been regrouped, re-arranged wherever considered necessary"

The comments of the Auditors indicate the following facts.

1. The stock shown in the balance sheet was in existence.
3. Loans, creditors were not confirmed or their confirmations were not produced before the Auditors.

In view of the above, it is held that figures given by auditor in Audit report cannot be negated, challengeable and disputed."

11. Hence AO held that assessee had manipulated the figures with deliberate intention to inflate the figures of capital and stock. He noted that assessee had not revised any return of the year mentioned herein above. Assessee has filed decision regarding revised return and correction of return. But AO found that these decisions are not applicable in the present case as this case is neither matter of revising the return nor a case of correction of the return; that this is a clear case of fictitious introduction of capital and stock. AO in this regard concluded as under :-

“This is clearly a case of fictitious introducing of capital and stock. As discussed above to prove its case, the assessee has manipulated its account under the head introduction in capital, sundry debtors/creditors and unsecured loan. This has been done only to manipulate the figure of stock. Since the assessee has taken the value of opening stock as on 01.04.13 at Rs.12,29,28,544/- as against value of closing stock as on 31.03.2013 at Rs.6,95,81,348/- the difference between these two figures of Rs.5,33,57,196/- will be treated as Unexplained credit u/s 68 of the Income Tax Act. Therefore the said amount of Rs. 5,33,57,196/- is add to the total income of the assessee.”

12. Against the above order, assessee appealed before the Id. CIT (A).

Ld. CIT (A) reproduced the following submissions of the assessee made before the AO:-

“It is kindly submitted that the opening stock shown as on 1st April 2012 of Rs.12,29,38,549/- had inadvertently been taken from the stock statement filed by the assessee with his banker on 31st March 2012 for taking/ obtaining financial assistance vis-a-vis C/C limit/OD facility and term loan on hypothecation of stocks and book debts. The statement of stock as of 31st March ,2012 was submitted to the bank on 31.03.2012 by the assessee was in fact the inflated value of the actual stock for taking advantage of OD facility, term loan etc.”

13. Thereafter, he noted that AO has rejected the submission of the assessee. Thereafter he noted that in the appellate proceedings, it was submitted by the assessee that it is in the practice to manipulate figures for the purpose of getting enhanced bank loans and these manipulations/fabrications are not considered as real/true for the purpose of charging manipulation under the I.T. Act. That institution of opening stock being closing stock of the last year cannot be changed by inflating the same in the year under consideration though it had happened by mistake inadvertently on the part of the assessee while drawing the balance sheet etc. as on 31.03.2013. In this regard, he referred to Hon’ble

Delhi High Court decision in the case of Pr. CIT vs. M/s. Religare Enterprise Ltd. in ITA 75/2016 & CM Nos.40127-28/2018 for the proposition as under:-

“.....Besides the true nature of amounts received or entries reflected, are to be determined by law not by the treatment reflected in the books or the understanding of the parties, as held by the Supreme Court in Kedarnath Jute Mfg. Co. Ltd. Vs. CIT 82 ITR 363..... ”.

14. He noted that inflated figures are not chargeable to tax under law and that too where no deficiency has been found in any transaction entered into during the year under consideration on trading result declared by the assessee which has been accepted by the AO. That for AY 2012-13 being the immediate preceding assessment year, assessment has been framed u/s 143(3) wherein closing stock being the correct opening stock for the year under consideration has been accepted. He further accepted the submission that all these adjustments have been done on the basis of provisions balance sheet as on 31.03.2013 for showing a good picture of the firm to the bank. That the same balance sheet was uploaded with the return of income by mistake inadvertently and this position was also explained in the assessment proceedings by filing rectified balance sheet etc. wherein no defect has been found by the AO. He further noted the assessee's submission that such mistakes did not have any impact on the income declared by the assessee for the year under consideration. That as per law only real income/real figures is

subject to consideration for chargeability of tax. Ld. CIT (A) accepted these submission and concluded as under :-

“I have considered all the facts and circumstances of the case. There is no doubt that the closing stock of the preceding year shall form the opening stock on the next year. The appellant to extract the benefit from the banking authorities appears to have inflated the figure of opening stock, which he submitted to the bank. Now we have to judge the impact of such inflation of stock on the income of the appellant. It has been brought to my notice by the Ld AR that the assessment order for A Y 2012-13 has been passed by the Assessing Authorities U/S 143(3) in which the closing stock of Rs.6,95,81,348/- stood accepted. If the appellant has inflated the opening stock of the next year that clearly indicates that the appellant had no occasion or opportunity to make purchases (real or otherwise) in that year. Therefore, if at all there has to be any impact of inflation of opening stock, that could occur only in the closing stock of the previous year. Further, as has been rightly pointed out by the appellant the manipulation carried out by the appellant is "revenue neutral" meaning thereby that it does not affect the income of the appellant in any way. The increase in opening stock will lead to the corresponding increase in closing stock and shall even out the impact. Therefore, to my mind the addition made by the Assessing Officer with regard to the inflated opening stock is not called for. Further, the addition could not have been made u/s 68 is another matter.”

15. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the record.

16. Ld. DR of the Revenue relied upon the order of AO. Per contra ld. counsel of the assessee relied upon the order of ld. CIT (A). He reiterated some of the contentions made before the ld. CIT (A) and claimed that CBDT Circulars are there that Revenue authorities should not take advantage of the mistakes of the assessee. He further referred to Article 265 of the Constitution of India that tax can be collected only on real income.

17. We have considered the submissions as above. We find in this case that AO has found clear manipulation on both debit and credit side of the accounts submitted by the assessee in the income-tax return. On AO's query, the plea is that these figures have been taken from the manipulated figures given to bank for obtaining loans. Ld. CIT (A) strangely accepted this submission and proceeded on the basis that these are only result of manipulated figures given to banks and there was inadvertent mistake by the assessee. He also accepted the submission that assessee has duly revised the return and accounts during the course of assessment. However, we note that from the order of AO, nothing is emanating as to whether assessee has been able to duly revise the accounts and return before the AO during the course of assessment in terms of the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. 284 ITR 323 Furthermore, assessee's plea that these figures have been taken from manipulated figures given to bank has been accepted without any enquiry. There is nothing on record that actually these figures were submitted to the bank from any enquiry from the banking authorities. Furthermore, this is not a case of addition simply based upon difference in figures in balance sheet. But AO duly issued notice to the parties as given by the assessee and noted that these parties are non-existent. Assessee cannot get away without cogently establishing

about various differences found in the accounts by simply claiming that these have been taken from the manipulated figures given to bank without any enquiry from the bank as to what figures were actually given. Furthermore, Id. CIT (A)'s finding that assessee has duly revised the return of accounts before the AO during the course of assessment is not at all supported by the observations of the AO in the assessment order. In our considered opinion, on the facts and circumstances of the case, the issue needs to be remitted back to the file of AO for the purpose of carrying out *de novo* examination. AO shall give a finding about the revision of accounts during the course of assessment proceedings. If the assessee has duly filed the revised return, the AO shall examine the same in accordance with law. The AO shall also examine the assessee's claim that these are manipulated figures which were given to bank by proper enquiry from the banking authorities. Assessee also needs to duly cooperate and reconcile the figures and give cogent reply about the non-existence of the parties to whom AO has given notices which have remained unresponded.

18. In the result, the appeal of the Revenue for AY 2013-14 stands allowed for statistical purposes.

ITA NO.5582/DEL/2017 (AY 2015-16)

19. The grounds of appeal raised by the Revenue read as under :-

“Whether the Id. CIT (A) is correct on facts and circumstances of the case and in law in deleting the addition of Rs.2,17,13,878/- made by the Assessing Officer on account of difference in the values Fixed Assets, Sundry Debtors, Loans & Advances and Cash & Bank Balances?

20. In this case, AO referred to the additions made in the case of assessee for the AY 2013-14. Upon AO’s notice, assessee submitted that the mistakes during the present year are result of earlier assessment year. However, AO was not satisfied. He wanted the assessee to furnish written explanation from the auditor regarding the revision of balance sheet as well as explain the same date on both the original and revised balance sheets. Assessee reiterated that these were result of mistake in the earlier year. Following the reasoning in the earlier assessment year’s order, AO made additions as under :-

“Further, the assessee has not been able to offer a satisfactory explanation for the increase in the values of fixed assets, sundry debtors, loans & advances and cash & bank balances in the original and revised balance sheets. In light of the discussion above, I hold that the increase in these parameters represents unexplained investments of the assessee and thereby, these increases are being added to the total income of the assessee as per the following summary :-

S.No.	Assets	Original	Revised	Increase (Revised- Original)
1	Fixed Assets	27,75,429	82,39,195	54,63,766
2	Sundry Debtors	5,72,63,580	6,92,75,093	1,20,11,513
3	Cash and Bank Balances	14,38,394	45,96,993	31,58,599
4	Loans and	10,00,000	20,80,000	10,80,000

	advances			
	Total			2,17,13,878

21. Ld. CIT (A) reproduced the assessee's submission and reiterated his order for AY 2013-14. Ld. CIT (A) on the same reasoning given in the earlier assessment year accepted the assessee's submission and directed that the addition be deleted.

22. Against the above order, Revenue is in appeal before us.

23. Having heard both the parties and upon perusing the record, we note that the orders of the authorities below for this year are based upon the orders of earlier assessment year which has been adjudicated by us herein above. On the same reasoning, we remit the issue raised in this case to the file of AO. AO shall examine the same after adjudicating upon the issues remitted by us to his file for AY 2013-14 and decide as per law. Accordingly, the appeal filed by the Revenue is allowed for statistical purposes.

24. In the result, both the appeals by the Revenue stand allowed for statistical purposes.

Order pronounced in the open court on this 13th day of July, 2022.

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 13th day of July, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.