

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**  
**AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.No.298/Chny/2020**

(निर्धारणवर्ष / Assessment Year: 2014-15)

The Assistant Commissioner of Income Tax, Non-Corporate Circle-6(1), Chennai.	Vs	Mr. Shankar Lal Chunilal Shah, 315, Mint Street, George Town Chennai-600 003.
		PAN: AAVPS 8598Q
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. P.Sajit Kumar, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. D. Anand, Advocate

सुनवाई की तारीख/Date of hearing	:	11.07.2022
घोषणा कीतारीख /Date of Pronouncement	:	20.07.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, AM:**

This appeal filed by the Revenue is directed against order of the learned Commissioner of Income Tax (Appeals)-5, Chennai, dated 29.11.2019 and pertains to assessment year 2014-15.

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

*"1.The order of the Ld.CIT(A) is contrary to facts and circumstances of the case.*

*2. The Ld. CIT(A) erred in deleting the addition of Rs.1,79,76,877/- made to the total income of the assessee.*

*3.It is pertinent to note that during the course of Survey, discrepancy in respect of closing stock was found to an value of Rs.1,79,76,877/-. The assessee has agreed for the excess*

stock found during survey and has admitted a sum of Rs.1,79,76,877/- on account of difference and valuation of closing stock.

4. The assessee while filling the return of income for the A.Y 2014-15 admitted a total income of Rs.89,46,785/-. During the course of scrutiny proceedings the assessee claimed that the sum of Rs.1,79,76,877/- which was declared as undisclosed income made during survey has been included in the Gross income for the AY 2014-15.

5. The assessee has declared a Gross profit ratio Rs.2.98% for the A Y 2014-15 whereas the Gross profit ratio of the assessee for the AY 2013-14 is Rs.5.55%. If the amount declared u/s 133A of Rs.1,76,76,877/- is deducted from the gross profit shown of Rs.2,98,14,948/- for the AY 2014-15, the gross profit ratio works out to 2.98% as against the gross profit ratio of 5.55% of the preceding assessment year 2013-14. Further, if the declared amount of Rs.1,79,76,877/- is deducted from the net profit shown by the assessee (Rs.88,95,472/-), the resultant figure becomes negative.

6. Excluding the amount declared during the survey, the assessee is supposed to have a approximate gross profit ratio of 5.55 % as per the preceding assessment year 2013-14. This issue was raised during the course of assessment proceedings. The assessee has not produced any substantive evidence for the fall of Gross profit ratio from 5.55% to 2.92% compared to last year.

7. Even if the claim of the assessee that he has offered the sum of Rs.1,79,76,877/- declared during the survey in his gross total income, it would show that on one hand he is including the undisclosed income in the gross total income and on the other hand he is reducing his normal income drastically without any substantive evidence.

8. It is pertinent to note that the undisclosed income was on account of excess stock during the survey. This does not affect the normal gross profit percentage of the assessee unless substantive evidence. In the instant case, the assessee has not provided any such evidence during the assessment proceedings.

*9. This issue was also discussed by the AO in the assessment order and a remand report was also submitted to the CIT(A) for consideration. But the Ld.CIT(A) has not considered the submitted in the Remand report while passing the order.”*

3. Brief facts of the case are that the assessee is engaged in the business of dealing with stainless strips, sheets, coils filed his return of income for the assessment year 2014-15 on 30.11.2014 admitting income of Rs.89,46,785/-. In this case, survey u/s.133A of the Act, was conducted on 10.03.2014 at the business premises of the assessee. During the course of survey, statement of Shri Narendar Shah, son and power of attorney holder was recorded u/s.131 of the Act. Inventory of stock was also taken and compared to stock available as per books of account maintained as on date of survey, which shows difference with regard to value of stock and quantity of stock. As per survey information, there is difference of 4048 kgs in closing stock and also difference in valuation of closing stock. During the course of survey, the assessee has offered additional income of Rs.1,79,76,877/-. During the course of assessment proceedings, the Assessing Officer noticed that although, the assessee has admitted additional income of Rs.1,79,76,877/- towards difference in value of closing stock, but when it comes

to net profit declared for the year, the assessee has shown net profit of Rs.88,95,272/- and therefore, called upon the assessee to explain how profit declared for the year under consideration is true and correct. In response, the assessee submitted that it has considered difference in closing stock found during the course of survey and prepared its financial statements which resulted in profit of Rs.88,95,272/-, otherwise, the assessee has incurred net loss of Rs.1,05,39,657/-. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to A.O., the assessee has understated his profit so as to offset income declared during the course of survey on account of difference in stock and thus, rejected explanation furnished by the assessee and made additions of Rs.1,79,76,877/- towards difference in closing stock admitted during the course of survey u/s.133A of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has filed detailed written submissions on the issue which has been reproduced at para 3 on page 2 to 13 of the Id.CIT(A) order. The sum & substance of

arguments of the assessee before the learned CIT(A) are that the assessee has included difference in value of closing stock found during the course of survey amounting to Rs.1,79,76,877/- and has been substantiated by filing two set of financial statements for the year ending 31.03.2014, as per which ,the assessee has incurred net loss of Rs.1,05,39,657/-, when stock has been valued at Rs.148 per kg., whereas net profit after revaluation of stock at Rs.186.37 per kg comes to Rs.88,95,272/-. The Assessing Officer, without appreciating facts has simply made additions towards difference in stock, once again, even though, the assessee has already included said income offered on account of difference in stock in the financial statement prepared for relevant period.

5. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of detailed financial statement prepared for the year ending 31.03.2014 observed that before considering amount disclosed for difference in stock, net financial for the year results into net loss of Rs.1,05,39,657/- and after including additional income offered towards difference in stock resultant profit comes to Rs.88,95,272/-. Therefore, learned CIT(A) opined that the

assessee had declared closing stock at Rs.8,48,07,122/-, which includes additional income declared at Rs.1,79,76,877/- during the course of survey towards difference in stock and thus, deleted additions made by the Assessing Officer towards difference in valuation of stock. The relevant findings of the learned CIT(A) are as under:-

*“6. I have considered carefully, the assessment order passed by the AO and the written submissions made by the appellant. I have also perused the remand report furnished by the AO and re-joinder filed by the appellant. The entire issue in this appeal revolves around the fact that whether the appellant has admitted the additional income declared at Rs.1,79,76,877/- during survey u/s.133A in the return of income filed for the AY.2014-15. This additional income offered towards difference in value of stock at Rs1,72,22,451/- and on account of excess stock found valued at Rs.7,54,426/- which total up to Rs.179,76,871/-. While A.O is of the view that the said amount is not included in the return of income filed, whereas appellant vehemently argues that the same has been accounted for in the books of accounts maintained and accordingly, the return was filed. In fact, the AR in the written submissions made has stated that the additional income offered due to the adoption of higher price of Rs.192/Kg as against the price taken by the A.O. at Rs.186.37/Kg to value the closing stock of 4,41,704 Kgs as on 3103.2014.is higher at Rs.1,94,34,930/-, as against additional income offered at Rs,1,79,76,877/-. According to the appellant, if the closing stock value is taken Rs.148/Kg as per the books, there would be a loss of Rs.1,05,39,651/- for the impugned assessment year, but because the closing stock is valued at Rs.192/kg, the loss of Rs,1,05,39,653/- was converted*

into net profit of Rs.68,95,272/-, which is due to additional Income offered at Rs. 194,34.930/- (Rs.1,05,39,656 + Rs,88,95,272). Therefore, the appellant submits that there is no justification for the A.O. to separately add a sum of Rs.1,79,76,877 once again to the income returned. The position of stock as on date of survey is. 10.03.2014 is as under:

S.No.	Particulars	Quantity in Kgs
1	Stock physically found on date of survey	452900
2	Stock as per books of accounts maintained on date of survey	1148852
3	Excess stock found on date of survey	4048

7. Further, the appellant had agreed to offer the value of excess stock found for assessment and also on account of valuation of closing stock at Rs.1, 79,76,877/- as under:

S.No.	Particulars	Amount in Rs.
1	Price adopted as per books	148.00 / Kg
2	Average price adopted	186.37 / Kg
3	Difference in price / Kg	38.37 / Kg
4	Differene in value of Stock (Rs.38.37 x 4,48,852 Kgs)	1,72,22,481
5	Value of excess stock found (186.37 x Rs.4048 Kgs)	7,54,426
6	Additional income offered on account of above	1,79,76,877

8. As seen from the audited financials, the appellant has declared the closing stock value at Rs.8,48,07,168 (441704 Kgs x Rs.192) by valuing the same at the rate of Rs.192/Kg. The appellant thus contends that the closing stock is valued at Rs.192 /Kg which, the A.O, wanted to adopt the same at Rs.186.37/Kg as a result of which the additional income offered in higher by Rs.14,58,053 (Rs.194,34,930 — Rs.1 79,76,877). Taking these facts into consideration. I am of the considered view, that the A.O, has no case for any addition of

*Rs.179,76,877/- once again to the income returned as the same is without any basis. The AO did not brought out any discrepancy either in the purchases or sales or any such incriminating evidence so as to warrant a separate addition of Rs.179,76,877/- to the income returned. As rightly pointed out by the authorized representative that if not for the additional income declared at Rs.194,34,930 is admitted in the income returned, there would be a returned loss of Rs,1,05,39,658 instead of net profit of Rs.88,95,272. The appellant has also relied up on the judgment of Hon'ble High Court of Rajasthan in the case of PCIT Vs Bajargan Traders in TA No.25812017 dated 12.09.2017 in support of its contentions, Courts have repeatedly held that addition cannot be made based on surmises, suspicion and conjectures. The A.O. failed to appreciate the fact that the closing stock declared by the appellant at Rs.8,48,01,122 includes the additional income declared at Rs.194,34,930. In fact, the appellant has declared more by an amount of Rs,14,58,053 that was agreed to at Rs.179,78,877 during survey, That said, I direct the assessing officer to delete the addition made at Rs.179,76,877. The grounds taken are allowed."*

6. The learned DR submitted that the learned CIT(A) erred in not appreciating fact that although, the assessee had included additional income offered towards difference in value of stock found during the course of survey amounting to Rs.1,79,76,877/-, but manipulated its account so as to reduce profit for the year under consideration, to offset the additional income offered during the course of survey towards difference in value of closing stock. The learned DR further referring to two set of financial statements prepared by the assessee for the year ended 31.03.2014 submitted that although the assessee's gross profit has been increased to 7.37% for the year, when

compared to previous financial year gross profit of 5.5%, but net profit is substantially reduced which means the assessee has not disclosed true and correct profit for the year. The Assessing Officer, after considering relevant facts, has rightly made additions towards additional income offered towards difference in stock, but the learned CIT(A) has deleted additions made by the Assessing Officer without assigning proper reasons.

7. The learned A.R. for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that if you go through two set of financial statements prepared for the year ending 31.03.2014, i.e., one set of financial statement with closing stock valued @ Rs.148 per kg and another set of financial statement with a closing stock valued @ Rs.186.37 per kg., it is very clear that the assessee has included additional income offered towards value of closing stock. The learned A.R. further submitted that no doubt, the assessee has incurred net loss, when closing stock was valued at Rs.148 per kg and said method is followed as per cost or market value whichever is less. However, when the closing stock was valued at average price method, rate works out to Rs.186.37 per kg and if you

consider said rate, closing stock for the year ending was at Rs.8,48,07,122/-. If you consider closing stock value as adopted by the assessee on the basis of cost or market price @ Rs.148 per kg, value of closing stock as on 31.03.2014 was at Rs.6,53,72,192/- and as against this, if you consider closing stock value on the basis of average price per kg Rs.186.37, it works out to Rs.8,48,07,122/- per kg. The difference between two figures is almost equal to additional income of Rs.1,79,76,877/- declared by the assessee. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld.

8. We have heard both the parties, perused relevant material available on record and gone through orders of the authorities below. There is no dispute with regard to value of closing stock arrived at by the assessee as on date of survey and value of closing stock worked out by the Department as on date of survey. In fact, there is difference of 4048 kgs of closing stock, when compared to physical stock found during the course of survey and the assessee has admitted additional income of Rs.7,54,426/- towards difference in excess quantity

of closing stock found during the course of survey. It is also an admitted fact that there is difference of Rs.1,72,22,481/- in value of closing stock and such difference is on account of different method of valuation of closing stock. The assessee has adopted cost or market price whichever is less for valuing closing stock, as per which the assessee has valued closing stock at Rs.148/- per kg. and as per said method value of closing stock at the end of the financial year works out to Rs.6,53,72,192/-. The Department has valued closing stock at average price method, as per which rates per kg works out to is Rs.186.37 per kg. Thus, there is difference of Rs.38.37 per kg when compared to rate adopted by the assessee and rate considered by the department. The assessee has admitted lapses in valuation of closing stock and has offered additional income of Rs.1,72,22,481/- towards difference in value. From the above, it is very clear that there is no dispute with regard to fact that there is difference in quantity of stock found during the course of survey and also difference in rate adopted by the assessee, in fact, the assessee has admitted a sum of Rs.1,79,76,877/- towards difference in value of stock and offered as additional income for the year under consideration.

9. In light of above factual background, if you go through reasons given by the Assessing Officer to make additions towards value of closing stock, we find that the Assessing Officer has gone into make further addition of Rs.1,79,76,877/- only on the basis of net profit declared by the assessee for the impugned assessment year. The assessee has declared net profit of Rs.88,95,272/-. The assessee claims that it has included additional income offered towards difference in valuation of stock and after considering additional income, resultant profit for the year under consideration works out to Rs.88,95,272/-. In other words, as claimed by the assessee there was a loss of Rs.1,05,39,657/- in the financial year 2013-14 when closing stock was valued at Rs.148 per kg. However, when closing stock value has been considered @ 186.37 per kg., loss incurred for the year turns into profit of Rs.88,95,272/- per kg. We have gone through financial statement filed by the assessee before inclusion of additional income as offered towards difference in value of stock found during the course of survey and after inclusion of additional income offered towards difference in value of stock and we find that value of closing stock before inclusion of additional income was at

Rs.6,53,72,292/-, whereas after inclusion of additional income of Rs.1,79,76,877/- value of closing stock works out to Rs.8,48,07,122/-. From the above, it is very clear that the assessee has already included additional income offered towards difference in value of closing stock amounting to Rs.1,79,76,877/- and prepared its financial statement to arrive at net profit of Rs.88,95,272/-. In our considered view, there is no error in the method followed by the assessee to account additional income offered towards difference in value of closing stock, because when there is difference in valuation of stock, such difference goes to increase or decrease value of closing stock as the case may be. In this case, on perusal of two set of financial statements filed by the assessee, we find that there is clear difference and such difference pertains to additional income offered towards difference in valuation of stock found during the course of survey. The Assessing Officer without appreciating above facts, has simply made further addition of Rs.1,79,76,877/- to returned income only on the basis of net profit declared by the assessee, when compared to net profit declared for previous financial year ending on 31.03.2013. The Assessing Officer has compared first set of profit & loss

account which shows net loss of Rs.1,05,39,657/- to profit & loss account on 31.03.2013 and doubted, when there is profit of Rs.12,65,692/- for the earlier financial year, then there is no reason for the assessee to incur loss of Rs.1,05,39,657/- for the year ending 31.03.2014. In our considered view, reasons given by the Assessing Officer is purely on suspicious and surmises manner without there being any factual discrepancies in the books of account maintained by the assessee for the year under consideration. The Assessing Officer has neither noticed any discrepancy in books of account nor made out a case of understatement of profit so as to offset additional income offered towards difference in value of closing stock. In absence of any such findings, he cannot simply made additions towards income which has already been included in the financial statement only on the ground that profit for year ought to have been more, when compared to earlier financial years. Therefore, we are of the considered view that the Assessing Officer has erred in making additions towards difference in value of closing stock, even though said difference has been already included in value of closing stock declared by the assessee. The learned CIT(A), after considering relevant facts

has rightly deleted additions made by the Assessing Officer and hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the Revenue.

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

Order pronounced in the open court on 20<sup>th</sup> July, 2022

**Sd/-**

**( वी.दुर्गा राव)**

**(V.Durga Rao)**

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 20<sup>th</sup> July, 2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.

**Sd/-**

**(जी.मंजुनाथ)**

**(G.Manjunatha)**

लेखा सदस्य / Accountant Member