

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.311/AHD/2020
निर्धारण वर्ष/Asstt. Year:2016-2017

I.T.O, Ward-1(1)(1), Ahmedabad.	Vs.	M/s. Akar Laminators Ltd., B-505, Infinity Tower, Corporate Road, Prahlanagar, Ahmedabad. PAN: AABCA2778H
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(Applicant)		(Respondent)
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Revenue by	:	Shri Mohd. Usman, CIT. D.R
Assessee by	:	Shri Sunil Talati, A.R

सुनवाई की तारीख/**Date of Hearing** : **30/05/2022**
घोषणा की तारीख/**Date of Pronouncement**: **20/07/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-1, Ahmedabad, dated 17/03/2020 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-2017.

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

1. *The Id. CIT(A) has erred in law and in facts in deleting the addition of employee benefit expenses of Rs. 6,12,140/- by ignoring that the assessee had not furnished the requisite details to the AO.*
2. *The Id. CIT(A) has erred in law and in facts in deleting the addition of loans and advances of Rs. 17,02,736/- despite the findings of the AO that adequate evidences including contra confirmation, PAN, address was not provided.*
3. *The Id CIT(A) has erred in law and in facts in deleting the addition of stock of Rs.6,29,89,149/- despite the fact that assessee failed to substantiate its stand. The Id.CIT(A) has erred in law and in facts in deleting the difference in closing stock of Rs. 2,23,50,000/- by ignoring that the assessee had not furnished the requisite details to the AO.*
4. *Ld CIT(A) has erred in law and in facts in deleting the addition of unexplained cash of Rs. 18,81,497/- by ignoring that the assessee had not furnished the requisite details to the AO.*
5. *The Id CIT(A) has erred in law and in facts in ignoring that assessee was non-compliant before the AO during the assessment proceedings as is evident from the assessment order, and that assessee had not appeared before the CIT(A) and thus the benefit of doubt could not be granted not being borne out of evidences.*
6. *It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.*

3. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowances of excessive employee benefit expenses of Rs. 6,12,140/- only.

4. The facts in brief are that the assessee is a public limited company and engaged in the business of trading of aluminum foil, flexible lamination paper, coated material etc which are used in manufacturing of packing materials. The AO during the assessment proceedings found that the employees benefit expenses for the year under consideration increased from Rs. 5,29,824/- to Rs. 15,30,350/- as compared to immediate previous assessment year whereas, the turnover of the assessee decreased from Rs. 42.44 crore to 34.79 core. The AO also found that the assessee has not filed return of income and audit report of last two immediate previous assessment years. Accordingly, the AO held that the assessee submission that expenses increased due to hiring of additional employee cannot be accepted in

absence of supporting material such as list of employee, addition therein and details of monthly salary etc. Thus the AO disallowed 40% of employee benefit expenses amounting to Rs. 6,12,140/- holding as excessive and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A and submitted that details with respect to the employees and the benefit extended to them were duly furnished during the assessment proceedings.

5.1 It was also submitted that the amount of salary is being fixed in nature, cannot be compared with the turnover of the assessee.

5.2 The learned CIT(A) after considering the submission of the assessee allowed the appeal by observing as under:

"Ad-hoc addition of employee benefit expenses of Rs.6,12,140/- " The A.O has disallowed the expenses as audit report/Return of income not available for last two years. However, page no.9 of submission is seen giving details of employees. In the circumstances, a benefit of doubt is given and the ground no.2 is allowed.

6. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

7. The learned DR before us contended that the necessary details of the employees and nature of payment made to them were not furnished by the assessee during the assessment proceedings. Furthermore, the learned CIT-A has passed the order without giving sufficient reasons.

8. On the other hand learned AR before submitted a paper book running from pages 1 to 53 and drew our attention on the salary sheet containing the details of the employees to whom salary was paid in the earlier year viz a viz in the year under consideration, placed on pages 10/12 of the paper book.

9. We have heard the rival contentions of both the parties and perused the materials available on record. We find that the AO has disallowed 40% of employees benefit expenses, being excessive, on adhoc basis for the reason that the turnover of the assessee has decreased whereas employee benefit expenses has been doubled up as compared to immediate previous assessment year. The AO also alleged that no return and audit report was filed for the last two immediate previous assessment year being A.Y. 2014-15 and 2015-16 and details such as list of employee, their monthly salary and details of hiring of new employee were not provided. However the learned CIT(A) while deleting the addition made by the AO found that the assessee has furnished details of salary, therefore he provided benefit of doubt to the assessee.

9.1 On perusal of the order of the AO, we note that it was alleged therein that the assessee has not furnished the details of the employees along with the salary. But we find that the assessee has furnished the necessary details about the name of the employees, addition of the employees and salary paid to them in the year under consideration viz a viz in the immediate preceding assessment year. No doubt, the salary paid to the employees by the assessee has increased manifolds in comparison to the earlier assessment year. But to our understanding, the revenue cannot enter in the shoes of the assessee to decide the quantum of salary to be paid by the assessee. It is the prerogative of the assessee to increase or decrease the salary of the employees. Nothing has been brought on record by the revenue suggesting that the salary was not paid by the assessee in the course of the business. Moving further, the amount of salary is generally fixed in nature, meaning thereby, it cannot be linked with the turnover of the assessee company. In other words, the amount of salary cannot increase and decrease in proportion to the turnover of the assessee. Thus, to our understanding, the reasoning given by the AO for making the disallowance of the salary that the salary of the assessee has increased whereas the turnover of the assessee has decreased does not seem to be tenable. Likewise, there was not filed any audited financial statements by the

assessee in the earlier assessment years cannot be a ground for making the disallowance. It is for the reason that if the assessee has not filed the audited financial statements, there are separate proceedings provided under the provisions of the Act which has to be initiated against the assessee. However we find that there is no whisper in the assessment order whether such proceedings have been initiated against the assessee. So on this reasoning as well, there cannot be any disallowance of the expenses as made by the AO.

9.2 Furthermore, we find that the disallowance has been made by the AO on adhoc basis being 40% of the amount of salary though there is no provision under the Act for making the adhoc disallowance until and unless some evidences is available on record, suggesting that the employee salaries paid by the assessee is excessive and unreasonable in comparison to the prevailing market practice. In view of the above, we do not find any infirmity in the order of the learned CIT-A and therefore, we decline to interfere in his order. Thus, the ground of appeal of the revenue is hereby dismissed

10. The next issue raised by the Revenue is that learned CIT(A) erred in deleting the addition by the AO for Rs. 17,02,736/- being unexplained loan and advances.

11. The assessee in the year under consideration has made new advances of Rs. 17,12,736/- to the following parties:

<i>Sr.No.</i>	<i>Name of Party</i>	<i>Amount given Rs.</i>
1.	<i>Narendra Gravure Pvt Ltd.</i>	<i>11,00,000</i>
2.	<i>BC India SME Assets</i>	<i>6,02,736</i>
3.	<i>Anmol Developers</i>	<i>10,000</i>

11.1 As per the assessee, these advances were given in the course of the business. However, the AO found that no contra confirmation and PAN were provided of the

parties. The address in case of one party namely M/s BC India SME Assets was not complete.

11.2 Likewise, there was no other transaction except for making the payment of Rs. 11 lacs during the year in case of M/s Narendra Gravure Pvt Ltd. despite there was already opening advance of Rs. 24 lakh.

11.3 Therefore, the claim that the advances were in nature of trade advance was not supported by the corroborative material. Accordingly the AO treated the advance of Rs. 17,02,736/- given to parties namely Narendra Gravure Pvt Ltd for Rs. 11 lakh and BC India SME Assets for Rs. 6,02,736/- as income of the assessee.

12. The aggrieved assessee carried the matter before learned CIT (A) and submitted that against the trade advance given to the party namely M/s Narendra Gravure Pvt Ltd, there was purchase in the FY 2016-17 and 2017-18 and the account got cleared. The AO without asking for the details of purchases and other material made the addition on wrong assumption of facts. Similarly, the advance was given to the party M/s BC India SME Assets as upfront payment against secured loan from Credit Agricole Indosuez Bank Ltd.

13. The learned CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

"Addition of Loans and Advances of Rs.17,02,736/-"

The A.O has mentioned that there no transaction with M/s.Narendra Gravure Pvt. Ltd. and only one payment of Rs.6,02,736/- is shown to M/s.BD India SME Assets. Hence, the amount was disallowed.

The appellant has given details about M/s.maremndra Gravur Pvt. Ltd. and M/s BD India SME Assets. The details are reasonable and sufficient for further cross verification by the A.O. In the circumstances, a benefit of doubt is given and the ground no. 3 is allowed.

14. Being aggrieved by the order of the learned CIT (A) the Revenue is in appeal before us.

15. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

16. We have heard the rival contentions of both the parties and perused the materials available on record. The 1st controversy arises before us for our adjudication whether the loans and advances given in the course of the business can be treated as income under the provisions of law. To our understanding, there is no provision under the Act suggesting to make the addition of the amount advances to the parties as income of the assessee. It is for the reason that the advances given by the assessee has not been claimed as deduction against the income. In the later years, when these advances are adjusted against any expenses, the question may arise in that relevant year whether such deduction by way of expenses is eligible against the income shown by the assessee. Even in that year, question of treating the advance as income of the assessee would not arise. There can be a dispute with respect to the claim made by the assessee against such advances. In other words, the advances given by the assessee per se cannot be treated as income of the assessee.

16.1 Be that as it may be, we find from the submission of the assessee made before the learned CIT-A that these advances were made in the course of the business which were adjusted in the later years. To this effect, we note that the assessee has filed the copies of the ledger of the parties along with the payment vouchers which are placed on pages 13 to 16 of the paper book. The genuineness of these documents were nowhere doubted by the authorities below. Even at the time of hearing, the learned DR appearing on behalf of the Revenue has not brought anything on record contrary to the finding of the learned CIT-A. Hence we do not find any infirmity in the order of the learned CIT-A and therefore we uphold the same. Thus the ground of appeal of the revenue is hereby dismissed.

17. The next issue raised by the Revenue is that learned CIT (A) erred in deleting the addition of Rs. 6,29,89,149/- and 2,23,50,00/- made on account of difference in the opening stock and closing stock.

18. The AO during the assessment proceedings observed that the assessee has shown opening stock of Rs. 6,29,89,149/- whereas as no return and tax audit report furnished for the last 2 immediate preceding assessment years i.e. A.Y. 2014-15 and 2015-16. In the last return for the A.Y. 2013-14 the closing stock was shown at Nil. The AO furthered found the turnover of the assessee decreased and similarly the GP ratio of the assessee also decreased as compared to immediate previous year from 10.31 % to 1.88% in current year.

18.1 The AO further observed that the assessee has shown closing stock of aluminum foil/printed coated material weighing 8,02,181 kg which was valued @ 180 per kg at Rs. 14,43,92,712/- whereas the average purchase price, sale price and opening value of material comes at Rs. 285 per kg, 276.59 per kg and 258 per kg respectively.

18.2 Thus the AO in view of the above vide show cause notice proposes to disallow the opening stock and value the closing stock @ Rs. 285 per kg being average purchase price.

18.3 The assessee in response submitted that GP ratio decreased during the year due the reason that there was stiff competition in market and it was difficult for it to hold the goods for longer time. Therefore, the distress sale was made which heavily impacted GP ratio. Similarly opening stock amounting to Rs. 6,29,89,149/- was valued at Rs. 258.75 per kg being lower of cost and net realizable value whereas closing stock of Rs. 14,43,92,712/- was valued at Rs. 180 per kg. This also impacted GP ratio. The assessee further submitted that valuation of opening stock at @ Rs. 258.75 per kg is very much justifiable by the purchase bill dated 06-04-2015.

Similarly, the assessee also justified the closing stock by the sale bill dated 3-3-2016.

18.4 It was further submitted by the assessee during the year that it has made purchases as per requirement of customer and price of the same was varying from Rs. 230 to 452.2 only. Similarly, the sales were made at a price varying between Rs. 420 to 165 per kg. Therefore, the average sale price or purchase has no relevance in valuation of closing stock.

18.5 The AO disregarded the submission of the assessee and held there was no proof submitted by the assessee that how it has valued opening stock especially when no ITR and audit report furnished for immediate two previous assessment year was filed. Therefore, the AO disallowed the opening stock of Rs. 6,29,89,149/- and added to the total income of the assessee.

18.6 The AO with respect to purchase bill dated 06-04-2015 furnished in support of opening valuation found that details such as LR No. & date, PO No & date, Company stamp, receipt of goods by the assessee etc were not appearing. Similarly on sale bill dated 03-03-2016 furnished in support of valuation of closing stock detail such TIN no. of customer, LR detail, PO detail etc were blank. The AO further found that the assessee is dealing different type of aluminum paper foil/coated material but no detail of quantity wise purchase, sale and inventory was provided. The assessee itself submitted that different type of material and goods were sold and purchased at different price varying between Rs. 420 to Rs. 165. Therefore the valuation of the closing stock @ 180 per kg based on bill issued in 03-03-2016 on one item cannot be accepted. Thus AO valued the closing stock @ 285 per kg being average purchase price and made addition of differential amount of Rs. 2,23,50,000/- only. Thus, the AO in aggregate made an addition of Rs. 6,29,89,149.00 and 2,23,50,000.00 to the total income of the assessee.

19. The aggrieved assessee preferred an appeal before learned CIT(A).
20. The assessee before the learned CIT(A) submitted there was no specific query raised during assessment proceeding with respect to valuation and existence of the opening stock. Further detailed submission was made during the assessment proceeding along with tax audit report where the opening stock, purchases and sales were duly certified. Thus the addition made by AO shows his biased mind. Similarly addition on account of under valuation of closing stock was made with prejudice mind without requiring specific details. As such during the assessment proceedings, the necessary details such as tax audit report, the basis of valuation of stock, copy of invoices of sales and purchases, other details with regards to decrease in sale price etc. were furnished. However, the AO without pointing out any defect in those details and without requiring further other details or without providing opportunity of being heard made addition alleging under valuation of closing stock.
21. The learned CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

"Addition of Opening Stock of Rs.6,29,89,149/-"

The appellant has filed explanation before A.O by filing various letters and also referred tax audit report. The availability of tax audit report is not doubted. The A.O should have conducted further inquiry to gather evidences for the department. The audit report for earlier year is no available hence, A.O. has taken decision. In the circumstances, a benefit of doubt if given and the ground no.4 is allowed.

The ground no.5 is as under:

"Addition of Differential Amount in Closing Stock of Rs.2,23,60,000/-"

The appellant has filed explanation before A.O by filing various letters and also referred tax audit report. The availability of tax audit report is not doubted. The A.O should have conducted further inquiry to gather evidences for the department. The issue is relating to ground no.4 where in decision has been taken. The appellant has explained the issue as is seen from the details in assessment order. Moreover, the closing stock shall become opening stock for assessment year 2017-18 which would not jeopardized. In the circumstances, a benefit of doubt is given and ground no.5 is allowed.

22. Being aggrieved by the order of the learned CIT (A) the Revenue is in appeal before us.

23. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

24. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that it is the accounting practice that the closing stock of one year becomes the opening stock of the subsequent year. In the present case, the opening stock was shown by the assessee at ₹ 6,29,89,149/- which was treated by the AO at Rupees nil. The view of the AO was based on the fact that the assessee has not filed any income tax return for the 2 assessment years immediately preceding the assessment year in dispute. Thus, the closing stock of the previous year was not available with the revenue authority. If the opening stock for the year under consideration is taken at NIL then the corresponding closing stock should also be taken at nil which would lead to no difference of the income declared by the assessee except shifting the profit from one year to another year. The opening stock of the current year cannot be disturbed without disturbing the closing stock of the immediate preceding assessment year. However, from the preceding discussion we do not find any whisper suggesting that closing stock of the immediate preceding assessment year was not proper. Admittedly, the assessee has not filed the return of income of the immediate preceding assessment years but non-filing of the income tax return cannot be a ground to disturb the opening stock of the current year until and unless some material is brought on record suggesting that the closing stock of the immediate previous is not genuine. It is also important to note that the assessee has made subsequent sales out of the opening stock which were not disturbed by the revenue authorities. The sale is possible by the assessee only out of the purchases or out of the stock held in opening stock, but the revenue has not disturbed the quantity of the items in which he is dealing. In view of the above and

after considering the facts in totality, we are not inclined to uphold the addition made by the AO with respect to the opening value of stock.

24.1 With respect to the addition made by the AO for Rs. 2,23,50,000/- on account of difference found in the valuation of closing stock, we note that the quantity of the closing stock as on 31 March 2016 has nowhere been doubted by the AO during the assessment proceedings. Only, the valuation of the closing stock was disturbed by the AO. Before we address the specific issue raised by the AO, it is important to note that the closing stock determined by the AO in the year under consideration will become the opening stock of the next year leading to no difference in the taxable income of the assessee except shifting the profit from one year to another year. In holding so we draw support from the order of the Hon'ble Calcutta High Court in case of Chainrup Sampatam vs. CIT reported in 20 ITR 484 which been approved by the Hon'ble Supreme Court, the relevant observation of the Hon'ble High Court is extracted as under:

But such contingencies are provided for by the fact that what is the closing stock of one year becomes necessarily the opening stock of the next year so that whatever advantage or disadvantage may be acquired or suffered by the stock valuation for one year can be counterbalanced in the year next following.

24.2 However we note that, the AO has nowhere given a direction to revise the opening stock of the subsequent assessment year which is contrary to the stand taken by the AO for the year under consideration. The stock has to be valued either at cost or realisable value whichever is lower. The assessee by way of furnishing the sale bill dated 03-03-2016 placed on record has justified that the market value stands at ₹180 per kg only. However, it is not incorrect to hold that the assessee has been dealing in different types of aluminum paper foil and coated materials which are sold and purchased at different prices. As such the assessee has not furnished the details of the quantity wise stock of different types of material which were lying as on 31 March 2016. According to the learned AO the particular rate applicable to a particular material cannot be applied to all the materials which are having different price range. The contention of the AO may be correct. But on

perusal of the sales register filed by the assessee we note that the assessee has sold different products at different rates. Most of the products were sold at a price less than 180 except on 3 of the occasions the price was charged by the assessee ₹ 412 of its product. Thus from these details, it is transpired that the assessee has not taken any price in the valuation of the closing stock based on artificial figure. Thus, details filed by the assessee for valuing the closing stock cannot be rejected in arbitrary manner. Thus in view of the above and after considering the facts in totality, we do not find any infirmity in the order of the learned CIT(A). Hence the ground of appeal of the revenue is hereby dismissed.

25. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition of Rs. 18,81,497/- made on account of unexplained cash in hand shown as on 31-3-2016 in the audited financial statements.

26. The assessee in its financial statement prepared as on 31.3.2016 has shown cash in hand at ₹18,81,497/-. Which was not explained based on the documentary evidence during the assessment proceedings. Thus, the AO treated the same as unexplained cash and added to the total income of the assessee.

27. Aggrieved assessee preferred an appeal to the learned CIT(A) who has deleted the addition made by the AO by observing as under:

"Addition of Cash on hand Rs.18,81,497/-"
The appellant has filed explanation before A.O by filing various letters and also referred tax audit report. The availability of tax audit report is not doubted. The A.O should have conducted further inquiry to gather evidences for the department. In the circumstances, a benefit of doubt is given and the ground no.7 is allowed.

28. Being aggrieved by the order of the learned CIT (A) the Revenue is in appeal before us.

29. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

30. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the cash in hand was shown by the assessee in the financial statements as on 31.3.2016 which were duly audited. To our understanding, the cash in hand per se does not represent any income of the assessee. The cash in hand as on 31st of March 2016 is the net effect of cash receipts and payments made in the year under consideration. The receipt of cash arises from multiple sources such as sales realization, withdrawal from the bank, receipt of money in cash from any other source. Likewise the payment of cash represent certain transactions such as deposit in the bank, payment against the purchases/expenses, loans and advances in cash etc. As such, the closing balance of cash cannot be questioned or disturbed without bringing any tangible material on record qua the cash transactions carried out by the assessee in the year under consideration. In the case on hand, the closing balance has been doubted by the AO without disturbing the cash transactions carried out by the assessee in the year under consideration. Thus, we do not find any infirmity in the order of the learned CIT-A. Accordingly, we uphold the same. Hence the ground of appeal of the revenue is by dismissed.

31. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the Court on 20/07/2022 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)
Ahmedabad; Dated 20/07/2022
Manish