

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C(SMC)", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.125/Kol/2020
Assessment Year: 2008-09**

Sri Prodyut Banerjee C/o. Partha Sarathi Gupta, Advocate, 100, Bank Lane, Hatar Para, P.O. Krishnagar, Dist. Nadia, Pin-741101. [PAN: AHPPB 3698 B (Appellant)]	Vs.	ITO, Ward-41(2), Nadia (Respondent)
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Present for:

Assessee by : Shri K.M. Roy, Advocate & Shri Shri P.S. Gupta, AR
Revenue by : Shri Subhra Jyoti Chakraborty, ACIT

Date of Hearing : 11.07.2022

Date of Pronouncement : 28.09.2022

ORDER

PER SONJOY SARMA, JM:

The present appeal has been preferred by the assessee against the order dated 11.09.2019 of the Commissioner of Income Tax (Appeals)- 12, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act [hereinafter referred to as the 'Act']. The assessee in this appeal has taken the following revised and additional grounds of appeal:

"i. For that on the facts and in the circumstances of the case, the ld. CIT(A)-12, Kolkata was not at all justified in rejecting the additional/specific grounds taken at the time of hearing of the appeal case.

ii. For that on the facts and circumstances of the case, ld. CIT(A) was not at all justified in confirming the addition of the whole of Rs. 55,095/- and Rs. 83,427/- respectively under the alleged discrepancies in stock and sales on the ground that the discrepancy has been arrived at after issue of show cause notice to the appellant.

iii. For that on the facts & in the circumstances of the case the ld. CIT(A) was not at all justified in confirming the addition of Rs. 5,12,500/- for the alleged investment in the purchase of a shop at Fulia on the basis of the remand report dated 24.08.2015 without appreciating the fact that the appellant has already disclosed the purchase of shop at Fulia Market for Rs. 5,12,500/- in his audited financial statement for the year under appeal.

iv. For that on the facts & in the circumstances of the case the ld. CIT(A) was not at all justified in confirming the addition of Rs. 5,17,000/- on the alleged ground of money lending business of the appellant without appreciating the fact that no such loan was advanced in the financial year relevant to the assessment year 2008-09 as per audited financial statement.

v. For that having regards to the facts of the case the ld. CIT(A) was wrong in confirming the addition of Rs. 54,600/- out of the Salary of Rs. 1,09,200/- paid to the workers who were working under the appellant during the year under appeal.

vi. For that on the facts & in the circumstances of the case the ld. CIT(A) was not at all justified in confirming the addition of Rs. 65,409/- against the carriage-in-wards a/c.

vii. For that on the facts & in the circumstances of the case the ld. CIT(A) was not at all justified in confirming the addition on account of alleged difference in cash balance when the same is not appearing in the assessment order for the A.Y. 2008-09.”

2. Brief facts of the case are that the assessee filed his return of income on 26.09.2008 declaring a total income of Rs. 2,92,800/- which was subsequently processed u/s 143(1) of the I.T. Act, 1961 on 06.01.2009 at returned total income. A survey was conducted in the case of assessee on 28.01.2008 as a result of which the cases was compulsory selected into scrutiny assessment and notice u/s 143(2) of the Act was duly served upon the assessee. At the time of hearing, the assessee was asked to file list of purchasing concerns, bulk sale, retail sale, cash sale, etc. However, assessee failed to produce such a document for cross-examination and when assessee was asked to produce inventoried documents as inventory during the course of survey operation, assessee failed to submit the same for the purpose of assessment. The AO stated that during the course of survey operation, a register was found in the business premises of the assessee containing names of the parties who received loan by pledging gold and other precious materials to the assessee to have loan to the tune of Rs. 7,23,000/- was recorded and got it signed by the assessee at the time of survey. In this regard, assessee

was allowed lots of opportunities of being heard and producing documents throughout the entire period of assessment proceedings for the cross-examination before completion of the assessment. But there was no response from the assessee and the AO found discrepancy in stock and sale of Rs.55,427/- and Rs. 83,427/- respectively and the assessee invested Rs. 5,12,500/- to purchase a shop without having sufficient balance of cash and the ld. AO treated all the such amount as undisclosed income and added to the income of the assessee. Besides that during survey operation register and gold ornaments were found in the business premises of the assessee and it was found from the same names of 32 parties who received loan to the tune of Rs. 5,17,000/- and six out of 32 loan seekers pledged gold ornaments as security to procure loan from the assessee while other 26 parties received loan for which pledging was found. When statement was recorded at the time of survey operation, the assessee was asked to clarify, he failed to explain such amount and the ld. AO treated the same as undisclosed income of the assessee and added back to the total income of the assessee. The ld. AO during the proceeding, stated that at the time of survey operation, statement was recorded wherein the assessee stated that three workers working in the business premises to whom assessee incurred salary expenses to the tune of Rs. 54,000 @ Rs. 1,500/- per month per workers X 3 X 12 but while filing return of income of the assessment year in question, he claimed expenses of Rs. 1,09,200/- - Rs. 54,000/-) and at the time of assessment proceeding, the assessee was not able to give any reasons for such difference of salary. Therefore, the AO added the entire difference of salary of Rs. 54,200/- to the total income of the assessee. Therefore, the AO view that the assessee claimed bogus carriage inward amounting to Rs. 65,409/- inflated carriage inward and outward of Rs. 1,29,884/- difference of closing balance found at the time of survey operation of Rs. 1,29,502/- and inflated claim of expenses debited to P & L A/c of Rs. 19,945/- all are added to the total income of the assessee.

3. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A) and partly allowed the appeal of the assessee.

4. Aggrieved by the above order, assessee preferred the instant appeal before the Tribunal raising almost 7 grounds of appeal. Ground no. 1 is general in nature and as such need not to be adjudicated.

5. After hearing rival parties and perusing the records carefully, we find that at the time of hearing before the AO, the assessee produce books of accounts which were examined by the AO. However, the AO heavily relied on the findings of the survey team instead of pointing out any specific defects in the audit accounts produced by the assessee before the AO. We note that the assessee has replied the show cause notice and explained that the position of stock on the date of survey operation, the assessee sold merchandize to the customers after completion of survey operation and the stock of the assessee was reduced to Rs. 1,60,020/- which making a difference of stock of Rs. 44,445/-. However, the claim of the assessee was rejected by the ld. AO and additions were made in respect of discrepancy of stock of Rs.55,095/- and sales figure of Rs. 83,427/- and added to the income of the assessee. The ld. CIT(A) affirmed the order of AO by holding that there is no infirmity in the calculation of stock and sales figure by the AO again not commenting on the books of accounts. In our opinion, the findings of both the parties are without any basis or material as the books of accounts duly audited by auditors were produced by the assessee but not faulted with during the course of assessment proceeding as well as during appellate proceeding. Moreover, we note that the AO has not rejected in the books of accounts before making the addition on account of stock difference which is also not correct and not as per the provisions of Act. Therefore, the addition made on the basis of estimation and surmises cannot be sustained. The case of the assessee is squarely covered by the decision of Hon'ble Apex Court in the case of CIT vs Kader Khan Son reported in (2013) 352 ITR 480 (SC) wherein it has been held that the statement of the assessee in survey has no evidentiary value until and unless there is a corroborating material brought on record by the Investigation Team and thus statement during the survey cannot be basis of making the decision. In above conspectus of facts and the ratio laid down by the Hon'ble Supreme Court in the above case, we are inclined to delete the addition of Rs. 55,095/- and Rs.

83,427/- respectively under the alleged discrepancies in stock and sales. Therefore, ground no. 2 is allowed of the assessee.

6. The assessee raised in ground no. 3 against confirming the addition of Rs. 5,12,500/- for alleged investment in the purchase of shop at Fulia on the basis of remand report dated 24.08.2015 and this fact was not appreciated by the authorities below as the appellant has already disclosed the alleged purchase of stock in his audited financial statement for the year under consideration and as such we do not find any irregularity in the alleged investment in purchase of shop as appellant assessee already disclosed the same in its financial statement. Accordingly, we delete the addition of Rs. 5,12,500/- in the hands of the assessee.

7. The another issue raised in ground no. 4 is against in confirming the addition of Rs. 5,17,000/- in respect of alleged ground of money lending business of the appellant while doing so the authorities below did not consider the fact that no such loan was advanced in the financial year relevant to the assessment year 2008-09 as per the books of accounts and audited financial statement and the AO has not rejected the books of accounts before making such addition. Therefore, such addition was not in accordance with law. Accordingly, we direct to delete the addition of Rs. 5,17,000/- in the hands of assessee.

8. The assessee raised in ground no. 5 & 6 against in confirming of Rs. 54,600/- out of salary of Rs. 1,09,200/- paid to the workers during the year under consideration and another addition of Rs. 65,409/- against carriage inward accounts. Since we have already allowed the appeal of the assessee in ground no. 2 deleting the addition of Rs. 55,095/- and Rs. 83,427/- in respect of discrepancies in stock and sales as because findings of both the authorities are without any basis or material although audited books of accounts were produced by the assessee but no fault detected in the course of assessment proceedings as well as before the appellate authority. Since the AO has not rejected the books of accounts before making the addition, therefore, addition is not correct and as per the provisions of law. As such this ground being consequential to the

above and it is accordingly allowed in favour of the assessee. Accordingly, we direct the AO to delete sum of Rs. 65,409/- against carriage inward accounts in the hands of assessee.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28.09.2022.

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

**Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 28.09.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Sri Prodyut Banerjee.
2. The Respondent: ITO, Ward-41(2), Nadia.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata