

आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.488/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s.Saravana Stores New No.13, Ranganathan Street, T.Nagar, Chennai-600 017.	बनाम/ Vs.	The ACIT, Central Circle-1(2) Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAWFS-6762-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri T.Vasudevan (Advocate)- Ld. AR
प्रत्यर्थीकी ओरसे/Respondent by	:	Shri AR.V. Sreenivasan (Addl. CIT)-Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	26-10-2022
घोषणाकी तारीख / Date of Pronouncement	:	02-11-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 16-09-2021 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 of the Act on 11-12-2019. The grounds taken by the assessee read as under:

The order of the Commissioner of Income Tax (Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.

JURISDICTION :

2. The CIT(A) erred in upholding the reopening of assessment by issue of notice dated 20.03.2019 under sec.148 of the Act.

3. The CIT(A) failed to appreciate that the reopening of assessment is beyond 4 years from the end of the asst. year 2012-13 and that the Proviso to sec.147 is clearly attracted in the instant case and hence the reopening is without jurisdiction and untenable in law.

4. The CIT(A) failed to appreciate that the reopening was based only on change of opinion by the officer since the identical issue of difference in stock in trade was considered in detail by the officer in the assessment order u/s.143(3) passed on 25.3.2014 and hence the reopening is untenable in law.

5. The CIT (A) further failed to appreciate that there was no reason to believe that income had escaped assessment and in the absence of any fresh tangible material pointing to failure on the part of assessee to disclose material facts, ought to have applied the settled law that 'change of opinion' and also audit objection cannot be ground for reopening the assessment and hence is to be annulled.

6. The CIT(A) was not justified in confirming the reworking of closing stock value, considering it as an arithmetical error, which does not fall within the ambit of proceedings u/s.147 of the Act.

MERITS OF ADDITION:

7. The CIT(A) erred in confirming the addition of Rs.56,32,673 as excess stock with the assessee.

8. The CIT(A) was not justified in confirming the reworking of the excess stock by the officer applying an illogical method and arriving at a value of Rs.3,91,54,265 as against the value accepted in the 143(3) proceedings of Rs.3,35,21,592/-.

9. The CIT(A) failed to appreciate that the addition made by way of estimating the mark up at 20% on the cost price, thus resulting in 16% of selling price is totally against the principles of arriving at the cost price from the sale price which value was arrived at in the search and is an arbitrary method of arriving at the value of stock.

10. The CIT(A) further failed to appreciate that in the 143(3) proceedings, the excess value of stock (i.e., cost price) was correctly arrived as 20% mark up on the selling price (tagged to the goods) and hence the reworking of the excess value of stock is arbitrary, unjustified, and unsustainable on the facts of the case.

11. The CIT(A) further failed to appreciate that in the course of search, the stock was valued at sale price (tag price) and not at cost price and hence the mark up price was rightly calculated from the selling price in the original assessment and the reworking of the same at cost price is totally wrong and needs to be cancelled.

12. The CIT(A), in any event, ought to have considered the contentions of assessee in the proper perspective, deleted the addition and thus allowed the appeal of assessee.

As is evident, the assessee assails the validity of reassessment proceedings on the ground of change of opinion. The assessee also contests merits of the additions.

2. The Ld. AR submitted that the issue of stock was already considered in regular assessment proceedings and the reopening has been done on the basis of same set of material and therefore, it was case of mere change of opinion. The Ld. AR also submitted that reopening is beyond 4 years from the end of relevant assessment year and there was no allegation that there was any failure on the part of the assessee to disclose material facts. The Ld. Sr. DR, on the other hand, justified reassessment proceedings by drawing attention to the orders of lower authorities. Having heard rival submissions and after due consideration of material facts, our adjudication would be as under.

Assessment Proceedings

3.1 The original return of income as filed by the assessee was scrutinized u/s 143(3) on 25.03.2014. The assessee was subjected to search action on 18.08.2011 wherein excess stock was found. The Ld. AO reopened the case on the ground that valuation of physical stock as on the date of search was done incorrectly. The Ld. AO noted from the assessment order that the assessee admitted excess stock of Rs.335.21 Lacs. It was admitted by the assessee during search operations that the mark-up price was fixed at 20% higher than the cost price. The inventory of the stock was taken on the basis of mark-up price. The assessee reduced the physical stock as taken and deducted 20% mark-up price. In other words, the cost price was arrived at 80% of mark-up price whereas as per the admission made by the assessee, the stock was to be taken at 84% of valuation. As calculated in this manner, the excess stock

would be Rs.391.54 Lacs as against Rs.335.21 Lacs worked out by the assessee. The working submitted by the assessee was accepted during assessment proceedings. Therefore, there was an arithmetical error to the extent of Rs.56.32 Lacs in valuation of physical stock available on the date of search and income to that extent escaped assessment.

3.2 Consequently, notice u/s 148 was issued on 20.03.2019 which is beyond 4 years from end of relevant assessment year. The assessee objected reopening on the grounds that the assessment could not be reopened unless there was any failure on the part of the assessee to disclose fully and truly all material facts and in this case, there was no such failure. It was further submitted that reopening was on mere change of opinion. However, rejecting the same, Ld. AO made addition of Rs.56.32 Lacs in the hands of the assessee.

4. Appellate Proceedings

The Ld. CIT(A) rejected the legal ground by observing that the case was reopened in order to address the under-assessment made on account of wrong calculation of physical stock. The full disclosure does not merely mean production of books of account. The assessee did not discharge the onus to explain the stock difference. Regarding change of opinion, Ld. AO have clear cut reasoning for working out the correct physical stock that was supposed to be considered for working out the excess stock. Accordingly, the legal grounds were dismissed and the additions, on merits, were also confirmed. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee's case was scrutinized in regular assessment proceedings u/s 143(3) on 25.03.2014

consequent to search action on the assessee on 18.08.2011. During search, difference in stock was found which was admitted by the assessee. During assessment proceedings, the assessee raised various plea regarding valuation of stock and furnished revised working statement. The assessee valued excess stock at Rs.335.21 Lacs which was verified and accepted by Ld. AO (para-9 of assessment order dated 25.03.2014). Thus, the issue of valuation of excess stock was duly considered by Ld. AO and the claim was accepted after due verification of facts.

6. Subsequently, Ld. AO sought to reopen the case of the assessee and issued notice u/s 148 on 20.03.2019 which is beyond 4 years from end of relevant assessment year and approx. 5 years after framing of regular assessment proceedings. Evidently, the formation of belief is on the same material as available to Ld. AO while framing the regular assessment proceedings and no new tangible material has been referred by Ld. AO to reopen the case of the assessee. The reassessment proceedings have been initiated to correct arithmetical error in the computation which is impermissible. Another fact to be noted that the assessee had made elaborate submissions regarding valuation of stock during regular assessment proceedings and furnished revised statement which was verified and accepted by Ld. AO. There is no allegation that there was any failure on the part of the assessee to disclose material facts necessary for framing of assessment.

7. On the basis of above facts, it was to be held that the reassessment proceedings were based on mere change of opinion and there was no new tangible material before Ld. AO to reopen the case of the assessee. This being the case, the reassessment proceedings could

not be sustained in the eyes of law and the same are to be quashed. We order so. The ratio laid down by Hon'ble Supreme Court in the case of **CIT vs. Foramer France (264 ITR 566)** would apply. The Hon'ble Court dismissed the appeals filed by the revenue and confirmed the order of Hon'ble High Court of Allahabad which held that since there was no failure on the part of assessee to make return or to disclose fully and truly all material facts necessary for assessment, the case could not be reopened and the notice issued u/s 148 was barred by limitation.

8. Since the legal grounds urged by the assessee has been allowed, adjudication on merits of the case has been rendered academic in nature.

9. In the result, the appeal stands partly allowed in terms of our above order.

Order pronounced on 02nd November, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 02-11-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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