

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**

आयकर अपील सं./ITA No.: **372/Chny/2019**  
निर्धारण वर्ष / Assessment Year: 2008-09

Assistant Commissioner of  
Income Tax,  
Circle -1,  
Kumbakonam -612 001.

M/s. S. Periasamy Moopnar &  
v. Sons,  
No. 106, Nageswaran North St.,  
Kumbakonam – 612 001.  
**[PAN: AAKFM-1930-B]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT  
: Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 19.10.2022  
घोषणा की तारीख/Date of Pronouncement : 16.11.2022

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Trichy, dated 20.11.2018 and pertains to assessment year 2008-09.

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

*"Ground No 1: The CIT(A) has erred in allowing relief on excess stock as he has failed to consider the assessee's acceptance in sworn statement that the increase is due to stocks purchased from various places.*

*Ground No.2: The CIT(A) has erred in deleting the addition of Rs.3,55,06,618/- on account of unaccounted purchases as the assessee and his authorized representative vide letter dated 15.02.2010 had admitted that the purchases are not supported by bills and hence not accounted for in books.*

*Ground No.3: The CIT(A) has erred in deleting the addition of Rs.10,05,439/-on account of difference in Gross profit on unaccounted sales and GP ratio worked out at 14.5% based on sales and purchases as per the pen drive impounded.*

*Ground No.4: The CIT(A) has failed to note that the assessee had taken two different stands on the same issue, as the assessee had himself vide letter dt.14.11.2012, admitted that the sales in pen drive included the sales of the lady member of the family amounting to Rs.1,82,47,637/- and vide letter dated 15.12.2010 had admitted that the sales in pen drive Included the sales of Ayyakadai amounting to Rs.53,60,369/- and consignment sales of Rs.1,28,87,268/. The appellant craves leave to add, allow or modify any grounds of appeal."*

3. The brief facts of the case are that the assessee is a partnership firm, engaged in the business of dealing in textile goods and readymade garments. The assessee filed its return of income for the assessment year 2008-09, declaring total income of Rs. 98,70,650/-. A survey u/s. 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was conducted on 26.10.2007 in the premises of the assessee firm. During the course of survey, a pen drive was found containing unaccounted

purchases and sales. The assessee could not explain difference between sales as per books of accounts and pen drive, purchases and stock as per books and pen drive and thus, a statement was recorded from partners of the firm, for which they admitted that firm was not maintaining regular books of accounts and also no bills for purchase and sales. Therefore, the AO quantified unaccounted stock, unexplained purchases and also unaccounted sales. The case has been selected for scrutiny and assessment has completed u/s. 143(3) of the Act 29.12.2010 and determined total income of Rs. 5,14,24,610/-, by making additions towards excess stock found as on the date of survey for Rs. 46,40,742/-, unaccounted purchases of Rs. 3,55,06,618/- and gross profit on unaccounted sales amounting to Rs. 10,05,439/- etc. The assessee carried the matter in appeal before the first appellant authority and the CIT(A) vide their order dated 16.05.2012, deleted additions made towards excess stock found during the course of survey, unaccounted purchases added u/s. 69C of the Act, and gross profit on unaccounted sales. The Revenue carried the matter in appeal before the Tribunal and challenged deletion of additions made by the AO. The ITAT, vide their order dated 15.05.2013 in ITA No. 1580/Mds/2012 set aside the issues to the

file of the AO with a direction to reconsider the issues afresh in accordance with law. Pursuant to directions of the Tribunal, the AO has completed assessment u/s. 143(3) r.w.s. 254 of the Act on 20.02.2015 and made additions towards excess stock found during the course of survey, unaccounted purchases and also gross profit on unaccounted sales. The assessee carried the matter in appeal before the first appellant authority and the CIT(A) vide their order dated 20.11.2018 deleted additions made by the AO. Being aggrieved by the CIT(A), the Revenue is in appeal before us.

4. The first issue that came up for our consideration from ground no.1 of Revenue's appeal is deletion of addition towards excess stock found during the course of survey amounting to Rs. 46,40,742/-. The fact with regard to the impugned dispute are that during the course of survey u/s. 133A of the Act on 26.10.2007, by considering selling price, physical inventory of goods lying in the premises were valued at Rs. 1,63,00,859/-. Further, after reducing gross profit @ 11.74%, cost of goods found at the time of survey was arrived at Rs. 1,43,87,138/-, and arrived at a difference of Rs. 46,40,742/- when compared to

book stock. It was the explanation of the assessee before the AO, that certain invoices for purchase of goods were not accounted in the books of accounts due to work pressure and survey was conducted in the month of October, which is a peak season on account of Deepavali festival. Therefore, the assessee has filed a reconciliation statement after considering certain invoices which were not accounted at the time of survey, and claimed that there is no difference in stock found at the time of survey when compared to physical stock.

5. The Id. Sr. DR submitted that, the Ld. CIT(A) erred in allowing relief on account of excess stock without appreciating a fact that, during the course of survey the assessee has admitted in sworn statement that firm is not maintaining regular books of accounts and also purchases are not supported by invoices. He further submitted that, although the assessee could not reconcile difference in stock, but the CIT(A) has allowed relief by stating that the assessee has reconciled difference in stock found during the course of survey.

6. The Ld. Counsel for the assessee supporting the order of the CIT(A) submitted that the assessee has filed detailed reconciliation statement vide their letter dated 15.12.2010 and explained that the stock as per books of accounts was at Rs. 1,42,43,030/-, whereas physical stock found during the course of survey was at Rs. 1,43,87,138/-. The CIT(A) after considering minor difference, deleted additions made by the AO on the ground that the assessee has reconciled physical stock during the course of survey with books of accounts and there is no difference.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. This case has checkered history and the Tribunal has set aside the issue to the file of the AO, in light of arguments of the assessee. During second round, the assessee has filed a detailed reconciliation statement explaining difference in stock found at the time of survey. However, the AO has reiterated his stand and made additions without considering detailed reconciliation filed by the assessee. Therefore, on this ground itself, additions made by the AO cannot be sustained. Be that as it may, the Id.

CIT(A) has recorded categorical finding that the books of accounts of the assessee was not updated as on the date of survey and reasons for not updating books was festival season sales and all staff were busy in sales activities. Therefore, they could not reconcile physical stock during the course of survey, but during the assessment proceedings, the assessee has filed a detailed reconciliation statement vide their letter dated 15.02.2010 and has arrived at book stock of Rs. 1,42,43,030/- and said stock has been arrived after reducing gross profit ratio @14.35%, admitted by the assessee firm in its return of income for the relevant financial year. However, the survey team has considered GP ratio of 11.74%, thus there is a difference in GP ratio which leads variation in stock. The assessee further explained that purchases made in the month of October was not updated in the books of accounts and if we consider said purchases and also apply correct GP ratio, then there is no difference in physical stock found as on the date of survey when compared to book stock. We find, that Ld. CIT(A) accepted reconciliation statement filed by the assessee with updated purchases as per books of accounts and given a categorical finding that the assessee has fully reconciled excess stock

quantified during the course of survey. The findings of facts recorded by the Ld. CIT(A) is uncontroverted by the Revenue. Therefore, we are of the considered view, that there is no error in the reasons given by the Ld. CIT(A) to delete additions made towards excess stock found during the course of survey, and thus, we are inclined to uphold the findings of the CIT(A) and reject the ground taken by the Revenue.

8. The next issue that came up for our consideration from ground no.2 of Revenue's appeal is deletion of addition towards unaccounted purchases u/s. 69C of the Act amounting to Rs. 3,55,06,618/-. During the course of survey, a pen drive containing details of purchases and sales of the assessee was found and as per said pen drive, purchases up to the date of survey was at Rs. 7,78,24,787/-. During the course of survey, it was found that the purchases as per books of accounts was at Rs. 4,23,18,169/-. Therefore, difference between purchases as per pen drive and books has been arrived at Rs. 3,55,06,618/-. During the course of assessment proceedings, the assessee has filed reconciliation explaining difference between purchases as per pen drive and purchases as per books of accounts. According

to the assessee, purchases at the time of survey was not updated and they claimed that as on the date of survey, purchases as per books of accounts was at Rs. 5,96,29,177/- as against pen drive purchases at Rs. 7,78,24,787/- and arrived at a difference of Rs. 1,18,95,610/-. The assessee explained that out of Rs. 1,18,95,610/- purchases relating to Ayya Kadai sales and consignment sales is included. If you exclude purchases relating to Ayya kadai sales and consignment sales, then there will be no difference in purchases as per pen drive and purchases as per books of accounts.

9. We have heard both the parties and considered relevant material available on record. There is no dispute with regard to the fact that the purchases as per pen drive and purchases as per books of accounts was not matching. In fact, during the course of survey, the assessee could not explain readily with necessary evidences, the purchases recorded in pen drive and purchases as per books of accounts. However, during the course of assessment proceedings, the assessee has filed a detailed reconciliation statement along with bills and argued that certain purchase bills were unaccounted when the survey took place. If

you consider purchases unaccounted during the course of survey, the total purchases comes to Rs. 5,96,29,177/-, and if you consider updated purchases as per books and purchases as per pen drive, net difference works out to Rs. 1,18,95,610/-. The said difference has been explained by the assessee and according to assessee explanation, purchases related to Ayya kadai sales and consignment sales is included in pen drive and if you exclude said purchases, there will be no difference in purchases when compared to books of accounts. We find, that the Ld. CIT(A) has recorded a categorical finding that the assessee is able to reconcile purchase difference arrived at during the course of survey with necessary details and also it pertains to Ayya Kadai sales and consignment sales. The Ld. CIT(A) had recorded further findings that Ayya kadai sales has been declared in family members of assessee firm. It was further noted that the assessee is accounting 15% commission on consignment sales. The Id. CIT(A), further noted that the assessee has continuously following this method of accounting and as per which Ayya kadai sales is declared in family members hands, and for consignment sales only accounting commission income. From the above, it is very clear that there will be a difference in purchases when

compared to books of accounts and if you exclude purchases relating to Ayya Kadai and consignment sales, then purchases reported in books of accounts as on the date of survey is almost equal to purchases as per pen drive. The factual finding recorded by the Id. CIT(A) is uncontroverted by the Revenue except stating that the assessee could not furnish necessary reconciliation. We find that the assessee has filed a reconciliation statement which is available in paper book page no. 70 to 84. Therefore, we are of the considered view, that there is no error in the reasons given by the Ld. CIT(A) to delete additions made towards unaccounted purchases u/s. 69C of the Act, and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the Revenue.

10. The next issue that came for consideration from ground no. 3 & 4 of Revenue's appeal is deletion of additions made towards gross profit on unaccounted sales. During the course of survey, as per pen drive sales was recorded at Rs. 8,83,26,761/- as against sales recorded in books of accounts at Rs. 7,00,79,123/-. The AO arrived at a difference on sales at Rs. 1,82,47,634/-. Since, the assessee could not explain difference in sales readily

with necessary evidences, the AO has estimated gross profit on sales @ 14.35% and made additions of Rs. 10,05,439/-. It was an argument of the assessee before the AO, that the assessee has filed reconciliation explaining difference in sales when compared with sales recorded in pen drive and sales as per books of accounts. According to the assessee, if you exclude sales relating to Ayya Kadai sales and consignment sales, then there will be no difference in sales when compared to books of accounts.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The AO has made additions towards gross profit on unaccounted sales on the basis of the sales reported in books of accounts and sales as per pen drive. The AO has arrived difference in sales at Rs. 1,82,47,637/-. The assessee has filed reconciliation explaining difference in sales and as per assessee, sales relating to the assessee (Ayya Kadai sales) was at Rs. 53,60,369/- and if you exclude said sales difference comes out to Rs. 1,28,87,268/-. The assessee further claimed that said difference represents consignment sales as per record and as on

the date of survey, which was at Rs. 2,11,07,515/- and if you exclude consignment sales there is no difference in sales as worked out by the AO. We find that the Ld. CIT(A) after considering reconciliation statement filed by the assessee explaining difference in sales observed that, the assessee is regularly declaring Ayya kadai sales in the hands of family members. The assessee had also declared commission income on consignment sales and this fact is not examined by the AO. The Ld. CIT(A), further recorded that in earlier assessment years also, the AO has made additions towards Ayya Kadai sales and consignment sales and the ITAT has deleted additions made towards Ayya Kadai sales and consignment sales. Therefore, Ld. CIT(A) opined that, if you exclude sales relating to Ayya Kadai and Consignment sales, then there is no difference in sales worked out by the AO, when compared to sales accounted in books of accounts and sales as per pen drive. The finding of the facts recorded by the CIT(A) is uncontroverted by the Revenue, except stating that the assessee could not explain difference in sales during the course of survey with necessary evidences and also the partners have admitted that the firm is not maintaining regular books of accounts. We find that the CIT(A) has negated

the arguments of the Revenue on the basis of various evidences filed by the assessee including books of accounts maintained for relevant assessment years and also reconciliation statement explaining difference between sales as per pen drive and sales as per books of accounts. Therefore, we are of the considered view that the AO has completely erred in making additions towards gross profit on difference in sales. The Id. CIT(A) after considering relevant facts has rightly deleted additions made by the AO and thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject ground taken by the Revenue.

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

Order pronounced in the court on 16<sup>th</sup> November, 2022 at Chennai.

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(जी. मंजुनाथ)  
**(G. MANJUNATHA)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 16<sup>th</sup> November, 2022

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy 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             |