

**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH
VIRTUAL HEARING AT ITAT KOLKATA**

**Before: Shri Manish Borad, Accountant Member and
Shri Sonjoy Sarma, Judicial Member**

आयकर अपील सं.य/
ITA No. 52/Ran/19
Assessment Year: 2015-16

Prem Industries C/o Sri Vinay Kumar Jalan M/s. O.P Jalan & Associates Consultants LLP 48 Cart Sarat Road, Upper Bazar, Ranchi- 834001.	बनाम V/s.	Assistant Commissioner of Income- tax(ACIT), Circle-3, Central Revenue Building(Annexe), Ranchi-834001
PAN: AANFPO 501A		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee		Shri Vinay Jalan, Advocate, Ld. AR
प्रत्यर्थी की ओर से/ By Respondent/Department		Rinku Singh, CIT/ Ld. DR
सुनवाई की तारीख/Date of Hearing		16-11-2022
घोषणा की तारीख/ Date of Pronouncement		20-12 -2022

आदेश /O R D E R

PER MANISH BORAD, AM

This appeal of the assessee for the assessment years 2015-16 is directed against the order dt. 05-12-2018 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter, referred to as 'the Act'] by the Id.

Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A), Ranchi, Jharkhand, which is arising from the assessment order dt. 28-12-2017 passed u/s. 143(3) of the Income-tax Act by the Assessing Officer (AO), A.C.I.T, Circle-3, Ranchi.

2. The assessee has raised the following common grounds of appeal for the AY 2015-16:-

1. Under the facts and circumstances of the case the Id. CIT(A) erred in confirming the addition so made by the Ld. Assessing Officer amounting to Rs. 91,81,313/- with respect to the difference in stock determined during the survey.

2. Under the facts and circumstances of the case, the Id. CIT(A) erred in confirming the addition so made by the Ld. Assessing Officer amounting to Rs. 2,56,59658/- as unexplained credit for those creditors who did not confirm.

3. Brief facts of the case are that the assessee is a partnership firm and whole sale dealers in sanitary ware, pipes & fittings. Survey proceedings were carried out u/s. 133A of the Act on 18-11-2014. Certain discrepancies including excess stock was found. Thereafter, the assessee filed ITR(Income Tax Return) on 30-09-2015 for the AY 2015-16 declaring income at Rs. 68,05,870/-, which included an amount of Rs.60 lacs admitted as undisclosed income on account of excess stock found during the course of survey. After the case being selected for scrutiny followed by serving of valid notices u/s. 143(2) & 142(1) of the Act the Id. AO carried out the assessment proceedings. Further the submissions were filed reconciling the excess stock *qua* surrender of stock shown in the ITR(Income Tax Return), which was mainly on account of not considering some of the purchases made before 18-11-

2014. The Id. AO considered the submissions of the assessee but did not find it to be acceptable and made addition of Rs. 91,81,013/- towards unaccounted investments made in stock u/s. 69 of the Act. The Id. AO also enquired about sundry creditors balance of Rs.3,58,03,103/-. Letters were sent u/s. 133(6) of the Act but since the case was getting time barred only few confirmations were received. After considering the same for the remaining balance of Rs. 2,56,59,658/- the Id. AO made addition towards unexplained credit at Rs. 2,56,59,658/-. Income assessed at Rs. 4,16,46,541/-.

4. Aggrieved, the assessee preferred appeal before Id. CIT(A), but failed to succeed.

5. Aggrieved, now the assessee is in appeal before this Tribunal challenging the addition(s) confirmed by the Id. CIT(A).

6. The Ld. Counsel for the assessee referred to the detailed paper book containing various details including purchase invoices not considered during the course of survey, details of sundry creditors and their confirmations. It was submitted that the Id. CIT(A) did not consider these details filed during the course of appellate proceedings.

7. On the other hand, the Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

8. We have heard the rival contentions and perused the records placed before us. The assessee has raised two rounds of appeal in which ground no. 1 relates to addition for difference in stock determined at Rs. 91,81,313/- during the survey and second ground relates to unexplained creditors at Rs. 2,56,59,658/-. Before advertizing to the fact of the case we first would like to go through the findings of the Id. CIT(A) on the two issues raised before us which reads as follows:-

9. Regarding the addition of Rs.91,81,313/- the excess stock the Id. CIT(A) observed as under:-

“6.3 As can be seen from the above, the addition has been made on account of difference in stock after confronting the Appellant during the Survey proceedings u/s. 133A as well as during the appellate proceedings. The Authorised Representative furnished the written submission and tried to explain the difference in stock. The contention of the Authorised Representative is not acceptable as it appears to be after thought and the Appellant ought to have come out with this position with respect to stock during the statutory Survey proceedings as well as the assessment proceedings. The Appellant itself admitted Rs. 60,00,000/- as the additional income on account stock difference although the total stock difference was Rs. 1,51,81,313/-. There is no basis at all for the admission of only Rs. 60,00,000/- out of Rs. 1,51,81,313/-. In view of these reasons, I do not find any reason to interfere with the findings of the Assessing Officer. Therefore, the addition of Rs. 91,81,313/- is hereby confirmed. Accordingly, this of appeal is dismissed”.

10. As regards the addition for unexplained sundry creditors of Rs.2,56,59,658/- the findings of the Id. CIT(A) are as under:-

“7.3 As can be seen from the above, the addition has been made on account of enquiries from sundry creditors and thereafter wherever the confirmation is not received, the Assessing Officer has taken adverse inference and added Rs. 2,56,59,658/-. During the appellate proceedings, the Authorised Representative has furnished certain evidences which are separately dealt with in Para 5 above. As stated therein, these new evidences are not admitted. As the third party have not confirmed the balance before the Assessing Officer during the assessment proceedings, this goes to suggest that the liabilities have either ceased or have been remitted by the creditors. Therefore, as per the provisions of Section 41(1) the Assessing Officer was justified in making the addition Rs. 2,56,59,658/-. In view of these reasons, I do not find any reason to interfere with the findings of the Assessing Officer. Therefore, the addition of Rs. 2,56,59,658/- is hereby confirmed. Accordingly this ground of appeal is dismissed.”

11. From perusal of the above findings of the Id. CIT(A) it *prima facie* indicates that the assessee has filed various details to explain the difference amount of Rs. 91,81,313/- (Excess stock found during the course of survey Rs. 151,81,313 less undisclosed income admitted at Rs. 60,00,000/-). The assessee also filed various details including purchase invoice for the purchases made before the survey date i.e. 18-11-2014 but were not considered neither by the survey team nor by the lower authorities. We find that the Id. CIT(A) has out rightly denied to go through the details making a general observation that they appear to be an *afterthought*. Similarly, regarding the issue of unexplained creditors, though the Id. AR furnished certain evidences, but they were not admitted. The Id. CIT(A) even failed to take note of the fact during the course of assessment proceedings the Id. AO issued letters u/s. 133(6) of the Act and without waiting for the reply of those letters on account of the reasons that assessment proceedings were getting time barred, only considered the confirmation letters received before passing of the assessment order and for the remaining confirmations the assessee did not get any opportunity to explain the sundry creditors. Even Id. CIT(A) neither admitted the documents nor made any comments on the facts of the case and rejected the assessee's submissions in a cryptic manner.

12. Under these given facts and circumstances of the case and considering the principle of natural justice and being fair to both the parties, we are of the considered view that both the issues raised on merits needs to be restored to the Id. CIT(A) for afresh adjudication and to pass a speaking order after considering/going through the evidences filed by the assessee and if necessary to call remand report from the Id. AO on such documents and after considering the same and providing

reasonable opportunity of being heard should decide in accordance with law. The assessee is also directed to *remain vigilant* and to furnish necessary evidence as and when called for and not to seek any adjournment unless and otherwise required for reasonable cause. Thus, all the grounds raised by the assessee are allowed for statistical purpose.

13. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court 20-12-2022

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated :20 -12 -2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/Assessee: **Prem Industries, C/o Sri Vinay Kumar Jalan, M/s. O.P Jalan & Associates Consultants LLP 48 Cart Sarat Road, Upper Bazar, Ranchi-834001.**

2. प्रत्यर्थी/Respondent/Department: **Assistant Commissioner of Income- tax(ACIT), Circle-3, Central Revenue Building(Annexe), Ranchi-834001**

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Ranchi

6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata