

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 23/Chny/2021

निर्धारण वर्ष / Assessment Year: 2009-10

M/s. The Madras Pharmaceuticals,
No. 15, Sri Gopalakrishna Road,
T. Nagar, Chennai – 600 017.

The Assistant Commissioner of
v. Income Tax,
Central Circle -1(1),
Chennai – 600 034.

[PAN: AAFT-2536-L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. J. Prabhakar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing

: 05.07.2023

घोषणा की तारीख/Date of Pronouncement

: 08.09.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 28.01.2021 and pertains to assessment year 2009-10.

2. The brief facts of the case are that, the assessee is a firm engaged in manufacturing pharmaceutical products. A search u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to

as "the Act") was conducted in the premises of the assessee on 16.10.2018. Consequent to search, notice u/s. 142(1) of the Act, dated 18.08.2010 was issued and served on the assessee calling for return of income for the assessment year 2009-10. The assessee filed its return of income on 31.08.2010, admitting total income of Rs. 6,44,83,600/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3) of the Act, on 31.12.2010 and determined total income of Rs. 13,09,52,117/-, by inter alia, making additions towards unexplained expenditure being payments recorded in page no. 36 of seized documents for Rs. 45 lakhs, unexplained expenditure as recorded in seized documents and admitted by the partner in the statement recorded u/s. 132(4) of the Act, for Rs. 50 lakhs and additions towards unexplained expenditure being difference in stock in trade as on the date of search amounting to Rs.5,69,68,520/-. The assessee carried the matter in appeal before the first appellate authority. The Id. CIT(A), for the reasons stated in their appellate order dated 28.01.2021, partly allowed appeal filed by the assessee, where the Id. CIT(A) allowed partial relief in respect of additions made by the Assessing Officer towards bogus purchase of bill trading activities and out of

addition of Rs. 45 lakhs, sustained a sum of Rs. 25 lakhs and deleted balance addition of Rs. 20 lakhs. The Id. CIT(A), had also sustained additions made towards unexplained expenditure amounting to Rs. 50 lakhs on the ground that, the assessee could not explain nature and source with regard to expenditure as per seized documents. The Id. CIT(A), had also sustained additions made u/s. 69C of the Act, towards difference in stock in trade as on the date of search, on the ground that the assessee could not reconcile and explain difference in stock in trade as on the date of search with known source of income. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

3. The first issue that came up for our consideration from ground no. 1 and 2 of assessee appeal is addition towards alleged bogus purchase of bill trading amounting to Rs. 25 lakhs. The fact with regard to the impugned dispute are that at the time of search, it was noticed that the appellant firm was indulged in bill trading where by bogus purchases are booked. The modus operandi has been explained and as per which the accommodating party receives cheques from the assessee ostensibly towards purchase of raw material etc and

returns the money by cash after deduction a certain sum towards their fees or commission. From the seized document ANN/RV/B&D/S, which is a pocket notebook maintained by one Shri. Sulaiman's employees, certain transactions were recorded and when questioned, Shri. Sulaiman admitted that these pertain to bill trading and certain other transactions which were not recorded in the books. On appeal, the Id. CIT(A) out of Rs. 45 lakhs, deleted a sum of Rs. 20 lakhs towards amount claimed to have been paid to M/s. Kawarlal & Co., and received back the cash and sustained balance addition of Rs. 25 lakhs.

4. The Ld. Counsel for the assessee, submitted that the additions sustained at Rs. 25 lakhs has no legal basis to be sustained as bogus purchases, since the seized material clearly indicates the inflow and outflow of funds as representing property transactions, for which the source as regards the assessee has emanated from cash drawings from bank account to the extent of Rs. 5 lakhs on 04.09.2008 and Rs. 20 lakhs received back from Kawarlal & Co based on payment made by cheque on 27.06.2008. He further submitted that, in any event there is a surplus cash balance of Rs. 5,99,42,160/-

arising out of capitalization of additional income offered before the Settlement Commission, which is more than the amount of additions sustained by the Id. CIT(A) and needs to be telescoped.

5. The Id. DR, Shri. R. Mohan Reddy, CIT, supporting the order of the Id. CIT(A) submitted that, the additions made by the Assessing Officer towards bogus purchase on bill trading activities as per seized documents, where the assessee clearly admitted to have issued cheques to various parties and received back cash. The assessee could not explain the transactions with necessary source of income. Therefore, the Assessing Officer has rightly made additions and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The basis for addition of Rs. 5 lakhs is seized document ANN/RV/B&D/S-2, as per which on 04.09.2008, it was stated that M.L cash drawn Rs. 5 lakhs. Based on said seized document, the Assessing Officer inferred that the assessee has issued cheques to parties against bogus purchase bills and received cash, but on perusal of said seized

documents, we find that no where it was stated that said sum has been paid against bogus purchase bills. The Assessing Officer, drawn the above conclusion only on the basis of statement of appellant firm recorded during the course of search. Except statement, there is no evidence with the Assessing Officer to allege that the said sum of Rs. 5 lakhs represents bogus purchases. In any event, the assessee has explained the transactions and claimed that on 04.09.2008, a sum of Rs. 5 lakhs has been drawn from the bank account of M/s. Maral Labs and paid to Shri Sathya Narayanan. Since, the source for payment is explained out of cash drawn from bank account, in our considered view, the Assessing Officer is erred in making addition towards Rs. 5 lakhs as unexplained expenditure. Further, assuming for a moment, the assessee could not explain source for said entries, but fact remains that as per the order of the Income Tax Settlement Commission, the assessee has been allowed to capitalize 50% of tax paid, in pursuant to order of the Settlement Commission, it works out to Rs. 5.99 crores, and the same is available for telescoping against any addition.

7. In so far as, the addition made for Rs. 20 lakhs in respect of payment made to Kawarlal & Co, it was the submission of the appellant that, it was a debit in the name of K & Co from HDFC bank account on 27.06.2008, which represents a contemporaneous proof of amount paid against purchases. Even the Id. CIT(A), admitted in his order that transactions is not reflected in ledger folio furnished by M/s. Kawarlal & Co. From the above, it is very clear that the so called entries recorded in seized documents considered by the Assessing Officer is cash withdrawn from bank account of the appellant firm, which is reflected in the books of accounts maintained for the relevant assessment years. Therefore, in our considered view, the additions made by the Assessing Officer towards alleged bogus purchases through bill trading is nothing but cash withdrawn from bank account, which is part of regular books of accounts of the assessee. In any event, if you consider the cash balance available as per order of the ITSC towards capitalization of 50% of tax paid on income declared, then the assessee can very well take the benefit of telescoping towards additions made by the Assessing Officer and thus, we are of the considered view that the Id. CIT(A) is erred in sustaining additions to the extent of Rs. 25 lakhs and thus, we

direct the Assessing Officer to delete additions of Rs. 25 lakhs made on the basis of seized documents.

8. The next issue that came up for our consideration from ground no. 3 to 5 of assessee's appeal is addition of Rs. 50 lakhs u/s. 69C of the Act. The fact with regard to the impugned dispute are that during the course of search, some notings were found made in one personal diary of Shri Sulaiman, regarding certain payments. When the partner was confronted with those documents, he has expressed his inability to explain the payments. The Assessing Officer, made additions at Rs. 50 lakhs as unexplained expenditure, on the basis of documents found during the course of search coupled with statement recorded from the partner and observed that said payment is made to certain officials as speed money and the same is not recorded in the books of accounts of the appellant.

9. The Ld. Counsel for the assessee, submitted that the entries contained in seized document pertains to cash withdrawals from bank of the appellant firm and also from group entities. He further stated that, the said payment has not been claimed as expenditure in the books of accounts of

the appellant. Further, said expenditure is made out of cash balance available with the appellant, after the Settlement Commission allowed capitalization of taxes paid on income. Therefore, the Assessing Officer and CIT(A) are completely erred in making additions towards unexplained expenditure only on the basis of statement of partner, without there being any evidence.

10. The Id. DR, supporting the order of the Id. CIT(A) submitted that, there is no dispute with regard to the fact that entries recorded in seized documents indicates certain payments to various persons. The appellant firm had admitted during the course of search that, said payments are made to certain officials as speed money and the same are recorded in the books of accounts of the assessee. Since, the expenditure incurred by the assessee is not explained out of known source of income, the Assessing Officer has rightly made additions and their order should be upheld.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. During the course of search, certain documents were found in the form of pocket diary which contains certain

payments to various persons. The partner of the firm was confronted with those documents and he could not explain the nature of entries and also source of such payments. The Assessing Officer, made additions on the basis of statement recorded from the partner coupled with certain entries contained in pocket diary. The appellant has explained the entries recorded in said documents and as per explanation, the appellant firm has drawn cash from bank on two occasions and paid to Shri. Alagappan and Shri. Gandhirajan. It was further explained that, said payments are not claimed as expenditure in books of the assessee and hence, cannot be treated as unexplained expenditure. We find that, the payment recorded in the seized documents has not claimed expenditure in the books of accounts of the assessee. Further, the source for such payment has been explained out of cash withdrawn from bank account. Therefore, once the payments are not considered as expenditure and further the source of said payment has been explained out of known source of income, then the question of making addition towards said payments u/s. 69C of the Act, does not arise. In so far as the case laws relied upon by the Id. CIT(A) in the case of B. Kishore Kumar vs CIT, 52 Taxmann.com 449, we find that the facts of the

case before the Hon'ble Madras High Court are entirely different and in the said case no books of accounts were maintained by the appellant and further, the assessee had admitted undisclosed income in the statement recorded u/s. 132(4) of the Act. In the present case, the appellant has maintained books of accounts and further source for entries recorded in seized documents has been explained out of cash withdrawn from bank. Therefore, we are of the considered view that the decision relied upon by the Id. Assessing Officer and CIT(A) is not applicable to the facts of the present case.

12. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the assessee could able to explain source for certain payments claimed to have been made to various persons out of cash withdrawn from bank. In any event, if you consider the cash balance available as per order of the ITSC towards capitalization of 50% of tax paid on income declared, then the assessee can very well take the benefit of telescoping towards additions made by the Assessing Officer. Therefore, we are of the considered view that the Assessing Officer and Id. CIT(A) are erred in making addition u/s 69C of the Act and thus, we

direct the Assessing Officer to delete the additions of Rs. 50 lakhs made towards certain payments u/s. 69C of the Act.

13. The next issue that came up for our consideration from ground no. 6 to 8 of assessee's appeal is addition towards difference in stock in trade, amounting to Rs. 5,69,68,520/- u/s. 69C of the Act. The fact with regard to the impugned dispute are that at the time of search, inventory of stock as well as purchases was taken and the details thereof were also furnished to the assessee. The assessee was also directed to file the details of purchases made after the date of search and an invoice wise list has been furnished. The Assessing Officer, has quantified difference in stock in trade by considering purchase of raw material + packing material from 01.04.2008 up to 16.10.2008 and arrived at total purchase of Rs. 36,76,45,483/-. The Assessing Officer, had also arrived at purchases as per vouchers produced by the assessee from 17.10.2008 up to 31.03.2009 at Rs. 19,83,98,625/-. The Assessing Officer, had taken purchases shown in the books of accounts for the period from 01.04.2008 to 31.03.2009 at Rs. 50,93,85,389/-, and worked out difference of Rs. 5,69,68,520/-. The above difference was pointed out to the

authorized representative of the assessee and requested to file reconciliation, if any. In response, the assessee has furnished two trading accounts for the period 01.04.2008 to 20.10.2008 and from 21.10.2008 to 31.03.2009, pertaining to the financial year 2008-09, as taken from the books of accounts maintained and claimed that there is no difference as such claimed by the Assessing Officer. The assessee further submitted that, in absence of any evidence for the difference worked out by the Assessing Officer, it is not possible to file any reconciliation. The Assessing Officer, after considering relevant explanation of the assessee made addition of Rs. 5,69,68,520/- as unexplained expenditure u/s. 69C of the Act.

14. The Ld. Counsel for the assessee, submitted that the Id. Assessing Officer is erred in making additions towards alleged difference in opening stock at Rs. 5,67,68,336/-, without bringing on record as to how such difference has been worked out. The Ld. Counsel for the assessee, further submitted that there is no basis for the Assessing Officer to arrive at difference in stock in trade at Rs. 5,67,68,336/-, which is evident from the fact that the Assessing Officer has simply taken purchases up to the date of search and after the date of

search and then compared with purchases shown in the books of accounts to arrive at a difference, without considering opening stock in trade and closing stock in trade. Further, the Assessing Officer has considered closing stock in trade at Rs. 12.04 crores as on 31.03.2008, which is the stock admitted in the return of income for assessment year 2008-09, prior to the date of search and has no legal validity, since, the stock in trade has been substituted with different figures based on seized material in the return filed pursuant to search u/s. 132 of the Act. The Ld. Counsel for the assessee, further submitted that the appellant has filed a petition u/s. 154 of the Act, on the basis of decision rendered by the Income Tax Settlement Commissioner to enhance opening stock pro-tanto by the amounts added to the closing stock as on 31.03.2008 and revise the opening stock figure for the impugned assessment year and the Assessing Officer has passed an order on 31.03.2014 and reduced the stock to the extent of additional income declared before the Settlement Commission, which resulted in reduction of total income assessed and refund due to the assessee. From the above, it is very clear that there is no basis for the Assessing Officer to arrive at difference in stock in trade at Rs. 5,67,68,336/-. The Id. CIT(A), without

considering relevant facts simply sustained additions made by the Assessing Officer.

15. The Id. DR, Shri. R. Mohan Reddy, CIT, supporting the order of the Id. CIT(A) submitted that, the Assessing Officer has arrived at a difference in stock in trade on the basis of purchases and sales declared by the assessee up to the date of search and from the date of search to the end of the relevant financial year. Further, the assessee could not reconcile the stock difference arrived at by the Assessing Officer with any evidence, except stating that there is no basis for the Assessing Officer to work out difference in stock in trade. The arguments of the Id. Counsel for the assessee that, there is additional income declared before the Income Tax Settlement Commission on account of revaluation of stock which resulted in enhancement of opening stock for the impugned assessment year and after said enhancement is considered, there is no difference in stock in trade is devoid of merits, because said difference has been worked out up to 31.03.2008, whereas difference worked out by the Assessing Officer is for the financial year 2008-09 relevant to assessment year 2009-10. Since, the assessee could not reconcile the

difference in stock in trade, the Assessing Officer has rightly made additions and their order should be upheld.

16. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The sole basis for the Assessing Officer to make additions towards unexplained expenditure, being difference in stock in trade at Rs. 5,69,68,520/- is on the basis of working of stock in trade as on the date of search after taking into account purchase of raw material and packing material. The Assessing Officer has worked out difference in stock in trade at Rs. 5,69,68,520/-, on the basis of total purchase of raw material and packing material up to the date of search, as per details submitted by the assessee and also purchases after the date of search and up to the end of financial year. The Assessing Officer, has considered total purchases as per list submitted by the assessee and then compared with purchases as per books of accounts of the assessee and worked out difference. The Assessing Officer, has reproduced the chart which contains the workings of difference in stock in trade. We have gone through the workings reproduced by the Assessing Officer in the assessment order and we find that

there is no details as regards what is the basis for taking purchase figures up to 16.10.2008. Further, the Assessing Officer claims that purchases from 17.10.2008 to 31.03.2009, as per purchase vouchers produced by the assessee. Further, the Assessing Officer has considered total purchase of raw material and packing material including excise duty and as per audited books of accounts of the assessee and then worked out a difference of Rs. 5,69,68,520/-. The assessee has filed a reconciliation explaining total purchases including purchase of capital goods and purchase returns and tallied with purchases recorded in the books of accounts of the assessee, which has been reproduced in reply filed to remand report of the Assessing Officer and same is available at page 64 of the Id. CIT(A) order. We have gone through the purchase figures considered by the Assessing Officer in his assessment order at Para 4.1 and purchase figures adopted by the assessee in the table furnished in reply to remand report and reproduced at para 43 of Page 64 of the Id. CIT(A) order and we find that there is no difference in purchases considered by the Assessing Officer and the assessee up to the date of search. Further, the Assessing Officer has considered total purchases after the date of search and up to 31.03.2009 as per vouchers produced by

the assessee at Rs. 19,83,98,625/- and the same is tallying with purchase figures considered by the assessee in reconciliation submitted before the Id. CIT(A). From the above, it appears that there is no difference in purchases considered by the Assessing Officer and the assessee for above periods. But, the Assessing Officer has worked out difference of Rs. 5,69,68,520/-, by comparing net purchases declared by the assessee for the period 01.04.2008 to 31.03.2009, amounting to Rs. 50,93,75,389/- to the total purchases worked out by the Assessing Officer at Rs. 56,63,44,300/- without any details as to what is the opening stock, closing stock, purchase returns and purchase of capital goods, as considered by the assessee in its reconciliation. From the above, it is clear that as alleged by the assessee there is no basis for the working of difference computed by the Assessing Officer towards stock in trade and this fact has been further strengthened by a letter written by ACIT, Central Circle-1(1), to the CIT(A) on 16.04.2015, where the Assessing Officer categorically admitted that there is no details available with regard to stock difference worked out by the Investigation Wing and further he has written a letter to the Investigation Wing to clarify the basis for adopting stock difference of Rs.

5,69,68,520/- in appraisal report. From the observations of the Assessing Officer in his letter dated 16.04.2015 submitted to the Id. CIT(A) during appellant proceedings, it is clear that the Assessing Officer has made additions towards difference in stock in trade/purchases as unexplained expenditure u/s. 69C of the Act, only on the basis of observation of the Investigation Wing in the appraisal report without any attempt to verify the quantification of stock difference worked out during the course of search. We further noted that, as explained by the Ld. Counsel for the assessee, the Assessing Officer did not furnish relevant basis for working out stock difference inspite the appellant made a repeated request. Even before us, the Department representative could not explain as to how said difference has been worked out to make additions u/s. 69C of the Act. This position is further fortified by the statement of the Ld. Counsel for the assessee, in light of order of the ITSC and order passed by the Assessing Officer u/s. 154 of the Act, giving effect to additions made towards difference in stock in trade by enhancing opening stock for the impugned assessment year, which resulted in income determined in final assessment order passed u/s. 143(3) of the Act. From the above facts, it is undoubtedly clear that the Assessing Officer

has made additions towards stock in trade difference u/s. 69C of the Act purely on surmises and suspicion manner, without there being any supporting evidence to justify additions. Further, we have also noted in earlier part of this paragraph, even the Assessing Officer did not have the benefit of relevant workings of stock difference arrived at during the course of search by the Investigation Wing. Therefore, we are of the considered view that, the Assessing Officer has completely erred in making additions towards difference in stock in trade as unexplained expenditure u/s. 69C of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer and thus, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to delete additions made towards difference in stock in trade u/s. 69C of the Act.

17. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 08th September, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated: 08th September, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member