

THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1726/Del/2018  
Assessment Year: 2014-15

Bharat Bhushan Sawhney, C-6, New Sabzi Mandi, Azadpur, Delhi 110033. <b>PAN AHCPS 8691 Q</b>	vs.	The ACIT, Circle 36(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri R S Shingvi, Adv.
For Revenue :	Shri Kanav Bali Sr. DR

Date of Final Hearing :	05.09.2023
Date of Pronouncement :	22.09.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of CIT(A)-12 New Delhi dated 20.12.2017 for AY 2014-15.

2. The grounds of assessee are as follows:-

1. *That the order of the learned appellate authority is arbitrary and against law and facts of the case.*

2. *That the Ld. Commissioner of Income Tax (Appeals)-12 has passed the appeal order without affording a reasonable opportunity of being heard to the assessee as the order has been passed on the basis of written submission filed in the office of the CIT(A)-12 on the instructions of the Ld. CIT(A).*

3(i) *That CIT(A) confirmed the addition of Rs 7,76,500/- without proper appreciation of facts.*

(ii) *That excess cash found as a result of survey has duly been accounted for as sales and treated as revenue receipt, there is thus no justification for addition in respect of very same amount.*

*(iii) That impugned addition was on illegal and arbitrary basis and resulted in double addition in respect of very same amount and as such same is not sustainable.*

*4(i) That CIT(A) confirmed the addition of Rs 72,23,450/- made on account of excess stock found during the survey and surrendered as income under the head "Undisclosed Income and same being declared as income by way of profit/part of taxable income, there is no case of any further addition.*

*(ii) That impugned addition was on illegal and arbitrary basis and resulted in double addition in respect of very same amount and as such same is not sustainable.*

3. The learned counsel of assessee submitted that the assessee does not want to press ground no. 2 hence the same is dismissed as not pressed. Ground no. 1 is of general in nature.

4. Apropos ground no. 3 the Id. counsel submitted that the Id. CIT(A) has confirmed the addition of Rs. 7,76,500/- without proper appreciation of facts ignoring the very vital fact that excess cash found as a result of survey has duly been accounted for as sales and treated as revenue receipt, there is thus no justification for addition in respect of very same amount. The Id. counsel vehemently pointed out that impugned addition was on illegal and arbitrary basis and resulted in double addition in respect of very same amount and as such same is not sustainable. Therefore he submitted that addition may kindly be deleted.

5. The Id. counsel also submitted that at the time of survey the cash book was not fully complete and on the advice of survey team the appellant agreed to treat the same as sales without corresponding adjustment of purchase and closing stock. The Id. counsel also pointed out that the addition has been made by the authorities below on the ground that appellant has not shown the income represented by cash in the return of income, but they ignored the fact an explanation of the assessee that the appellant has duly accounted and disclosed the cash as part of cash sales in the cash book and profit & loss account on the date of survey and as such it is implicit that the same stands duly disclosed in the return of income also. Therefore addition merely on the basis of incomplete facts would amount to duplicating in nature which is not sustainable and hence may kindly be deleted.

6. Replying to the above, the Id. Senior DR supported the orders of authorities below and submitted that it is not a case of double addition as if the excess cash found at the time of survey was on account of unaccounted sales then such unaccounted sale pertains to pre survey period and the addition on account of excess cash found at the time of survey in excess of the balance of cash as per books of accounts has to be confirmed.

6.1 Placing rejoinder above, the Id. counsel submitted that the page no. 12 of assessee paper book clearly reveals that the assessee has shown amount of Rs. 7,76,550/- as sales being the amount excess cash found the during the course of survey on 19.02.2014 i.e. on the date of survey therefore, no further addition was required to be made in this regard.

7. On careful consideration of above submissions, from the assessment order we note that the Assessing Officer noted that during the course of survey cash of Rs. 7,76,550/- was found in excess of cash recorded in the books of accounts and he also noted that the assessee has surrendered said excess cash and offered the same for taxation in the statements recorded during the course of survey. From first appellate order we note that the Id. CIT(A) dismissed said ground of assessee with following observations and findings:-

*7. This ground is against the addition of Rs.7,76,550/-made by the Assessing Officer on account of excess cash at the time of survey operation within premises of the Appellant on 19.02.2014 u/s 133A of the Income Tax Act, 1961. During assessment proceedings and also during the present appeal proceedings the appellant has not disputed the fact that there was excess cash of Rs.7,76,550/- at the time of survey. The Appellant, when required by the survey team to explain excess cash offered the same for taxation for AY 2014-15. This fact is also not disputed by the Appellant. It is seen from the return of income that the Appellant has not declared the above excess cash in the return of income as additional income as offered for taxation by the Appellant himself during survey. During assessment proceedings, the Appellant was required to explain why excess cash be not added in the returned income. The Appellant explained vide letter dated 21.12.2016 that the surrendered amount of cash has been included in the sales after the date of survey and, therefore, the income is accounted for as sales in the post survey period. The Assessing Officer took a view that the above explanation is not acceptable as the Appellant should have shown this excess cash as income by separately crediting in the capital account. The Appellant by recording sales in post*

*survey period has introduced his cash in the books and shown and included the sales as per P&L Account without proving nexus with the business income. Before me the Appellant has reiterated the same submission which was made before the Assessing Officer. After considering the Assessing Officer's observation and the Appellant's contention, I find the explanation of the Appellant not helping his cause. If the excess cash found at the time of survey was on account of unaccounted sales, such unaccounted sales pertain to pre-survey period. If that is the case, the sales as per trading account prepared on the date of survey has to be enhanced by the amount of excess cash found and by that exercise, the difference in stock will increase by the amount of excess cash and the income represented by excess cash will accordingly increase by the difference of stock for which separate addition has been made by the Assessing Officer. In any case, this addition whether it is by way of excess cash found or by way of unaccounted sales, in either case the Assessing Officer has to make addition of excess cash found. I, therefore find no merit in the contention of the Appellant that the addition of Rs.7,76,550/- is double addition "first by way of additional sales declared by the Appellant and second by the addition by the Assessing Officer". It is not a case of double addition, hence, the addition of Rs.7,76,550/- of the cash found at the time of search in excess of the balance of cash as per books of account made by the Assessing Officer requires no interference and this action of the Assessing Officer is confirmed.*

8. From the basis taken by the Assessing Officer for making addition and conclusion drawn by the Id. CIT(A), first of all, we note that the assessee before the authorities below consistently submitting that the sales in post survey period has been increased by the amount of excess cash found which was a result of cash sales not recorded in the cash book and thus the same has been declared by way of inclusion in the post survey sales. Page no. 12 of assessee paper book also supports said factual contention of assessee wherein amount of excess cash has been shown as sales on 19.02.2014 by recording entry that "the amount being the excess cash found during the survey on 19.02.2014". This factual position has not been negated by the Id. CIT(A) he simply dismissed the explanation of assessee by observing that the sales as per trading account prepared on the date of survey had to be announced by the amount of excess cash found. On the other hand, we clearly note that the assessee has shown the excess cash amount as sales on the date of survey i.e. 19.02.2014 which reveals the fact of inclusion of impugned amount in the sales shown by the assessee at the end of financial period and thus said amount, included as sales in the books on the date of survey, clearly show that the same was part of sales declared by the assessee for the relevant period. In view of above, no further addition is required to be made and any

further amend will result into double taxation. Accordingly, ground no. 3 of assessee is allowed.

**Ground no. 4 of assessee**

9. The Id. counsel submitted that the CIT(A) has erred in confirming the addition of Rs 72,23,450/- made on account of excess stock found during the survey and surrendered as income under the head "Undisclosed Income" and same being declared as income by way of profit/part of taxable income, there is no case of any further addition. He further pointed out that the impugned addition was on illegal and arbitrary basis and resulted in double addition in respect of very same amount and as such same is not sustainable. The Id. counsel, after submitting above precise arguments drew our attention towards written submissions of assessee received on 20.02.2023 and submitted that the addition made by the Assessing Officer on account of undisclosed stock u/s. 69A of the Act is not sustainable and thus the same may kindly be deleted. For the sake of completeness, we find it appropriate to reproduce written submissions of assessee as follows:-

*5.1 The Ground No.4 is regarding addition of Rs. 72,23,450/- u/s 69A on the alleged ground of excess stock of vegetables and fruits found during the course of survey. The stock summary prepared by the survey party is enclosed at PB Pg 16-20. It may be clarified that considering the nature of business, the appellant is working out closing stock at the end of the year and same system is being followed since inception and accepted in preceding and subsequent year. However, it is clarified that the appellant maintains stock register in respect of stock kept in cold storage.*

*5.2 That the assessing officer and CIT(A) considered the entire stock as unexplained in the absence of maintenance of day to day stock register without taking into consideration any value of stock as on the date of survey. The assessing officer did not even considered the value of stock lying in cold storage.*

*5.3 In this regard, it is submitted that the stock so found is arising from and duly forms part of the books of account of the appellant in absence of any evidence of unrecorded purchases and as such there is no case of any undisclosed or unexplained stock. It is relevant to mention that the very nature of appellant business is such that it is not practical to maintain daily stock register as the goods traded are highly perishable and there is rapid movement of stock.*

*5.4 Further, in absence of daily stock register, it is was incumbent upon the survey party as well as the assessing officer to decipher the value of stock as per books by making*

*reverse calculation on the basis of gross profit rate. However, without undertaking such crucial exercise, the assessing officer on wholly mechanical basis presumed the recorded stock at the time of survey as Nil and treated the entire stock so found as excess and unexplained stock. The approach of the assessing officer is clearly irrational and contrary to accounting and taxation principles.*

*5.5 We have furnished a calculation of stock as per books as on the date of survey on the basis of Gross profit rate of 3.45% (actual GP rate for the year under consideration) and the figure of closing stock arrives at Rs. 1,20,92,162/- which clearly covers the physical stock of Rs.72,23,450/- . In these circumstances, there is no case of any excess stock and the very basis of allegation of excess stock is misconceived. It may be clarified that during survey, there was no evidence of any unaccounted purchase or sales.*

*5.6 In any case, it has been a consistent stand of the appellant before the lower authorities that the value of stock so found is based on the books of account and forms part of the sales so made post survey and as such the impugned addition is of duplicating nature since the profit element of such stock is already subjected to tax.*

*5.7 It is worth mentioning that the total sales even at the date of survey was more than Rs. 52 crores and as such the presumption of Nil stock is not only fallacious but without any basis and contrary to facts. Moreover, apparent ignorance of stock maintained at cold storage which forms part of total stock clearly proves the high handed and arbitrary approach of the assessing officer.*

*5.8 As regard to the statement of the appellant assessee recorded at the time of survey with regard to stock inventory prepared by survey team, it is submitted that such statement is not based on correct facts and same was recorded on advise of survey team and merely to corroborate the same stock already being part of record. It is trite law that the statement recorded during survey has no evidentiary value and reference is made to the decision of Apex Court in the case of CIT v. S. Khader Khan Son [2013] 352 IT 480 (SC). In fact, the stock so found during survey being fully recorded and arising out of books of account, the allegation of excess stock and so-called admission in the statement has no relevance and does not hold good. It is reiterated that there is no material whatsoever to establish any unaccounted purchase or sales and as such the entire case of excess/unaccounted stock falls flat.*

*5.9 Moreover, the observation of the assessing officer regarding lower gross profit and higher wastage is whimsical and not based on correct appreciation of facts. It is worth clarifying that during the year under consideration, there were unusual factors which adversely affected the profitability of the business and resulted in lower rate of Gross profit/Net profit. It may be submitted that the core business of the appellant is supply of fruits and vegetables to elite hotels/restaurants in Delhi for which the annual agreements are entered well in advance. Further, the price fluctuation of fruits and vegetables in the market is to be borne by the appellant. The sample copies of agreements are placed at PB Pg 24-86.*

*5.10 In year under reference, there was a peculiar trend where the average purchase price of trading items rose for almost 28% as compared to last year, however, the corresponding increase in average sale price was only 8% thus leaving lower gross profit in the hands of the appellant. The relevant supporting details are placed at PB Pg 87-98.*

*5.11 Further, the quantum of wastage is dependent upon the quality of items and wastage from the purchasers who are high end hotels/restaurants having strictest quality checks and criteria. In support of unusual factors which contributed to higher wastage, we have placed on record newspaper cuttings vide PB Pg 91-98. The complete detail of item-wise and party-wise wastage is enclosed at PB Pg 99-121 which is purely on actual basis. The assessing officer has merely commented on the increased wastage without disputing the factual aspect and business model of the appellant and as such the observation regarding wastage is unwarranted and out of context.*

*5.12 In the light of above submission, it is submitted that there is no case of any excess stock and the impugned addition has no legs to stand and may kindly be deleted.*

10. Replying to the above, the Id. Senior DR supported the orders of the authorities below and submitted that the Id. CIT(A) by taking a balancing and justified approach deleted the addition on the basis of GP rate adopted by the assessee. However he was quite correct and justified in upholding the addition on account of undisclosed excess stock found during the course of survey operation u/s. 133A of the Act carried on 19.02.2014 on the business premises of the assessee. He further submitted that the assessee was not able to explain the reasons for the difference in the physical stock actually found and stock worked out on the basis of trading account prepared at the time of survey. The Id. Senior DR submitted that during the survey the assessee voluntarily surrendered excess stock for taxation in his statement recorded during the course of survey by the survey team on 19.02.2014 copy of which has been placed at pages 124 to 131 of assessee paper book which cannot be kept aside for accepting the baseless explanation of the assessee. Therefore, the Id. Senior DR submitted that addition may kindly be upheld.

11. Placing rejoinder to the above, the Id. AR submitted that the Assessing Officer noted that the assessee has shown GP at the @3.45% of turnover and this fact has been noted by the Assessing Officer in para 7.12 of assessment order. He further submitted that even if the opening stock, as declared by the assessee as closing stock in the immediately preceding year, is considered then the amount of Rs. 19,86,235/- was the opening stock as on 01.04.2013 in the beginning of financial period and in continuation as per GP rate of 3.45% of turnover the closing stock at the end of financial period as on 31.03.2014 comes to Rs. 26,90,788/- therefore entire stock inventorised by the survey team on the date of survey i.e. on 19.02.2014 cannot be

taken as Rs. 72,23,450/- the tax authorities are required to take into consideration entire facts and circumstances and profit percentage shown by the assessee while estimating closing stock on the date of survey in absence of stock register. Therefore the credit of some closing stock at the end of financial period should be allowed to the assessee out of stock inventorised by the survey team as it cannot be presumed that entire stock found by the survey team was uncounted stock and there was no accounted stock on that day.

12. On careful consideration of above submissions from the assessment order we note that the Assessing Officer made addition on account of excess stock found during the course of survey u/s. 69A of the Act, treating the same as undisclosed investment. The Assessing Officer noted that the surrendered excess stock was found at the time of survey and because the assessee was not able to explain the source of investment in the excess stock therefore the same was to be taxed as assessee's income u/s. 69A of the Act as unexplained investment.

13. The assessee carried the matter before the Id. First Appellate Authority and the Id. CIT(A) uphold the addition by observing that the appellant could not explain the basis of excess stock. He also noted that the explanation of the appellant on the treatment of excess stock the Assessing Officer gave finding that the assessee adjusted the excess stock claiming huge quantity of wastage for which no supporting evidences were provided the Id. CIT(A) after considering the trading account of pre-survey period and post-survey period and consolidated trading account for whole financial period, find that the explanation of the assessee does not dispute the fact that there was excess stock found at the time of survey and if that fact is not disputed by the appellant the addition on account of excess stock need to be required to be made in the hands of assessee. The Id. CIT(A) also went on to hold that in absence of stock registered maintained by the appellant the claim of appellant that the income of post survey period includes the excess stock found during the course of survey, is not supported by any material or evidence on record and thus, income from pre-survey period required to be enhanced by the amount of excess stock found during the survey.

14. It is not in dispute that during the course of survey on 19.02.2014 excess physical stock in comparison to trading account prepared by the survey team was found and when the assessee failed to reconcile and explain the reason of excess stock then during the course of statement recorded by the survey team the assessee surrendered the same for taxation. However, at the time of filing return this amount was not included in the income and not offered for taxation. The Assessing Officer picked up the said omission on the part of assessee and picked up the issue in the scrutiny assessment proceedings and made addition u/s. 69A of the Act. Obviously the Assessing Officer is empowered and entitled to take into consideration fact of declaration of unaccounted stock on date of survey which was not declared by the assessee in his returned income filed for AY 2014-15. The Assessing Officer agreeing to the inventory made by the survey team treated the entire stock as unrecorded stock of assessee and made addition u/s. 69A of the Act. The assessee is harping and arguing on two lines viz first that entire stock cannot be treated as undisclosed stock in absence of stock registered and secondly the Assessing Officer is required to give credit of closing stock either on the date of survey or at the end of financial period because it cannot be presumed that there was no accounted stock in the hands of assessee on the date of survey merely because assessee did not maintained any stock register due to business of perishable items such as vegetables, fruits, dairy item and other raw material.

15. In our humble understanding the assessee did not maintained any stock register and has shown and declared turnover of Rs. 61,94,95,763/- declaring profit @ rate of 3.45% . It is pertinent to mention that the Id. CIT(A) has set aside the action of the Assessing Officer in rejecting books of accounts u/s. 145(3) of the Act and making addition on account of enhanced GP rate of 4.65% of turnover as against 3.45% declared by the assessee there is no appeal by the Department against the said deletion. Thus, we safely presume that the Department has accepted the GP rate of 3.45% percent of turnover. We are in agreement with the contention of Id. AR that in absence of stock register it cannot be presumed that entire stock inventorised by the survey team was unaccounted stock and there must be some accounted stock also on

the date of survey which was included by the survey team in the inventory prepared on the date of survey. Consequently, we are inclined to hold that even the GP rate declared by the assessee and accepted by the Department i.e. 3.45% turnover is an appropriate and undisputed bench mark for making reverse calculation to ascertain closing stock on the date of survey as on 19.02.2014 or on the date of end of financial period i.e. 31.03.2014. Since the bench mark GP rate of 3.45% is arising from the audited books of accounts and balance sheet of assessee and it is also pertinent to mention that the assessee has not maintained stock register and wastage register, therefore, we deem it proper to ascertain closing stock on the date of end of financial period. As per trading account discernable from the audited balance sheet of assessee which has not been disputed by the Id. Senior DR the closing stock comes to Rs. 26,90,788/- by taking gross profit rate @3.45%. considering the undisputed fact that the survey team has taken entire inventory of stock as undisclosed stock without providing credit of any accounted stock which is not acceptable even for a person ordinary prudent that the person undertaking purchases of Rs. 57.32 crore and making sales of Rs. 61.95 crore would not have any disclosed or unaccounted/excess closing stock on the date of survey. It is also relevant and pertinent to mention that the survey team has added and considered all stock on the date of survey as unaccounted/excess stock of assessee placed in two places of Azadpur Mandi and two cold storages which is not justified and correct approach. Therefore in our considered opinion that assessee eligible for credit of Rs. 26,90,788/- as closing stock out of alleged uncounted stock of Rs. 72,23,450/-. Accordingly, ground no. 4 is partly allowed and the addition on account of excess stock is restricted to Rs. 45,32,662/- (Rs 72,23,450 – Rs 26,90,788/-).

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 22.09.2023.

Sd/-  
(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 22<sup>nd</sup> September, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

*// By Order //*

Asstt. Registrar, ITAT, New Delhi