

आयकर अपीलीय अधिकरण " ए " न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.728/PUN/2023
निर्धारण वर्ष / Assessment Year : 2015-16

M/s.Kuwad and Sons, 367, Ganesh Peth, Pune – 411002. PAN: AABFK6150G	V s	The Income Tax Officer, Ward-6(3), Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	Dr.Prayag Jha & Prateek Jha – AR's
Revenue by	Shri Ramnath P Murkude - DR
Date of hearing	14/09/2023
Date of pronouncement	22/11/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order under section 250 of the Income Tax Act, 1961 passed by the ld.CIT(Appeal)-11, Pune dated 19.05.2023 for A.Y.2015-16.

The assessee has raised the grounds of appeal :

"1. The Ld CIT(A), erred in confirming the addition of Rs.92,27,964/- on amount of excess stock without taking into consideration the facts of the case and the submissions made by the appellant.

2. The Ld CIT(A), erred in confirming addition of Rs.92,27,964/- solely relying on the Statement of Partner recorded

during survey.

3. The Ld CIT(A), erred in ignoring the submission made by the assessee vide letter dated 5th June, 2015 before the Ld AO in which specific discrepancies in valuation of stock were pointed out with supporting documents.

4. The above grounds of appeal are without prejudice to one another

5. The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings.

6. The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”

Brief facts of the case :

2. Assessee firm is a wholesale dealer in grossery items.

There was a survey under section 133A of the Act in the case of assessee on 04.03.2015. During the survey, in the statement recorded under section 131 of the Act, Mr.AshishKuwad, partner of the assessee firm made a declaration for A.Y.2015-16 as under :

“Excess stock found of Rs.1,82,01,750/-

Excess cash found of Rs.17,23,000/-.”

2.1 During the scrutiny proceedings, the Assessing Officer(AO) observed that the assessee has declared excess stock of only Rs.89,73,786/- instead of Rs.1,82,01,750/- declared during the survey in the statement under section 131 of the Act.

The AO asked assessee to explain the difference. Assessee reiterated his submission which was made on 05.06.2015. The assessee claimed that after the survey, the partner realised that there were some errors in the valuation of the stock during the survey. Therefore, the assessee filed a letter on 05.06.2015 to the Assessing Officer explaining the discrepancies. The relevant paragraphs of the letter are reproduced here as under :

“7 The glaring mistakes has taken place in case of Chana Daal, Green Peas, Matki (Math) and Refined Oil, though mistakes are there in valuation of each and every item. Major mistake has taken place in taking the rates. For example, the first item of inventory Cl is Aata in 50 kg pack. There were 570 bags. While making valuation rate is taken at Rs.1,720/- per bag for 570 bags. This is not correct because 1,720/- may be sale price for 1 Quintal of aata but not the cost of 1 bag of 50 kg Aata. Our cost of Aata is Rs.20 per kg. Total content of Aata of 575 bags is 28,750 kg cost of which @ the rate of Rs.20 per kg is Rs.5,75,000/-, as against value of Rs.9,89,000/- adopted by the Survey team. There is over valuation of Rs.4,14,000/- in respect of this item.

7 In case of Chana Daal 1,100 bags were found. Each bag contained 40 kg. Cost per kg of Chana Daal supported by purchase invoices is Rs.45 /-. Weight of Chana Daal kept in 1,100 bags is 44,000 kgs and value @ Rs.45 per kg is Rs. 19,80,000/-. As against this , the Survey team has taken the value at Rs.52,80,000/-. The Survey team has presumed perhaps that each bag contained 100 kg of Chana Daal. The survey team valued this @ Rs.4,800/- per quintal and arrived at an amount of

Rs.52,80,000/-.

There is over valuation of Rs.33,00,000 /- in respect of this item.

8 *In case of Matki(Math), as per inventory, 1200 bags of 50 kg each were found. The Survey party has valued it at 60,00,000/- presuming that each bag contained 100 kg of Matki. The facts that we purchased Matki @ 74 per kg. Since the quantity of Matki kept in 1200 bags was 60,000 kg, the cost was 44,40,000/-. Thus , there is excess valuation by for Rs.15,60,000/-.*

9 *Another glaring example is valuation of Refined Oil. During survey 870 tins were found each containing 15 kg of Oil. The survey team has valued Refined Oil @ 1,760 per Tin/Box. This is not correct. Our cost of this commodity is Rs.54 per kg. Cost of 13,050 kgs of Refined Oil contained in 870 Boxes/ Tins is Rs.7,04,700/-. The valuation made by the survey party is excess by Rs.8,26,500/-.*

11 *We have made valuation of stock at cost. The purchase price is supported by actual purchase invoices. The price has been rounded off upward to nearest Rupee. Transport element has been included for the purpose of our valuation.*

12 *In view of the facts and circumstances narrated in the preceding paragraphs, the cost of excess stock found during Survey in the case of M/s Kuwad and Sons is Rs.89,73,786/- (Rs.1,36,62,450/- less Rs.46,88,664/-).*

13 *Accordingly, the cost of excess stock as on 03-03-2015 in the hands of M/s Kuwad and Sons is Rs.89,73,786/- and not Rs.*

1,82,01,750/- . It is further submitted that the cost of excess stock found during Survey was incorrectly worked out at Rs.1,82,01,750/- which was exaggerated by an amount of Rs.92,27,964/-. The cost of excess stock given in my Answer to Question No-18 of my Statement recorded on 04-03-2015 should be considered as Rs.89,73,786/- and not Rs.1,82,01,750/-. The declaration of Additional Income is accordingly reduced by an amount of Rs.92,27,964/-. This is for your kind information and record.”

2.2 During the assessment proceedings, assessee reiterated its submissions. However, the AO rejected assessee’s contention on the ground that Stock Statement was prepared in the presence of assessee. The so-called discrepancy was submitted after three months which suggests an afterthought. Further, the AO detected unaccounted sale of Rs.1,68,66,000/- during the assessment proceedings. Therefore, AO held that assessee was not accounting purchases, sales and stock properly. Hence, AO rejected the books of accounts. AO made addition of Rs.92,27,964/- on account of difference in stock i.e. “Rs.1,82,01,750/- (-) Rs.89,73,786/- which is equal to Rs.92,27,964/-.” AO also made addition of Rs.5,90,310/- on account of Gross Profit arising from unaccounted sales of Rs.1,68,66,000/-.

2.3 Aggrieved by the addition made by the AO, assessee filed appeal before the ld.CIT(A). The ld.CIT(A) upheld the addition made by the AO.

3. Aggrieved by the order of the ld.CIT(A), the assessee filed appeal before this Tribunal.

Submission of ld.AR :

4. The ld.Authorised Representative (ld.AR) of the assessee filed a paper book containing 82 pages. The ld.AR filed copy of the inventory prepared during survey, copy of statement of the partner recorded during the survey, copy of sample invoices of purchases, copy of letter dated 05.06.2015.

4.1 The ld.AR explained that during the survey, the partners were not in proper frame of mind. Therefore, there was an error in valuation. The ld.AR submitted that there was only difference in valuation of stock and not in quantity of stock. Ld.AR submitted that this discrepancy was brought to the notice of the AO vide letter dated 05.06.2015 along with copies of purchase bills. Ld.AR took us through the inventory to demonstrate the discrepancies. Ld.AR also submitted that statement made during

survey cannot be the basis for addition. Ld.AR relied on various case laws and CBDT Circulars.

Submission of Id.DR :

5. The Id.Departmental Representative(Id.DR) for the Revenue relied on the order of the AO and Id.CIT(A). The Id.DR explained that the AO has made addition based on stock statement taken during the survey. Thus, the addition is based on material found during the survey and not merely based on statement. Therefore, the case laws are distinguishable. The Id.DR submitted that AO has specifically pointed out the discrepancies and rejected the books of accounts.

Findings &Analysis :

6. We have heard both the parties and perused the records. It is observed that during survey a stock statement was taken. The survey party observed that there was difference in the stock. There was excess stock.

7. The assessee has not denied excess stock. Assessee agrees that there was excess stock. Assessee has not disputed the quantity mentioned in the stock statement. The only dispute is

about the valuation. The assessee had brought to the notice of the AO that there was difference in the valuation. We have already reproduced the relevant paragraphs. The AO has not discussed anything about the discrepancies specifically pointed out by the assessee. Nothing prevented AO from actually verifying the cost of purchase as claimed by the assessee. Assessee had submitted relevant invoices, some of the invoices are part of the paper book. The AO has not commented on these invoices. For example, there was 50kg packs of Aata. The Department has valued it at Rs.1720/- per bag, whereas assessee claimed value of each bag at Rs.1000/- only. The relevant invoice dated 23.02.2015 is at page 49 of paperbook. Assessee had submitted sample invoices. Similarly, discrepancies have been pointed out by assessee, vide letter dated 05.06.2015. AO has not rebutted these claims of the assessee. Once assessee has claimed by filing documentary evidence in the form of sample invoices regarding the valuation of the stock, the onus is shifted to AO if AO does not agree with the valuation. In this case, the AO has not pointed out any specific discrepancy in the cost of purchase claimed by assessee by filing sample invoices.

8. In these facts and circumstances of the case, we agree with the assessee that there was error in the valuation. Subsequently, the assessee had submitted proper valuation. Based on that valuation the assessee has already disclosed excess stock. Therefore, AO is directed to delete the addition of Rs.92,27,964/-. Accordingly, Ground No.1, 2 and 3 of the assessee are allowed.

9. Ground Nos.4, 5 and 6 are general in nature, do not need any adjudication, hence, dismissed.

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

Order pronounced in the open Court on 22nd November, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd Nov, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

ITA No.728/PUN/2023
M/s.Kuwad and Sons [A]

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.