

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “H”: NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2423 /DEL/2022  
Assessment Year: 2019-20**

DCIT, Central Circle-32, New Delhi.	<u>Vs</u>	ARK Infosolution Pvt. Ltd., F-28, Okhla Phase-1, Tehkand, South East, Delhi-110020.  PAN- AAKCA7602H
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Sh. Ved Jain, Adv. & Ms. Uma Upadhyay, CA	
<b>Department represented by</b>	Ms. Sapna Bhatia, CIT(DR)	
<b>Date of hearing</b>	11.12.2023	
<b>Date of pronouncement</b>	14.12.2023	

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The Revenue has come in appeal against the order dated 28.07.2022, for the assessment year 2019-20, passed by the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in appeal no. 20462/2018-19, arising out of assessment order dated 30.09.2021 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the ACIT, Central Circle-32, New Delhi, hereinafter referred to as the “AO”).

2. The assessee is engaged in the business of distribution of technology products i.e. sale of software, IT products and also provides software support services. The original return of the assessee, declaring total income at Rs. 14,75,91,670/-, was processed u/s 143(1) of the Act. However, based on the survey operations carried out in the premises of the assessee on 18.02.2019, notice u/s 143(2) of the Act was issued on 29.09.2020 and detailed questionnaire dated 16.09.2021 was issued u/s 142(1) of the Act. Learned AO had questioned the difference in closing stock as per the trading account and stock statement taken from SAP Software on 18.02.2019. The learned AO on the basis of confrontation of the issue to Shri Rishi Khemka, Director of the assessee company, made addition by following findings in para 6:

*“6. The above submission of the assessee has been considered and found not acceptable as per submission of the assessee, GP rate was 27.76% in F.Y. 2016-17, 25.13% in F.Y. 2017-18 and 24.16% in F.Y. 2018-19. The survey has taken gross profit percentage of 25.74% as on date of survey and for the F.Y. 2018-19, the gross profit was 24.16%. On the basis of calculation as per survey team, there was difference in stock of amount 5,23,93,246/-. This excess stock is not explained by the assessee so far. In the absence of proper explanation with documentary evidence, the excess stock of amount of Rs. 5,23,93,246/- is added to the income of the assessee u/s 69A of the I.T. Act.”*

3. The learned CIT(A) has deleted the same with following relevant findings in paras 10.2 and 10.3, as follows:

*“10.2 On careful perusal of the facts of the case, observations of the AO in the assessment order and the written submissions made by the appellant in this regard, it is noticed that the AO has made addition on account of difference in closing stock mainly on the basis of working done by the Survey*

*team at the time of Survey which was confronted to the Director of the appellant company in his statement recorded on oath at question no.37. On perusal of the question no.37, it is noticed that the trading account quoted in the said question was prepared by the Survey team wherein closing stock was worked out at Rs. 13,50,90,186/-, however, the exact basis of calculating the same has not been mentioned. It is further noticed that gross profit rate is being mentioned at 25.74% is the said trading account which the appellant in its written submissions have demonstrated that the same was worked out on the basis of preceding year financial statement. From the assessment order it is noticed that the appellant had submitted before the AO that the closing stock derived by the Survey team was based on the GP of the preceding financial year and the actual value of the closing stock appearing in the books of accounts as on the Date of Survey i.e. Rs.8,26,96,940/- was simply ignored by the Survey team without assigning any reasons. The said facts submitted by the appellant to the AO during the assessment proceedings have not been doubted by the AO in the assessment order. In this regard, my attention was drawn to the question no. 17 of the statement of Sh. Rishi Khemka which reads as under:*

*"Q.17 On verifying the Trial Balance as taken out on 18.02.2019, it is noticed that closing stock of stock IT of Rs.7,55,96,908/-, stock account software of Rs.36,21,437/-, stock account download software of Rs.34,78,595/- totaling to Rs.8,26,96,940/- is there. Please provide the details of premises where this stock is kept.*

*Ans. I am providing you the list of premises where out above stock of Rs.8,26,96,940/-is lying ie. the stock of Rs.5,81,46,863/-is lying with our godown at 109- Samridhi Sagar Plaza Complex, Near Bhoidapada, Sathiballi Road, Vasai, Mumbai, Rs. 1,76,05,654/- is lying at F-28, Okhla Industrial Area Phased, New Delhi-110020, Rs.5,75,838/- at A- 11, Sector-4, Noida, Rs.6,77,311/- at Pune Branch, Rs. 43,94, 157/-at Chennai Branch, Rs. 4,96,189/- at Bangalore Branch, Rs.7,31,160/-at Secundarabad branch and Rs.69,764/- at Cochin Branch."*

*10.3 From the above question posed by Survey team, it is noticed that during the course of Survey the Survey team took details of stock of software lying at different premises of the appellant company valuing Rs.8,26,96,940/- as on the Date of Survey and the Director of the appellant company had duly given the location of the godowns/offices where the stock was lying along with the amount/value of stock. The details of stock given by the Director of*

*the appellant company have not been doubted by the Survey team in the rest of the statement and there is no mention of any discrepancy with respect to valuation/physical verification of the stock. Even during the course of assessment proceedings the AO has not pointed out any discrepancy/error in the value of the closing stock as on the Date of Survey at Rs.8,26,96,940/- appearing in the books of accounts of the appellant company. There is also no allegation of non-existence of the physical stock lying at different premises of the appellant company as on the Date of Survey. Further, from the assessment order it is noticed that the AO has not given any reason for adoption of value of closing stock worked out by the Survey team for estimation basis at Rs.13,50,90,186/- in absence of any discrepancy in the value of stock as per the books of accounts as on Date of Survey. Further, it is also noticed that AO has quoted the GP declared by the appellant in the return of income at 24.16%, however, he has not rejected the same and has also not given any reasoning for relying on the estimated GP rate of 25.74% adopted by the Survey team at the time of Survey to work out the notional figure of closing stock at Rs. 13,50,90,186/-. On perusal of the tax audit report it is noticed that the appellant is valuing inventories at cost, or net realizable value, whichever is lower as per Income Computation and Disclosure Standards-II which has also not been doubted by the AO in the assessment order nor any discrepancy being pointed out in this regard. It is also not a case of the AO where the books of accounts maintained by the appellant were found to be unreliable and the same were rejected while making the assessment. Accordingly, in absence any material defect being pointed out by the AO the books of accounts of the appellant or the stock records regularly maintained by the appellant, the addition made by the AO on account of alleged excess stock found during the course of Survey is not justified and hence the addition of Rs.5,23,93,246/- made on said account is hereby deleted.*

4. Revenue is in appeal, raising following grounds:

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee stating that basis of calculating G.P. was not mentioned by the survey team without appreciating the fact that the assessee company was fully aware of it?*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was correct in allowing the assessee's appeal without commenting on the fact that the assessee company during the survey proceedings never*

*questioned the correctness of trading account and never put forth the explanation itself before the AO?*

3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in stating that the survey team had taken G.P of previous year without appreciating the fact that previous years G.P. was 25.13 and not 25.74 as taken by the survey team?*

4. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was correct in not commenting on the fact that the G.P. calculated by the assessee company for trading account as on date of survey was 23.69% which was lowest among the current year as well as previous years?*

5. *Whether the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

6. *Whether the grounds of appeal are without prejudice to each other.*

7. *Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal.”*

5. Heard and perused the records.

6. Learned DR has submitted that there is no error in the assessment order and learned AO has rightly relied the statement of the Director, which lacked explanation.

7. On the other hand, learned AR, supporting the findings of learned CIT(A), submitted that during the survey, while recording statement vide question no. 17, the Director of the assessee company was specifically asked to provide details of premises where the stock was kept, which was duly responded, but there was no

physical verification of the same. It was submitted that the alleged discrepancy, on the basis of which trading account was worked out by the survey team, was also duly explained by submitting that the trading account worked out by the survey team only depicted provisional figures. It was submitted that in response to the notice u/s 142(1), all relevant information were given about the nature of business activities, addresses of the office and godown where stock was kept, computation of total income and book profit and the comparative figures of G.P. and N.P. rate for last three years. It was submitted that addition of excess stock was erroneous and rightly deleted by the learned CIT(A) in the absence of any physical verification of stock statement given at the time of survey. It was submitted that even otherwise no addition could have been made for alleged excess stock u/s 69A.

8. The Bench has given thoughtful consideration to the material on record and the submissions. What immediately strikes, is the fact that at the time of recording of statement of Shri Rishi Khemka, vide question no. 17, for the verification of trial balance stock, specific query was raised and it was clearly answered by Shri Rishi Khemka. It will be appropriate to reproduce the same herein below:

*“Q.17. On verifying the Trial balance as taken out on 18.02.2019, it is noticed that closing stock of Stock IT of Rs.7,55,96,908/-, Stock account software of Rs. 36,21,437/-, Stock account download software of Rs. 34,78,595/- totaling to Rs. 8,26,96,940/- is there. Please provide the details of premises where this stock is kept.*

*Ans. I am providing you the list of premises where out above stock of Rs. 8,26,96,940/- is lying i.e. the stock of Rs. 5,81,46,863/- is lying with our godown at 109-Samridhi Sagar Plaza Complex, Near Bhoidapada, Sathiballi Road, Vasai, Mumbai, Rs. 1,76,05,654/- is lying at F-28, Okhla Industrial Area Phased, New Delhi-110020, Rs. 5,75,838/- at A-11, Sector-4, Noida, Rs. 6,77,311/- at Pune Branch, Rs. 43,94,157/- at Chennai Branch, Rs. 4,96,189/- at Bangalore Branch, Rs. 7,31,160/- at Secunderabad branch and Rs. 69,764/- at Cochin Branch.*

8.1 Now without making any efforts to verify the stock in physical form by making any inventory or other mode and without finding any incriminating evidences showing that the stock reflected was manipulated and not accounted in due course of business, the Survey Team on the basis of applying gross profit of 25.74% recomputed the trading account and arrived at a closing stock figure. Learned CIT(A) has duly appreciated this arbitrary manner of valuing the stock. Learned CIT(A) has duly appreciated that at one hand the G.P. rate of 24.16% has been accepted as per the return of income and without any reasonable basis for the purpose of revaluation of stock trading account, the G.P. of 25.74% has been adopted. Thus, there is no error in the finding of learned CIT(A).

8.2 Even otherwise, the addition was made by learned AO u/s 69A of the Act, which is a deeming income provision, for which there should be specific evidence of ownership of something in the nature of money, bullion and jewellery or other valuable article. Certainly, the AO intended to make addition covering the excess

stock under the phrase “other valuable article” and for which without any physical verification and identification of the stock in physical form, apart from the business of the assessee and attributing ownership of the same to the assessee, recourse to section 69A could not have been taken. To make such an addition u/s 69A, for such excess stock, if any, same should be separately identifiable and there should be specific allegation and evidence that this stock has no nexus with the stock otherwise found at the assessee’s business. Same is not the case here.

9. Thus, there is no substance in the grounds of the Revenue. **The appeal of the Revenue is dismissed.**

Order pronounced in open court on 14.12.2023.

**Sd/-**  
**(G.S. PANNU )**  
**VICE PRESIDENT**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI