

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरद, लेखा सदस्य

के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT**

&

**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 195/KOL/2016**

**Assessment Year: 2009-10**

**M/s. Fashion Palace.....Appellant**  
**[PAN: AABFF 1873 B]**

**Vs.**

**ITO, Ward-27(3), Haldia.....Respondent**

**Appearances:**

**Assessee represented by:** Sh. Soumitra Choudhury, Adv.

**Department represented by:** Sh. B.K. Singh, JCIT, Sr. D/R.

Date of concluding the hearing : February 6<sup>th</sup>, 2024

Date of pronouncing the order : February 9<sup>th</sup>, 2024

**ORDER**

**Per Rajpal Yadav, Vice-President (KZ):**

The assessee is in appeal against the order of the Commissioner of Income Tax (Appeals)-7, Kolkata [in short ld. 'CIT(A)'] dated 20.11.2015 passed for AY 2009-10.

2. This appeal was earlier listed for hearing on 13.02.2018. The appeal was dismissed for want of prosecution. The assessee could not know about the order of the ITAT. This order was not passed on merit as contemplated in the procedure. But the appeal was dismissed in limine. Therefore, when it came to the notice of the assessee, he filed a Miscellaneous Application

bearing No. 28/KOL/2023. This application has been allowed by the Tribunal vide its order dated 18.08.2023. This appeal has come up before us for adjudication on merit.

3. The assessee has raised six grounds of appeal which are argumentative and descriptive in nature. In brief the grievance of the assessee is whether addition of Rs. 17,82,466/- to the total income of the assessee is sustainable or not.

4. The brief facts of the case are that assessee has filed his return of income on 18.03.2010 declaring total income at Rs. 14,730/-. The assessee was engaged in trading of garments on retail business. A survey u/s 133A of the Act has been carried out on the premises of the assessee. The survey team has observed that there is an excess stock than the one accounted in the register. The AO in the assessment order has observed that stock at the assessee's business premises was of Rs. 24,79,474/- whereas assessee has shown gross sales at Rs. 29,79,085/-. The AO thereafter, made certain calculations and worked out an addition of Rs. 17,67,736/-. Appeal to ld. CIT(A) did not bring any relief.

5. Before us, ld. Counsel for the assessee has submitted that assessee has been filing his return of income u/s 44AF of the Act and therefore, he was not required to maintain any books of accounts and if he was not required to maintain books of accounts then it is not discernible as to how survey team has worked out excess stock.

6. On the other hand, ld. D/R relied upon the orders of Revenue authorities.

7. We have duly considered the rival contentions and gone through the record carefully. Section 44AF would contemplate that notwithstanding anything contrary to Section 28 to 43C of the Act, in the case of assessee engaged in retail trade in any goods or merchandise, a sum equal to 5% of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than then aforesaid sum as declared by the

assessee in his return of income shall be deemed to be the profits and gains of such business chargeable to tax. This Section absolve a certain category of retail traders for maintaining of books of accounts, undertaking audit reports etc. The turnover of the assessee does not exceed prescribed limit of Rs. 40 Lakh in this Section. We could appreciate the case of the Revenue had during the course of survey the stock exceeding Rs. 40 Lakh was found. It should be total i.e. recorded one or non-recorded one. But, a perusal of the assessment order would reveal that stock did not exceed Rs. 40 Lakh. The AO has drawn the trading account that also shows only Rs. 38,66,993/-. If that be the case then how the AO could manipulate the calculation for making an addition of Rs. 17,67,736/- to the income of the assessee. The whole exercise by the Department is vitiated. Therefore, we allow this appeal and delete the addition.

8. In the result, appeal of the assessee is allowed.

**Kolkata, the 9<sup>th</sup> February, 2024.**

Sd/-

**[Manish Borad]**

Accountant Member

Dated: 09.02.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. M/s. Fashion Palace, Vill.-Kola Puratan Bazar, P.O.-Kolaghat, Dist.- Purba Medinipur, 721 604.**
- 2. ITO, Ward-27(3), Haldia.**
3. CIT(A)-7, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

Sd/-

**[Rajpal Yadav]**

Vice President

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata