

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1148/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2020-21)

ACIT Central Circle-1 Trichy.	बनम / Vs.	M/s. Sri Thaila Silks 53A-1, Big Bazaar, Trichy-620 002.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AASFS-1407-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Clement Ramesh Kumar (CIT)- Ld. DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri N.Quadir Hoseyn (Advocate) & Dr.L.Natarajan (CA) -Ld. ARs

सुनवाई की तारीख/ Date of final Hearing	:	31-01-2024
घोषणा की तारीख / Date of Pronouncement	:	20-02-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2020-21 arises out of an order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 16-08-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 22-09-2021. The grounds taken by the revenue are as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. The Ld.CIT(A) erred in deleting the addition of Rs.4,15,48,917/- made towards excess physical stock during the survey and directing to assess only Rs.3,69,139/-, being

Gross profit on stock difference as per the working given by the assessee during the assessment proceedings.

2.1. The CIT(A) ought to have appreciated that the assessee had not made any claim during the survey that the physical stock value of 15,14,64,938/- included GST and GP component. The assessee had not provided detailed item wise reconciliation neither at the time of survey nor during assessment proceedings.

2.2 The CIT(A) erred in relying on the method adopted by the assessee in the valuation of physical stock on the basis of one sample bill and adopting average GST rate of 4.76% to arrive at the cost price, whereas GST for different textile items range from 0% to 28%. The CIT(A) ought to have obtained item wise reconciliation from the assessee during the appellate proceedings but he simply relied on the same submissions by the assessee made before the Assessing Officer

2.3 The CIT(A) failed to appreciate that the assessee had not produced bills in respect of the excess stock found during the course of survey. Even during the assessment proceeding, he submitted the reconciliation statement worked out on the basis of one sample bill. In the absence of invoices, the CIT(A) ought to have treated the excess stock as unaccounted purchases.

3. The Ld.CIT(A) erred in holding that the addition made toward excess stock found during the survey should be treated as undisclosed business income and Provisions of Sec. 69 and 115BBE are not applicable

3.1 The Ld.CIT(A) failed to appreciate that the source for excess physical found during the survey was not explained by the assessee, Instead the assessee claimed that there was only excess physical stock of Rs.14,19,766/- on the basis of its working and the same was also attributable to the error of commission while stock taking. But the assessee's explanation was not accepted by AO during the assessment proceedings.

3.2. The Ld.CIT(A) failed to appreciate that since the source for purchase of stock was not explained to the satisfaction of the AO, the AO rightly invoked the provisions of Sec.69 and calculated tax as per the provisions of Sec.115BBE of the Act.

As is evident, the sole issue that arises for our consideration is addition of excess physical stock as found during the course of survey.

2. The Ld. CIT-DR supported the findings given by the survey team and assailed the findings of Ld. CIT(A). The Ld. CIT-DR submitted that impugned addition was based on stock variation found during survey proceedings. the Ld.AR, on the other hand, submitted that impugned order is based on reconciliation filed by the assessee which duly explained the alleged discrepancy in the variation in stock. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident firm is stated to be engaged in retail trade of textiles. The assessee was subjected to survey u/s.133A by the department on 27-02-2020 wherein inventory of physical stock was taken and the same was valued at Rs.1514.64 Lacs. However, the stock as per books of accounts was Rs.1099.16 Lacs. Thus, there was difference in stock for Rs.415.48 Lacs. The managing partner, in his sworn statement, submitted that firm was maintaining stock register in SS retail software and tally software. They were in not in a position to reconcile the stock difference presently and demanded more time to explain the difference. The managing partner also agreed to offer additional income, if any discrepancy was found for difference in stock and on account of low net profit ratio.

3.2 During the course of assessment proceedings, the assessee submitted that physical inventory was valued at selling price which would require adjustment of GST component as well as adjustment of Gross Profit component to bring the stock at cost price which was the basis of valuation of closing stock in the books maintained in the software. By adjusting these two components, the assessee arrived at valuation of Rs.1084.96 Lacs leaving un-reconciled balance of Rs.14.19 Lacs.

3.3 However, Ld. AO rejected the arguments of the assessee on the ground that the assessee did not furnish any evidence for GST component and accepted the valuation made at the time of survey. The assessee did not raise any objection nor furnished any evidence to justify the valuation of stock. Finally, the amount of Rs.415.48 Lacs was

added to income of the assessee as unexplained investment u/s 69 of the Act which would be taxable at rates prescribed u/s 115BBE.

Appellate Proceedings

4.1 The Ld. CIT(A) concurred with the assessee's submissions that AO did not bring on record any specific material to disprove the contentions and arguments of the assessee. Further, Ld. AO should not have merely relied upon sworn statement but should have made additional efforts in proving that the findings of survey were right.

4.2 The Ld. CIT(A), in para 6.6.2, also observed that the value of stock was arrived on the basis of selling price whereas the same should have been valued at cost price excluding GST and gross profit. The assessee had furnished necessary evidences during the course of assessment proceedings, in this regard. The assessee, based upon evidences, worked out corrected value of stock to be Rs.1084.96 Lacs and there remained minor un-reconciled amount of Rs.14.19 Lacs. The deficit in stock was nothing but sales effected but not brought on record. Against the un-reconciled amount, Ld. AO estimated Gross Profit of 26% and sustained addition to the extent of Rs.3.69 Lacs. The same would be in the nature of business income. Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the physical stock was taken at selling price whereas the stock in the books of accounts was being reflected at cost price. Therefore, the physical stock was required to be adjusted for GST component as well as for Gross Profit component to make the two items comparable. The assessee furnished necessary

workings in this regard during the course of assessment proceedings which could not be controverted by Ld. AO. No defect has been pointed out by Ld. AO in assessee's workings. No quantitative differences have been noted. The Ld. AO has merely raised an objection that the assessee did not object to the valuation at the time of survey. However, in the statement recorded during survey, the assessee demanded more time to reconcile the two components. The same was done at the time of assessment proceedings. Obviously, the onus was on Ld. AO to controvert the working of the assessee which was not done.

6. The Ld. CIT(A), in our considered opinion, clinched the issue in correct perspective. The deficit in stock could be termed as sales effected but not recorded in the books of account. The Ld. CIT(A) has already estimated gross profit against the same and sustained the addition to that extent which is quite appropriate on the facts and circumstances of the case. The same has rightly been held to be business income of the assessee. We concur with the adjudication of Ld. CIT(A) and find no reason to interfere in the impugned order, in any manner.

7. The appeal stand dismissed.

Order pronounced on 20th February, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / **ACCOUNTANT MEMBER**

चेन्नईChennai; दिनांकDated :20-02-2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF