

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 6241/DEL/2016 [A.Y. 2012-13]

Shri Rohit Narang
Prop. M/s P. & P Overseas
W-5/3, DLF City, Phase - 3,
Gurgaon, Haryana

Vs.

The Dy C.I.T
Circle - 3
Gurgaon

PAN: AACPN 5305 K

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Shri Lalit Mohan, CA

Department By : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 19.02.2024

Date of Pronouncement : 21.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) -1, Gurgaon dated 16.09.2016 pertaining to A.Y. 2012-13.

2. The substantive grounds taken by the assessee and argued before us read as under:

"2. That the Ld. CIT(A) has grossly erred in upholding has erred both in law and on facts in **making** an addition of a sum of Rs. 98,29,479/- on account of alleged gross profit @ 28% on alleged unaccounted sales during the impugned assessment year and the said addition is highly unjust, arbitrary and completely based on suspicion and surmises without there being any material on record.

3. That the learned CIT(A) has failed to appreciate the basic fact that the alleged discrepancy in stock was duly reconciled by the assessee - appellant and thus, the allegation of learned DCIT that the stock has been sold by the assessee - appellant outside books of accounts, is completely based on suspicion and surmises and without there being any material on record to suggest the alleged sale and as such, the said addition made has no legs to stand and should be deleted."

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidences brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee is engaged in the business of export of paper bags, jute bags etc. The assessee electronically filed his Return of Income on 29.09.2012 declaring an income of Rs. 47,60,740/-. Return was selected for

scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

5. A survey operation u/s 133A of the Income-tax Act, 1961 [the Act, for short] was conducted in the premises of the assessee on 13.12.2011. Physical stock was taken by survey team. Total stock was valued at Rs. 1,03,85,849/- which was raw material Rs. 70,39,099/- and finished goods and work in progress Rs. 33,46,750/-. Since the book stock was found to be at Rs. 4,54,91,134/-, the assessee was asked to explain the difference of stock of Rs. 3,51,05,285/-.

6. The assessee filed detailed reply which is extracted at pages 3 and 4 of the assessment order. However, the reply of the assessee did not find any favour with the Assessing Officer who not only added stock difference of Rs. 3,51,05,285/- but also added gross profit @ 28% on account of unaccounted sales and further made addition of Rs. 98,29,479/-.

7. The assessee challenged the addition before the Id. CIT(A) and vehemently contended that no defect has been pointed out in the books of account maintained by the assessee in the ordinary course of

its business. It was strongly contended that stock which was not found physically still continued in the books of stock and in these circumstances, any computation of book profit on the date of survey will also include the stock which is not found physically.

8. The ld. CIT(A) was convinced with the contention of the assessee. However, he was of the opinion that in these circumstances, addition can be made only on account of gross profit and confirmed the addition of Rs. 98,29,479/-.

9. Before us, the ld. counsel for the assessee vehemently stated that the Assessing Officer has examined the books of account and could not point out any defect in the books maintained by the assessee. It is the say of the ld. counsel for the assessee that since the addition on account of alleged unaccounted sales has been deleted by the ld. CIT(A), and since the Revenue is not in appeal, therefore, that issue has attained finality.

10. The ld. counsel for the assessee further stated that addition on account of gross profit amounts to double addition as gross profit of

the assessee as per books of account included gross profit of alleged sales outside the books.

11. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and read the operative part.

12. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that during the assessment proceedings, the Assessing Officer has examined the books of account which were produced before him.

13. We have carefully gone through the documents filed before us in the form of Paper Book. We find that the profit and loss account has been made for the period 01.04.2011 to 13.12.2011 which is the date of survey. However, assessment has been made and income has been declared for the F.Y. 01.04.201 to 31.03.2012 wherein the gross profit is shown at Rs. 2,68,36,334/-.

14. In our considered opinion, whatever there be the gross profit as on 13.12.2011, has been subsumed in the gross profit as on 31.03.2012 which date is considered for framing assessment. Therefore, once

again making addition on account of gross profit would amount to double addition.

15. As mentioned elsewhere, addition on account of alleged unaccounted sales has been deleted by the Id. CIT(A) and as mentioned above, gross profit as on 31.03.2012 includes the profit on the alleged unaccounted sales. We do not find any merit in the addition of Rs. 98,29,479/-. We accordingly, direct the Assessing Officer to delete the addition.

16. In the result, the appeal of the assessee in ITA No. 6241/DEL/2016 is allowed.

The order is pronounced in the open court on 21.02.2024.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 21st FEBRUARY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	