

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1320/AHD/2018

निर्धारण वर्ष/Asstt. Year: 2010-2011

M/s. B.J Cotton Industries Modasar Char Rasta, At Modasar, PO Bodeli, Ta. Sankheda, Dist. Baroda-391135./ Anil R. Shah (C.A) Shreeji House, 4 th Floor, B/h. M.J Library, Ellis Bridge, Ahmedabad-380006. PAN: AAGFB3067J	Vs.	D.C.I.T, Circle-3(1), Vadodara.
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(Applicant)		(Respondent)
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Assessee by	:	Ms Kinjal Shah, A.R
Revenue by	:	Shri Ashok Kumar Suthar, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **16/01/2024**

घोषणा की तारीख / **Date of Pronouncement**: **28/03/2024**

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax, (Appeals)-3, Vadodara arising in the matter of assessment order passed under s. 143(3) of the Income

Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2010-2011.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO for ₹ 65,68,900/- on account of excess stock found during the survey operation.

3. The necessary facts are that the assessee in the present case, a partnership firm, is engaged in the business of manufacturing & trading of cotton, cotton seeds and cotton seeds oil. There was survey operation at the business premises of the assessee under section 133A of the Act wherein unaccounted stock of 2119 quintal having value of ₹ 65,68,900/- was found and therefore, the same being unaccounted stock was added to the total income of the assessee.

4. On appeal, the Id. CIT(A) was pleased to confirm the order of the AO.

5. Being aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

6. The learned AR before us filed a paper book running into pages 1 to 69 and raised limited contention that the unaccounted stock represents the unaccounted purchases and therefore the entire amount cannot be treated as income of the assessee. As such the unaccounted stock represents the business transaction of the assessee and therefore only an element of profit can be made subject to tax. The assessee has declared profit at the rate of 1.87% from AY 2007-08 to AY 2013-14 which can be considered a yardstick to work out the profit out of such unaccounted stock.

7. On the other hand, the Id. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity to the fact that there was unaccounted inventory found as on the date of survey which has been discussed in the preceding paragraph. The question arises whether the gross value of the unaccounted stock is liable to be added to the income of the assessee or some percentage of profit embedded in such unaccounted stock should only be brought to tax. In this regard, we note that the unaccounted stock arises out of unaccounted purchases. Indeed, the assessee can make unaccounted purchases out of the unaccounted money available with it or the assessee can also acquire such unaccounted stock on credit as well. However, the money invested in such unaccounted stock has neither been quantified nor brought to tax by the authorities below. Accordingly, we refrain from this controversy as nothing arises from the order of the authorities below. In other words, had there been any investment by the assessee in such an unaccounted investment, the same needs to be brought to tax under the provisions of section 69A of the Act. Coming back to the question whether the entire amount of excess stock found during survey shall be subject to tax or only the profit element embedded in such unaccounted stock shall be brought to tax. As it is an undisputed fact that the stock arises from the purchases and if such purchases are not found accounted for or from explained sources then, can the entire purchase amount be brought tax? This question has been answered by the Hon'ble Gujarat High court in the case of CIT vs. Snita P Sheth reported in 38 taxmann.com 385 where it was held as under:

7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58 ITD 428 (Ahd.) came to be approved.

8. If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).

9. This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the

assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.

8.1 Identical view was also taken by the Hon'ble Gujarat High Court in the case of President industry reported in 258 ITR 654 where it was held as under:

The amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that the investment by way of incurring cost in acquiring goods which have been sold has been made by the assessee and that has also not been disclosed, the question whether entire sum of undisclosed sales proceeds can be treated as income, answers by itself in the negative.

8.2 The above principles laid down by the Hon'ble High Court of Gujarat can also be applied in the given set of facts. It is for the reason that the unaccounted purchase in itself does not give any rise to the income to the assessee until it is sold out. Though the assessee has claimed before us that such unaccounted stock has either been sold in the year under consideration or has shown as part of closing stock or the same has been sold in the subsequent assessment year. The relevant submission of the assessee vide letter dated 10-01-2022 made before us is extracted as under:

We would further like to state that the excess stock found during the survey was sold subsequently and sale proceeds of the same has also been offered to tax as income under the head sales, and therefore the assessee has correctly accounted for the excess stock found during the course of survey, as direct expenses, which may please be noted. The said fact has been very well explained during the course of assessment proceedings for the A.Y.2010-11 and has been considered by the Learned Assessing Officer vide our submission dated 18/12/ 2012

8.3 However, the Id. AR appearing before us has not brought anything on record demonstrating from the financial statements that such unaccounted purchases have either been shown as part of the closing stock or sold out in the current/ subsequent year. Thus, in the absence of such details and to render

equitable justice to the assessee and the revenue, we are of the view that some percentage of profit on such unaccounted purchases/stock is required to be added. The assessee before us has suggested vide letter dated 10-01-2022, such percentage of profit at the rate of 2% of the value of unaccounted stock. The submission of the assessee is reproduced as under:

Without prejudice and in the alternative, it is submitted that if any addition is called for then it should be the net profit @ 1.87 of the Assessee for the Asst. Year 2010-11 which is as per combined chart of Sales G.P., N.P etc from A.Y 2007-08 to A.Y 2013-14 page 55 of Paper Book filed on 8-6-2021.

Without Prejudice and in alternative, it is submitted that no addition of N.P be made or at net profit @ 2% 65,68,900 is taken it will meet the end of justice and for this the following judgements are referred and relied.

8.4 The above submission of the assessee has nowhere been countered by the revenue. However, we note that the above percentage of the net profit shown by the assessee is from disclosed business whereas the issue before us is of unaccounted stock found in the course of the survey. Therefore, we are of the view that the percentage of net profit of such unaccounted purchases/ stock should be higher than the profit already shown by the assessee from accounted/disclosed transaction. Hence, for the sake of justice and fair play, we hold that profit element embedded in such unaccounted/excess stock shall be brought to tax @ 5%, accordingly an amount of Rs. 3,28,445/- can be added to the total income of the assessee. Thus, the order of the Id. CIT-A is set aside with the direction to the AO to delete the excess addition made by him. Hence, the ground of appeal of the assessee is hereby partly allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 28/03/2024 at Ahmedabad.

**Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
28/03/2024