

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 903/Kol/2023
Assessment Year : 2014-15

DCIT, Circle-43, Kolkata	vs	Vijay Saree House 12, 2 nd Floor, Nurnal Lohia Lane, Burabazar, Kolkata-700007. PAN: AAEFV 4939 R
Appellant		Respondent

C.O. No. 18/Kol/2023
(Arising out of ITA No. 903/Kol/2023
Assessment Year : 2014-15

Vijay Saree House 12, 2 nd Floor, Nurnal Lohia Lane, Burabazar, Kolkata-700007. PAN: AAEFV 4939 R	vs	DCIT, Circle-43, Kolkata
Cross-Objector		Respondent

Date of Hearing	13.02.2024
Date of Pronouncement	05.04.2024
For the Assessee	Shri Anil Kochar, Advocate
For the Revenue	Shri B.K. Singh, JCIT, Sr. DR

ORDER

Per Shri Sonjoy Sarma, JM:

This appeal of the revenue for the assessment year 2014-15 is directed against the order dated 27.06.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'Id. CIT(A)'] and against the impugned order assessee has also filed a Cross-Objection being its CO. No. 18/Kol/2023.

2. Brief facts of the case are that assessee filed its return of income for the A.Y. 2014-15 declaring total income of Rs.

68,09,950/- . Subsequently, the case of the assessee was selected for scrutiny through CASS followed by notices u/s 143(2) and 142(1) of the Act. In compliance to the notices, the ld. AR of the assessee appeared time to time before the ld. AO and filed necessary requisite documents as asked for. In the case of assessee, a survey u/s 133A of the Act was conducted on the business premises on 05.03.2014. During the course of survey operation, the authorized officer took inventory of the stock and found that there was a difference of stock to the extent of Rs. 4,71,39,045/-. The alleged difference of stock was quantified by the survey party on the basis of the questions put to the partner of the firm, Sri Gouri Shankar Goenka during the survey operation and he has agreed to pay advance tax to the tune of Rs. 1.05 crores for the assessment year under consideration. However, during the assessment proceeding, the ld. AO found that assessee has claimed refund of Rs. 83,87,720/- out of advance tax deposited by the assessee. On this issue assessee's contention was that the opening stock of Rs. 3,20,45,110/- was not taken into consideration while calculating closing stock at the time of survey. However, the ld. AO did not accept such plea taken by assessee before him. Further, the AR also claimed that the purchase of Rs. 6,39,59,463/- which goods were received but not entered into the computer on the date of survey was taken place. But the ld. AO brushed aside such plea taken by assessee and determined a sum of Rs. 5,55,41,577/- as suppression of under valuation of closing stock and added back such amount to the total income of the assessee.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed by applying GP ration @ 12% of Rs. 5,55,41,577/- which arrived at Rs. 66,64,989/- in the hands of assessee.

4. Aggrieved by the above order, revenue is in appeal before the Tribunal. At the time of hearing, ld. AR stated that while passing the impugned order, ld. CIT(A) erred in restricting the addition made by the AO to the extent of Rs. 66,64,989/- (12% of Rs. 5,55,41,577/-) by ignoring the facts and evidence brought on record by assessing officer. Therefore, the view taken by the ld. CIT(A) needed to be set aside sustaining the order of AO.

5. On the other hand, ld. AR submitted that in the course of assessment proceeding to the observation made by the AO relating to amount of Rs. 5,55,41,577/- and the issue of show cause notice the assessee has submitted relevant reply. He drew our attention to the explanation which has been partly recorded by the AO in the assessment order itself. He further stated that the records of the assessee would reveal that the entries with regard to purchases as well as the sales were not entered in the computer for a long period and this fact can always be corroborated by the hard disc of the computer which was impounded during the course of survey operation. The assessee immediately after the survey operation was over, had made all the entries with regard to purchases/sales etc. relating to period prior to the survey date and a trading a/c for the period commencing from 1 of April, 2013 to 5th March, 2014 being the date of survey and one for the period from 6 March 2014 till 31"

March has been prepared and enclosed. This in fact gives a true and correct picture of the entire accounting aspect. Along with the same a reconciliation has been prepared in between the figures reflected in the show cause notice dated 02.12.2016 vis-a-vis the revised figures, after incorporating all pending entries, and this reflects a difference of Rs.27,802/- towards the stock and during assessment proceeding requested the ld. AO to kindly go through the same and to inform any anomaly if found in the same. The assessee has also stated the reasons behind each of the columns of the said statement.

6. He further stated that explanation about the issue involved was duly explained by the assessee in its written submission placed before the ld. CIT(A) and while passing the order in para 3 of the order also reproduce the submission made by the assessee. However, the ld. CIT(A) did not consider the submission of the assessee relying on the decision of the various Hon'ble High Court applying the GP ratio of 12% as income with reference to an amount of Rs. 5,55,41,577/- being the excess stock as noted by the AO. The contention of the AR before the bench that assessee had duly explained that there was no difference in stock in hand on the date of survey as because purchases which have been made prior to the date of survey could not be uploaded in the accounts and assessee submitted full details about the purchases which were duly supported by bills and payments were made by cheques. He further stated that while framing the assessment order by the ld. AO has never found any fault with the explanation submitted by the assessee.

The ld. AR also placed before the bench a copy of declaration dated 26.12.2016 explaining the entire issue relating to the stock. The ld. AR also stated that the AO has never rejected the books of accounts maintained by the assessee. In such scenario GP ratio is uncalled for.

7. We after considering the factual aspect of the case and gone through the assessment, submissions made by the assessee before the AO as well as before the ld. CIT(A). We have taken note of the crucial point that the revenue has not rejected the books of accounts maintained by the assessee. As a matter of fact the assessee did explain the variation in the stock found in the course of survey operation with reference to purchases which were made earlier were not uploaded in the summary of stock. The ld. AO examined all the entries relating to the purchases as well as sales and did not find any reason to disturb the trading result. Similarly, the assessee had given all relevant details about the purchase which were made by the assessee were not uploaded on the date of survey and payments were made through cheques to the respective parties.

8. In such a scenario, the ld. AO cannot deny such purchase made by the assessee. Moreover in the present case, the ld. AO did not reject the books of accounts of the assessee placed before the AO and addition made surmises and conjectures which is not correct and justifiable under the provisions of law.

9. We have gone through the arguments of both the sides and the records. It is a fact that in the course of survey excess stock

was found and plea of the assessee had been some purchases made by it remained uploaded. Since there was survey operation during the year, scrutiny assessment proceedings were drawn and in compliance to the requisitions made by AO the assessee had submitted all relevant details relating to purchases and the payments. It was contended that there was discrepancy noted by the AO and hence the book result could not be disturbed. Accordingly, we allow the cross-objection filed by the assessee and dismiss the appeal of the revenue.

10. In the result, the appeal of the revenue is dismissed and cross-objection filed by the assessee is allowed.

Order pronounced in the open court on 05.04.2024

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 05.04.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

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

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata