

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

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 777 to 780/KOL/2023
Assessment Years: 2014-15 to 2017-18**

**Monika Mondal.....Appellant
[PAN: AIMPM 6528 N]**

Vs.

ACIT, CIR-1, Durgapur.....Respondent

Appearances:

Assessee represented by: Vinod Kr. Jain, FCA.

Department represented by: Sallong Yaden, Addl. CIT (DR).

Date of concluding the hearing : May 13th, 2024

Date of pronouncing the order : May 30th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

This is a batch of four appeals bearing ITA Nos. 777 to 780/KOL/2023 pertaining respectively to assessment years 2014-15 to 2017-18. As the issues raised in these appeals are common and the facts are identical except change in figures, therefore, as agreed by both the parties, they are heard together and disposed off by way of this common order for the sake of convenience and brevity with the lead case being taken as ITA No. 778/KOL/2023 for AY 2015-16.

2. The facts of the case are that the assessee was engaged in the wholesale business of liquor under the proprietorship name of M/s. A.M. Enterprises. The appellant had filed her return of income for AY 2015-16 on 30.09.2015 declaring total income of Rs. 19,76,540/-. During the course of assessment proceedings, the Assessing Officer (in short ld. 'AO') noticed that the assessee had taken a loan from M/s. Durgapur Steel People Co-operative Bank Ltd. Through notices u/s 133(6) of the Act the said bank was required to furnish the monthly stock statement and details of all other properties and receivables, mortgaged/hypothecated with the bank by the assessee. On obtaining the requisite details, the ld. AO found that the position of stock and sundry debtors as on 01.04.2015 was as under:

- a) Sundry debtors : Rs. 2,23,85,444/-
- b) Stock (Trade value) : Rs. 11,28,276/-

The ld. AO discovered that the figure of sundry debtors and the stock as per the bank were substantially different from the audited balance sheet filed by the assessee. Thus, it was noticed that the value of sundry debtors was Rs. 66,26,481/- and value of closing stock was Rs. 1,10,58,970/-. Considering the substantial difference between the figures made available by the bank and the figures available in the audited accounts the assessee was asked to submit an explanation. It is seen that the assessee had stated before ld. AO as under:

"I am enjoying C.C. facility with Durgapur People Co-Operative Bank for which I had to make collateral Security (i) T.D. (ii) R.D. and landed property. They have sanctioned loan with few terms & condition such as (a) I have to submit monthly Stock Statement/Debtors list for avoiding additional 2% Penal interest (b) I have to submit Audited Accounts for every financial year.

Accordingly, I have complied the same your good self has alleged that I have suppressed assets in from of Stock and Sundry Debtors from the statement so filed before bank on the basis that such balances vary from the balances as per the books of accounts. In this regard, I would like to draw you kind consideration that your good self has not considered the Audited Accounts submitted before bank. Such a statement of Stock and Sundry Debtors was submitted on estimate basis for availing bank loan and also avoiding penal interest. Such balances are mere estimation and I have not only submitted the Stock Statement & Debtor balance, I have also submitted Audited

Accounts to the bank authority. Bank authority have not raised any question regarding balances shown in Balance Sheet as well as Statement so filed before them and these were also not verified by the Bank relying on the fact that the statement was filed just to maintained formality and in addition to the audited accounts submitted before the bank authority. Thus relying upon such estimated and unverified values without giving due and proper importance to authentic documents like audited accounts is well against the natural justice."

2.1. The AO proceeded to draw adverse inference from the said differences and for the year under consideration added Rs. 1,17,89,394/- as undisclosed investments on account of difference in the unexplained figure of sundry debtors as supplied by the bank, compared to the audited accounts. Ld. AO has treated the difference in closing stock figure between the bank statement and the audited accounts as sales out of books and proceeded to add Rs. 6,65,356/- (impugned addition) by applying a gross profit rate of 6.70% on the difference worked out at Rs. 99,30,694/-

2.2. Before the ld. CIT(A), the matter was adjudicated and while the addition of Rs. 1,17,89,394/- on account of unexplained sundry debtors was deleted, the amount of Rs. 6,65,356/- added on account of alleged sale out of books, was sustained, leading to the present appeal.

3. Before us, the assessee has canvassed his grievance through the following grounds of appeal:

"1. The Ld. CIT(A), NFAC erred in law as well as on facts in confirming the order of Jurisdictional Assessing Officer on addition of Rs.6,65,356 as undisclosed profit on alleged sale out of books.

2. The Ld. CIT(A), NFAC ought to consider that the addition by Jurisdictional Assessing Officer is made on arbitrary, illogical and irrelevant consideration of facts, as the closing stocks in books are higher than the amount stated in monthly statement and as such there is no sales out of books.

3. The appellate craves leave to add, modify or amend the ground of appeal and to adduce additional evidence in support of ground of appeal at the time of hearing of the case."

3.1. The ld. Counsel for the assessee argued that the stock in hand on the last date of the financial year is unsold stock which became the opening stock for the next financial year. The figures have been duly verified by the auditors

at the time of preparing audit report. It has been further, averred that the purchases are subject to TCS and the position of stock is constantly monitored by the State Excise Authorities. Ld. A/R stressed that ld. AO has not doubted the genuineness of the books of accounts since there is no rejection of the same. The ld. A/R filed copies of two affidavits, which were filed before the AO, to show that the figures filed with the bank on a monthly basis were on estimate only. Relevant portions from the two affidavits are extracted below:

A) Affidavit of Monika Mondal:

“In terms of the said overdraft facilities, we filed the monthly statement of stock and debtors with said bank, on estimate basis to keep the drawing power alive under the overdraft facilities and to avoid penal interest of 2% above the contracted interest rate. The monthly statements for the Financial year 2013-14, as practiced in past, were prepared by the office staff(s) who dealt with banking operation. They used to draw the statement on estimate basis by putting the figures, randomly, for the concerned month in the chart running since long. The figures put in the chart, were not in commensurate with the actual working recorded in the books of accounts, because of fact that said statements were not considered as part of records and books. However, at the end of each financial year, we filed the copies of audited annual accounts, audit report and tax audit report with the said bank.”

B) Affidavit of Suraj Shaw:

“I was entrusted with the task of submitting the monthly statement of stock and debtors with said bank, for drawing power under the overdraft facilities and to avoid penal interest of 2%, as per terms of the sanction of said facilities. The monthly statements for financial year 2013-14 were prepared by me, on estimate basis by putting the figures, randomly, for the concerned month in a chart prepared for the purpose, by my predecessors, since long. I put the amounts in said chart, randomly.”

4. The ld. D/R supported the findings of ld. AO and ld. CIT(A) and also relied on the case of *Suraj Bhan Oil (P.) Ltd. vs. DCIT* reported in (2022) 446 ITR 539 to argue that if there is difference between the value of stock submitted to bank and the value submitted before the Income Tax Department then an adverse view was possible against the assessee.

5. It is clear from a plain reading of the orders of the authorities below that the figure of closing stock filed with the bank is significantly lower than the figure filed before the Income Tax Department, through the audited accounts. The case law relied upon by the ld. D/R illustrates a diametrically opposite position where the stock position submitted to the bank was far in excess of whatever was disclosed before the Income Tax Department. In fact, other case laws referred in this very same case are basically indicating that, based on the facts and circumstances of each case, an adverse view is possible if the stock statement submitted to bank is higher than whatever is disclosed before the income tax authorities. In the present case, it is the other way around. Thus, on this reasoning alone the appellant merits relief. However, it is also seen that on the same set of facts the ld. CIT(A) has chosen to agree with the assessee regarding the addition made on account of difference in the figure of sundry creditors. But he chose to sustain the impugned addition which was evident from the same set of facts and figures. It is also seen that the ld. AO has not rejected the books of accounts, thereby indicating that he did not doubt the book results as presented before him by the assessee.

5.1. Considering the facts and circumstances of the case as also the averments of both ld. A/R and ld. D/R it is held that the assessee deserves to succeed in respect of the impugned addition on the ground that the book results have not been disturbed by the ld. AO and the contention of the assessee that they were merely following the practice of filing estimated details before the bank to avoid penal proceedings, is acceptable considering that the veracity of the affidavits filed by Monika Mondal and Suraj Shaw have not been doubted by either the ld. AO or the ld. CIT(A). Accordingly, the addition of Rs. 6,65,356/- is hereby deleted.

6. In the result, the appeal filed by the assessee in ITA No. 778/KOL/2023 for AY 2015-16 is allowed.

7. In light of the discussions above, the following additions for other assessment years mentioned below are also deleted:

- i) ITA No. 777/KOL/2023 for AY 2014-15 — Addition of Rs. 6,20,153/- as undisclosed profit on sale out of books.
- ii) ITA No. 779/KOL/2023 for AY 2016-17 — Addition of Rs. 12,77,447/- as undisclosed profit on sale out of books.
- iii) ITA No. 780/KOL/2023 for AY 2017-18 — Addition of Rs. 7,13,349/- as undisclosed profit on sale out of books.
8. In the result, all the four appeals filed by the assessee are allowed.

Order pronounced in the open Court on 30th May, 2024.

Sd/-

[Sanjay Garg]
Judicial Member

Dated: 30.05.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Monika Mondal, C/o. Jain Vinod K & Associates, 41A, A.J.C Bose Road, Suit No. 613, 6th Floor, Kolkata, West Bengal, 700017.**
2. **ACIT, CIR-1, Durgapur.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

Sd/-

[Sanjay Awasthi]
Accountant Member

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata