

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. R. RAGUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **969/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2020-21

Sundri Chimandas
49, Old No. 27, T. Mangharam,
Rattan Bazaar,
Chennai – 600 003.

Deputy Commissioner of
v. Income Tax,
Central Circle -3(4),
Chennai.

[PAN: AABPC-1797-K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 24.04.2024

घोषणा की तारीख/Date of Pronouncement

: 29.05.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-20, Chennai, dated 04.09.2023 and pertains to assessment year 2020-21.

2. The only issue in this appeal is as regards to the order of the CIT(A) confirming the action of Assessing Officer in making

addition of unexplained investment in stock being difference in valuation of stock found during the course of survey conducted u/s. 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and added u/s. 69B of the Act and applied higher rate of tax by invoking the provisions of section 115BBE of the Act. For this, the assessee has raised various grounds which are argumentative, exhaustive and hence, need not be reproduced.

3. The brief facts of the case are that, the assessee is an individual and engaged in the business of textile in the name and style of M/s. T. Managharam. A survey action u/s. 133A of the Act was carried out in the business premises of the assessee on 17.02.2020. The AO completed assessment u/s.143(3) of the Act, vide order dated 30.03.2022. The findings of the case are as under:

"During the course of survey, it is found that for the purpose of inventory/stocks, assessee maintained the register in 'Shoper9' software, whereas for all other financials, TALLY software was maintained. From the balance sheet, the closing stock as on 17.02.2022 was found to the tune of Rs.4,89,95,589/-, whereas as per Shoper9 software, the available stock to the tune of Rs.7,04,88,090/- was found. Hence, an excess stock valued at Rs.2,14,92,501/- was found. When the assessee was asked to explain the discrepancy, found during survey

proceedings, a sum of Rs.2,14,92,501/- was offered as additional income for the assessment year 2020-21 for taxation."

4. The assessee submitted that excess stock has been offered as 'business income' and hence it does not warrant addition u/s.69B of the Act. The Assessing Officer considered the excess stock as unexplained investment by relying on the decision of Hon'ble High Court of Madras in the case of M/s. SVS Oils Mills vs. ACIT in ITA No.765 of 2018, simpliciter without discussing any of the facts held that excess stock amounting to Rs.2,14,92,501/- is to be treated as unexplained investment u/s.69B of the Act and subjected to tax as per the provisions of section 115BBE of the Act. Accordingly, the Assessing Officer added the income offered during survey as unexplained investment u/s.69B of the Act and assessed to tax u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) after considering the submissions of the assessee upheld the action of the AO by noting that the investment in excess stock found to be assessed as 'unaccounted investment' and not as 'business income' by

relying on the decision of Hon'ble High Court of Madras in the case of M/s.SVS Oils Mills, *supra*. The Id. CIT(A) decided the issue vide para 7.23 & 7.24 as under:

"7.23 It can be held that the present case is distinguishable from that of Overseas leathers basing on the fact that Onus of offering Explanation with regard to Excess stock with relevant facts and cogent evidence has not been discharged by Appellant in the present case unlike in Overseas Leathers case. Admittedly excess stock found on date of survey pertains to previous years, however such years are not identified, year wise excess stock details could not be provided, how much of excess stock pertains to current year is also not mentioned.

7.24 The facts of the present case are similar to SVS Oil Mills Vs ACIT, ITA NO. 765 of 2018 as like in that case, appellant has not discharged the onus of offering reasonable Explanation regarding source of Investment in Excess stock. Further Appellant has not made entries in purchase register, ledgers, day book etc wrt excess stock similar to assessee in SVS Oil Mills case."

Aggrieved, now assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee is engaged in textile business. A survey was conducted in the business premises of the assessee on 17.02.2020 and statement was recorded by the Department. The assessee contested the Department's stand that on the date of survey. The inventory of stock is recorded in separate

software called 'Shoper 9'. The Id.counsel stated that during the course of survey there was no other discrepancy in the books of accounts including purchase bills, sales bills etc, which indicates the discrepancy in stock within the business of the assessee. The Id. counsel now stated that as per books of accounts, the physical stock as on 17.02.2020 was Rs.7,04,88,090/- as per 'Shoper 9' against stock ought to be available at Rs.4,89,95,589/- which is computed based on opening stock, purchase cost and sale cost and therefore, even assuming without conceding the physical stock inventory had been properly taken on 17.02.2020, still the stock difference is only a deficit stock and not excess stock as alleged by the Revenue. The Id.counsel stated that there is deficit stock and not excess stock. Apart from the issue of variation in stock, the Ld. Counsel for the assessee argued that the software 'Shoper9' was maintained only for the purpose of recording movement of goods as an internal record but not for statutory books of accounts and hence, considering that as books of accounts is not justified in the eyes of law. Even assuming without conceding, the Id.counsel stated that the allegation of excess stock at the time of survey is taken to be correct, still the treatment of the same cannot be taxed under unexplained

investment u/s.69B of the Act and levy tax u/s.115BBE of the Act. The Id.counsel for the assessee has relied on following ITAT Chennai decisions:

- (i) Mookambika Impex vs DCIT, ITA No. 299/2023
- (ii) Ethiraj Hotel Mart vs DCIT, ITA No. 1086/2022
- (iii) Santhilal Jain Vijay Kumar vs ITO, ITA No. 1103/2022
- (iv) Mr. Kamlesh vs DCIT, ITA No. 1104/2022
- (v) Suresh Ogadram vs DCIT, ITA No. 826/2022
- (vi) Ponnusamy Karunanithy vs DCIT, ITA No. 195/2023.

7. The Id. Counsel for the assessee also relied on the decision of ITAT, Chennai in the case of Overseas Leather vs. DCIT in ITA No.962/CHNY/2022, order dated 05.04.2023, wherein it is held that additional income admitted towards excess stock found during the course of survey has been explained as the same is emanating from the stock of earlier years and which has not been disproved by the Revenue. When the assessee has explained that the source was from the business and except stock difference, no other investment with any other asset was found and particularly, this unexplained investment is surrendered as 'business income', in the absence of any other finding, the same has to be assessed as 'business

income' and not under the head 'unexplained investment' u/s.69B of the Act. The Tribunal in para 12 has recorded the finding as under:-

“12. During the course of survey, excess stock of leather and allied products has been found and such excess stock was noticed when physical inventory of stock in trade of the assessee was taken up. Further, said stock is mixed with regular stock in trade of the assessee. The assessee has explained before the Assessing Officer that it could not immediately reconcile difference in stock and thus, to buy peace from Department, additional income has been offered under the head income from business, equivalent to the amount of excess stock found during the course of survey. The explanation offered by the assessee either during the course of survey or during the assessment proceedings is not negated with any other evidences to disprove the claim of the assessee that source for acquisition of stock in trade is other than business income of the assessee. Moreover, the assessee derives only one source of income from manufacturing and trading in leather and allied products, which is evident from income declared for the impugned assessment year and earlier assessment years. Further, when the assessee has explained source for excess stock found during the course of survey, is out of income earned from current year business, the AO did not go further to disprove the claim of the assessee that said source is not from income from business. Moreover, it is a general practice in trade that income generated is either ploughed back into the business in the form of stock in trade or receivables or spent for other purpose like acquisition of asset outside the business. In this case, during the course of survey except stock difference, no other investment with any other asset was found. Therefore, from the above it is very clear that explanation offered by the assessee that source for excess stock is out of income generated from business activity of the current year appears to be plausible explanation. Therefore, we are of the considered view that when the assessee has explained the source for acquisition of stock out of business income, the AO ought to have accepted the explanation of the assessee and assessed the income under the head profits and gains of business or profession, but not under the head

unexplained investment u/s. 69B of the Act. This is because, excess stock found during the course of survey does not have any independent identity as the asset is a mixed part of overall stock found in the business premises of the assessee, which in our considered view represents business income.

8. When these facts were confronted to Id. DR, he only relied on the assessment order and that of the CIT(A).

9. In the given facts and circumstances of the case, we noted that the assessee has declared additional income towards excess stock found during the course of survey and assessee has explained the source for excess stock found during the course of survey i.e., that it was out of income earned from current year business or earlier years business, since the assessee do not have any other source of income and surrendered the amount, the AO has not done anything to dispute the claim of assessee that the source was not from the business income. Further, we note that, as stated by the assessee, the said software 'Shoper9' is used only as internal records to maintain the movement of inward and outward of stocks, cannot be construed as books of accounts. Hence, the AO cannot apply the provisions of section 115BBE of the Act. The assessee also admitted the difference of Rs.2,14,92,501/-

as income, which is not disputed but has to be taxed as 'normal business income' and not as 'unexplained investment' u/s.69B of the Act. Accordingly, we allow the grounds of appeal of assessee and reverse the orders of CIT(A) and that of the AO on this. The appeal of the assessee is allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 29th May, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 29th May, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF