



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI G. D. PADAMAHSHALI, ACCOUNTANT MEMBER  
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.586/LKW/2018  
Assessment Year: 2016-17

R. K. Products Co. Survey No.48, Plot No.79 Katedan, Hyderabad	v.	The DCIT Central Circle II Kanpur
PAN:AALFR0791A		
(Appellant)		(Respondent)

Appellant by:	Shri Vikas Garg, C.A.		
Respondent by:	Smt. Namita S Pandey, CIT(DR)		
Date of hearing:	26	06	2024
Date of pronouncement:	11	07	2024

**ORDER**

**PER SUBHASH MALGURIA, J.M.:**

This appeal has been filed by the assessee against the order of the ld. CIT(A)-IV, Kanpur dated 28.06.2018 for the assessment year 2016-17, raising the following grounds:

- 1. Because the Authorities below have erred in law and on facts in making an addition of Rs.4,86,192/- on the account of excess stock found during the course of search.*
- 2. Because the authorities below failed to appreciate hat excess stock of Rs.4,86,192/- during course of search u/s 132 stood fully explained by cash in hand found less than cash balance as per cash book.*
- 3. Because the said addition of Rs.4,86,192/- is wholly inconsistent with the facts of the case on record and has been made without appreciating the same.*

*4. Because the authorities below have erred in law and on facts in making the said addition of Rs.4,86,192/- in an arbitrary manner.*

*5. Because the impugned assessment is contrary to provisions of law and principles of natural justice equity and fair play.*

*6. The Assessee craves leave to modify any grounds of appeal herein before or take additional ground(s) during pendency of this appeal.*

2. Vide letter dated 26.06.2024, the Ld. CIT (DR), Smt. Pandey sought adjournment, submitting that, due to pre-occupied official assignments & duties, the case could not be prepared for representation/hearing and, therefore, needs some more time for preparation. Having considered order sheet entries, case records, and solitary dispute in the light of settled position of law, the reasons for seeking adjournment failed to inspire any confidence to us. Accordingly, we deem it fit to reject the request and proceed to adjudicate the matter on merits after hearing the parties.

3. The brief facts of the case are that a search and seizure operation under section 132(1) of the Income Tax Act, 1961 was conducted in Shri Deepak Kothari and Vikas Malhotra Group of cases on 16.12.2015. Simultaneously, a search and seizure operation was also carried out on the assessee firm at its three units situated at Bidar (Karnataka), Ketedan (Hyderabad) and IDA Mallapur (Hyderabad). The assessee-firm is engaged in manufacturing of Pan Masala. The raw materials used for manufacturing Pan Masala are Supari, Kattha tobacco, Lime, Flavour, Menthol, Cardamom, Glycerin, etc. During the course of search, excess stock aggregating to Rs.4,86,192/- was found

at Kattedan unit, which was added to the income of the assessee under section 69 of the Act.

4. Aggrieved, the assessee preferred an appeal before the ld. CIT(A), who dismissed the appeal of the assessee. Aggrieved further, the assessee is now in appeal before this Tribunal.

5. During the course of hearing before us, the ld. counsel for the assessee submitted that some discrepancy was found in the physical stock taking carried out during the course of search at the unit of the assessee firm located at Kattedan and in this regard, in the statement recorded under section 132(4) of the Act on 16.12.2015, the partner of the assessee firm, Shri Mahantlal Yadav in response to Question No.15 explained that the excess stock of Rs.4,86,192/- was purchased in cash. He further submitted that the difference in cash found during the course of search was also explained by Shri Mahantlal Yadav in the statement recorded under section 132(4) of the Act on 16.12.2015 and in response to question No.19, he submitted that an amount of Rs.13 lakhs was deposited on 16.12.2015 in the current account of the firm in the account No.62095428988 maintained with State Bank of India, Mahaboobgunj Branch, Hyderabad and the balance amount of Rs.6,96,593/- was with the another partner of the firm, Shri Surya Prakash Pandey. The ld. counsel for the assessee submitted that the discrepancy in stock found during the course of search was duly explained, however, the Assessing Officer, without bringing on record any cogent material to reject the explanation of the assessee, made the addition arbitrarily and the ld. CIT(A) too has confirmed the same without bringing any material on record to support the order of the Assessing Officer. He submitted that since the difference has duly been explained, no addition in this regard is required and

hence the addition made by the Assessing Officer and confirmed by the Id. CIT(A) be deleted.

6. The Id. CIT (DR), on the other hand, supporting the orders of the authorities below, submitted that the difference in physical stock found during the course of search in the premises of the assessee could not be explained, therefore, the addition has rightly been made by the Assessing Officer and confirmed by the Id. CIT(A). She submitted that no interference is called for in the order of the Id. CIT(A).

7. We have heard both the parties and perused the material on record. We find that during the course of search at the manufacturing unit of the assessee firm located at Kattedan, discrepancy in stock of raw materials used for manufacturing of Pan Masala was noticed by the search party. In this regard, in the statement recorded under section 132(4) of the Act on 16.12.2015 in response to Question No.15, the partner of the assessee firm, Shri Mahantlal Yadav explained that the excess stock of Rs.4,86,192/- was purchased in cash. The Assessing Officer added the same under section 69 of the Act, observing that the partner of the assessee accepted the difference in stock are purchase outside books of account and payments are made in cash.

8. As per section 69 of the Act, where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory, the value of the investments may be deemed to be the income of the assessee of

such financial year. It may be noted that if the explanation furnished by the assessee not found to be satisfactory, the AO is under obligation to give reasons for not accepting the explanations offered by the assessee. Under Section 69 of the Act, the primary onus casts upon the assessee to make plausible explanation, and in case the explanation is given by the assessee and it is not accepted, the onus shifts on the Department to prove that the explanation offered by the assessee is either wrong or not sufficient to explain the impugned transaction by bringing further material evidence on record. Whereas, in the present case, the Assessing Officer without controverting the explanation so furnished by the partner of the assessee-firm, made the addition of Rs.4,86,192/- arbitrarily and on ad hoc manner, which has been confirmed by the ld. CIT(A). Therefore, the addition so made by the Assessing Officer and confirmed by the ld. CIT(A), cannot be sustained. Accordingly, we order for deletion of the addition made by the Assessing Officer and confirmed by the ld. CIT(A).

9. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 11/07/2024.

Sd/-  
[G. D. PADAMAHSHALI]  
ACCOUNTANT MEMBER

Sd/-  
[SUBHASH MALGURIA]  
JUDICIAL MEMBER

DATED:11/07/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar