

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./I.T.A. No.1085/Chny/2023
निर्धारण वर्ष/Assessment Year: 2011-12

The Deputy Commissioner of
Income Tax,
Corporate Circle 1,
Coimbatore.

Vs. M/s. Elgi Electric and Industries Ltd.
737-D, Elgi Towers, Puliyakulam
Green Fields, Coimbatore 641 045.

[PAN: AAACE4787H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. Gouthami Manivasagam, JCIT
प्रत्यर्थी की ओर से/Respondent by : Ms. Sandhyarthi, F.C.A.
सुनवाई की तारीख/ Date of hearing : 01.10.2024
घोषणा की तारीख /Date of Pronouncement : 09.10.2024

आदेश / O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order dated 09.06.2023 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2011-12.

2. We find that the Registry, ITAT has notified delay of 52 days in filing the appeal by the Appellant-Revenue. The Id. DR Ms. Gouthami Manivasagam, JCIT, by referring to Form No. 8 dated 28.08.2023 & Form

No. 8A dated 31.08.2023, which was uploaded along with appeal memo, submits that the amended provisions of sub-section (2) of section 158AB of the Income Tax Act, 1961 ["Act" in short], provides time limit of 120 days from the date of receipt of order of the Id. CIT(A) in filing the appeal before the Tribunal and thereby there is no delay in filing the appeal in the event of filing of Form No. 8 & Form No. 8A. Upon perusal of appeal memo and Form No. 8 & Form No. 8A uploaded by the Appellant-Revenue, we accept the submissions of the Id. DR.

3. The Appellant-Revenue raised only one ground in challenging the direction of the Id. CIT(A) in considering non-existing stocks claimed by the assessee for the purpose bank loan as opening stock of next assessment year by placing reliance on the decision of the Hon'ble Supreme Court in the case of VKJ Builders and Contractors Pvt. Ltd. v. CIT reported in 318 ITR 204 (SC).

4. Brief facts relating to the case are that the assessee filed return of income declaring total income at ₹.NIL after adjusting business loss of ₹.2,46,305/-. The assessment was completed under section 143(3) of the Act vide order dated 31.03.2014, inter alia making addition on account of difference in closing stock of ₹.76,28,385/- by adjusting same against brought forward business loss, consequently determining total income at

₹.Nil. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A), wherein, the addition of ₹.76,28,385/- was confirmed by treating value of closing stock added in the current year would be as opening stock for the next year and directed the Assessing Officer to recompute the loss of current year. The Revenue filed an appeal before the ITAT, wherein, the Coordinate Bench directed the Assessing Officer to consider the issue afresh in terms of the earlier order of the Tribunal for AY 2010-11 in ITA No. 2160/Mds/2011 dated 28.04.2013. In giving effect proceedings, the Assessing Officer added difference in closing stock between the return of income and statement submitted to the Bank. The relevant portion as reproduced herein below:

4. On receipt of the JCIT's direction as above, one more opportunity was offered to the assessee and the case was discussed with the AR. I have gone through the directions of the Range Head, ITMR, Case laws and Department's present stand on the matter in detail. No concrete proof could be produced by the assessee to substantiate its claim that the difference of the closing stock is only because of the rate difference. The stock submitted before the bank could not be exactly correlated to the stock as per books. The department has also taken a consistent view, considering which, the difference is added back as unexplained investment and is assessed u/s 69 of the Income Tax Act, 1961. Thus, the addition of Rs.76,28,385/-, being the difference between the closing stock declared in the return of income and disclosed to the bank authorities for want of credit facility is confirmed as correct. Regarding the issue of treatment of added closing stock as opening stock for next year, the ITAT's referral Hon' Supreme Court's judgment in the case of VKJ Builders and Contractors Private Limited vs. CIT 318 ITR 204, was made in the context of the Voluntary Scheme namely Kar Vivad Samadhan Scheme, 1998, (KVSS) and the facts of the said judgment are distinguishable from the present case as the addition here was made under specific section of the Act,

that is, under Section 69. Therefore the said case law is not relevant and applicable to the assessee's present case. Relying on the judgment of the High Court of Calcutta in the case of M/s Binod Kumar Agarwala dated 21.06.2018 and decision of Gujarat High Court in the case of Fakir Mohmed Haji Hasan vs. Commissioner of Income-Tax dated 10.08.2000, treatment of added closing stock as opening stock for next year is not acceptable and the assessment is completed with no interference on the assessment order passed u/s. 143(3) on 31.03.2014.

5. Considering the facts and circumstances of the case as discussed above the income/loss is assessed and computed u/s 143(3) r.w.s. 254 of the I.T. Act, 1961 as under:

Total income returned before adjusting business loss as per order u/s 143(3) dated 31.03.2014	Rs.2,46,305
Add. Difference in closing stock between return of income and statement submitted to Bank	Rs.76,28,385
	Rs.78,74,690
Less: Business loss adjusted	Rs.78,74,690
Total income assessed u/s 143(3) r.w.s. 254 on 28.12.2018	NIL

COMPUTATION OF LOSS

Broad forward Business loss as per order under Sec. 147 r.w. Sec. 143(3) of the Income-tax Act, 1961 dated 30.03.2016 for A.Y. 2010-11	Rs.5,98,14,644/-
LESS: Loss adjusted in this order dated 28.12.2018	Rs.78,74,690/-
Balance loss to be carried forward	Rs.5,19,39,954/-

5. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Id. CIT(A). The assessee contended that the Assessing officer has erred in adding the difference in closing stock submitted to the bank and closing stock considered in the balance sheet as income for the year under consideration. The closing stock of ₹.9.99 crore submitted to the bank was arrived at on notional basis in order to avail necessary credit limits from bank. Considering the same, the Id.

CIT(A), by placing reliance on the decision of the Hon'ble Supreme Court in the case of VKJ Builders and Contractors Pvt. Ltd. v. CIT 318 ITR 204, held that closing stock taken by the Assessing Officer for the previous accounting year shall be the opening stock for coming accounting year. The relevant part of the impugned order is reproduced herein below for ready reference:

Facts on record and appellant's submission have been examined. It is seen that the appellant is consistently adopting two different valuations of closing stock, namely, first for the audited balance sheet and other for availing credit facilities in the bank for all the years starting from F.Y. 2008-09. This gives rise to the question as to which valuation is correct and which valuation is incorrect. In case, the value of closing stock is inflated before the bank then the banking system is compromised and in case the closing stock is deflated before the I.T. Authority than there is loss to the exchequer. This is a serious issue. The appellant has not submitted any document before the AO to explain that the difference in valuation of closing stock before bank was because of different rate/method adopted by bank authorities. Therefore, addition of Rs. 76,28,385/- being difference between closing stock declared in audited account/ROI and disclosed to bank for availing credit facilities is on sound footing. Now we come to the treatment of closing stock. Now, It is a fundamental principle of accounting that closing stock valuation of previous year becomes opening stock valuation of the coming accounting year. This principal is inviolable. If this principle is not followed, accounting will become difficult and resulting chaos cannot be managed. This principle has been reiterated by the Hon'ble Supreme Court in the case of VKJ builders and contractors Pvt. Ltd. V/s CIT 318ITR204. I do not agree with AO's opinion that this Judgment is distinguishable from the present case for the simple reason that the above Judgment was made in the context of KVSS-1998 and the case we are dealing with is u/s 69 of the Act. The core issue in VKJ Builders (supra) was valuation of closing stock. The issue is hand, here also, is closing stock. Therefore, respectfully following the Judgment of the Hon'ble Supreme Court in VKJ (Supra) it is held that closing stock taken by the AO for the

previous accounting year shall be the opening stock for coming accounting year. In sum, the appeal is Partly Allowed.

6. The Id. DR submits that the assessee has been constantly adopting two different closing stock methods i.e., one for audited balance sheet i.e., in the return of income and the other for availing credit facilities from bank for all the financial year relevant to the assessment years 2008-09 onwards. She submits that the difference in the value of stock was added as undisclosed investment under section 69 of the Act. She refers to AY 2009-10 and submits that the Id. CIT(A) confirmed the addition made therein rejecting the plea for treating the closing stock adopted for the year ending 31.03.2008 as opening stock of the subsequent year. The Tribunal held that it is fundamental principle of the accounting of closing stock of earlier year form part of opening stock in next accounting year. She vehemently argued that the Revenue raised substantial question of law challenging action of ITAT in holding the same before the Hon'ble High Court of Madras in T.C.A. No. 35 of 2015 and is pending for adjudication. Coming to the year under consideration, she challenged the action of the Id. CIT(A) in directing the Assessing Officer to adopt the closing stock as opening stock of following year by confirming the addition made by the Assessing Officer. She referred to Form 8A invoking the

provisions of section 158AB of the Act r.w. Rule 16 of the Income Tax Rules, 1962 and requested to block the present appeal for six months.

7. The Id. AR Ms. Sandhyaarathi, F.C.A., placing on record order of this Tribunal in assessee's own case for assessment year 2008-09 in ITA No. 2116/Chny/2018 dated 02.01.2020, argued that this Tribunal held that the income is to be assessed by the Revenue only on the basis of material which is required to be considered for the purpose of assessment, but, not ordinarily on the basis of statement, which the assessee may have given to a 3rd party unless there is any material to corroborate the statement of the assessee given to the 3rd party even if it be a bank. She argued that the Tribunal held the view of the Assessing Officer in making addition on account of difference between valuation of closing stock shown in the return of income and other being given to the bank for availing credit facilities.

8. Heard both the parties and perused the material available on record. We note that the Assessing Officer made addition on account of difference between the value of closing stock shown in the return of income and in the statement made to the bank. We find the Tribunal, in first round of litigation, directed the Assessing Officer to consider this issue afresh in terms of the order of this Tribunal in assessee's own case

for AY 2010-11. On perusal of para 2 of the assessment order, we note that the Id. AR, in the giving effect proceedings, requested the Assessing officer to keep the proceedings in abeyance as the appeal for AY 2008-09 pending before the ITAT, but, indeed, the Assessing Officer proceeded to make addition to save the limitation i.e., on or before 31.12.2018. No doubt, the Assessing Officer did not refer any order of ITAT for AY 2010-11 in the assessment order as it is reflecting at page 2 of the assessment order. Further, there is no doubt the Assessing Officer made addition in the event of consideration only on the basis of value of closing stock given to Bank, which is a 3rd party, but, not on the statement of closing stock shown in the return of income. We find the order of this Tribunal for AY 2008-09, wherein, by following the decision of the Hon'ble High Court of Madras in the case of CIT v. N. Swamy 241 ITR 363 (Mad), held that the assessee's income is to be assessed by the ITO on the basis of material, which is required to be considered for the purpose of assessment, but not on the basis of statement, which the assessee might have given to a 3rd party unless there is any material to corroborate the statement given to the 3rd party. The relevant part of the order of the Tribunal at para 4.1 of the order dated 02.01.2020 in assessee's own case for AY 2008-09 is reproduced herein below:

4.1 Before us, the ld. DR has relied on the decision in the case of *Coimbatore Spinning & Weaving Co. Ltd. v. CIT* and pleaded for reversing the appellate order. We have gone through the above case law as well as the decision relied on by the ld. Counsel in the case of *CIT v. N. Swamy (supra)*, in which the case law relied on before the Tribunal was also relied on before the Hon'ble Jurisdictional High Court and find that while applying the case law as relied on by the ld. DR as well as in the case of *Parimiseti Seetharamamma v. CIT 57 ITR 532 (SC)*, in the case of *CIT v. N. Swamy*, the Hon'ble Jurisdictional High Court has observed and held as under:

“4. We find it a little difficult to agree with those observations. The assessee's income is to be assessed by the Income-tax Officer on the basis of the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank. The mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee had undisclosed income is on the Revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income. That the burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income, are propositions which are well settled by the Supreme Court in the case of *Parimiseti Seetharamamma v. CIT [1965] 57 ITR 532* which reiterates these propositions.”

9. On perusal of the above and taking into consideration the facts and circumstances of the present case, we note that the assessee, undoubtedly shown a different value of closing stock to the bank stating to be for availing credit facilities. Admittedly the said value is different from the statement of value of closing stock as annexed to the balance sheet.

Neither the bank authorities nor the Assessing Officer made any effort to verify the actual stock to prove that there is existence of unaccounted stock. In common parlance, under open loan system, the parties tend to inflate figures of quantity of stock as well as rate merely to enjoy higher cash credit limits. In the above referred decision, the Hon'ble High Court held that the Assessing Officer shall consider the material, which is required to be considered for the purpose of assessment. The Assessing Officer shall not consider any statement that might have given to a 3rd party unless there is any material to corroborate the statement given to a 3rd party. Admittedly, nothing was brought on record by the Assessing Officer that any existence of corroborating value of closing stock given to the bank. We find the burden is on the Assessing Officer to show that the assessee has undisclosed income and the said burden cannot be said to be discharged by merely referring to the statement given by the assessee to the 3rd party, which is not directly related to the assessment, making the sole foundation for finding merely the assessee has deliberately suppressed income. We find the facts and circumstances are similar and identical to the facts before the Hon'ble High Court of Madras in the case of CIT v. N. Swamy and respectfully following the same, we hold the addition made by the Assessing Officer is not justified and the order of the Id. CIT(A) is justified in directing the Assessing officer to consider the

value of closing stock of current year as opening stock of subsequent assessment year. Therefore, the Assessing Officer shall consider the value of stock as annexed to balance sheet. Thus, the ground raised by the Revenue fails and are dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 09th October, 2024 at Chennai.

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 09.10.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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