

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI MANU KUMAR GIRI, HON'BLE JUDICIAL MEMBER
AND SHRI S.R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1320/Chny/2023

निर्धारण वर्ष / Assessment Year: 2014-15

C S Garments,
42, Karumarampalayam,
Mannari,
Tiruppur – 641 607.

[PAN: AACFC-0719-J]

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

Deputy Commissioner of Income
Tax,
Circle -1,
Tiruppur.

(प्रत्यर्थी/Respondent)

: Shri. T. Banusekar, Advocate
: Dr. Samuel Pitta, JCIT

सुनवाई की तारीख/Date of Hearing : 25.09.2024

घोषणा की तारीख/Date of Pronouncement : 16.10.2024

आदेश / ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2014-15, vide order dated 22.09.2023.

2. The assessee has raised the following grounds of appeal:

1. For that the order of Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.2,27,77,043/- as unexplained investment u/s.69 on account of purported suppression of closing stock.
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that there is no understatement of stock as on 31.03.2014.
5. For that the method of adopting the ratio of (raw material consumed) / (value of finished goods produced) used by the Assessing Officer to arrive at the amount of stock that would be available at the beginning of a month for the sales effected during the month is incorrect.
6. For that even if the ratio of (raw material consumed) / (value of finished goods produced) used by the Assessing Officer is correct the ratio would be 44.84% and not 50% as arrived by the Assessing Officer.
7. For that the manufacturing cycle of the appellant is about two weeks and therefore the most of the raw materials purchased in March 2014, were consumed in March,2014.
8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had raised invoices before the dispatch of goods in order to facilitate the clearing agent for preparation of shipping bills and loading goods in the containers.
9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that goods to the extent of Rs.38,77,136/- were invoiced in March 2014 but were actually dispatched only in April, 2014.
10. For that the Commissioner of Income Tax (Appeals) failed to appreciate that out of the sales of Rs.5,04,15,811/- made in April 2014, goods worth Rs.84,70,021/- alone were dispatched in May 2014 while the balance was dispatched in April, 2014.
11. For that the effective sales of Rs.4,19,45,490/- in April 2014 were made from the closing stock as on 31.03.2014 and the finished goods purchased and goods produced out of the purchases of Rs.4,02,56,911/- made in April 2014.

12.For that the appellant objects to the levy of interest u/s.2348 and 234C of the Income Tax Act."

3. The brief facts are that, the assessee is a firm engaged in the business of manufacturing and sale of hosiery garments. The return of income for the assessment year 2014-15 was filed on 25.11.2014 declaring total income of Rs.1,80,91,080/- and the case was selected for scrutiny under CASS. The Assessing Officer thereafter completed assessment u/s.143(3) of the Income Tax Act vide order dated 30.12.2016 wherein the Assessing Officer added a sum of Rs.2,27,77,043/- as unexplained investment u/s.69 on account of suppression of closing stock by holding as under:

"6. It is pertinent to mention here in assessee's case itself, the auditor had qualified the consumption of raw material to finished goods percentage in Form 3CD. According to the report, the percentage of Raw material consumed/value of finished goods produced comes to 51.28% in AY 2014-15 and 50.90% for AY 2013-14. Thus, an average of 50% of raw material should be the available as stock -in-hand and stock-in-progress to convert it as a finished good. In assessee's case export sale of around Rs.5 crores has made and there should be at least 50% of Raw material, has to be in stock-in-progress. Hence during the month of March itself, these 50% of Raw material should be in assessee's stock-in-progress and should have been reflected in closing stock on 31.03.2014.

Accordingly, I hereby reject the books of accounts of the assessee. Also, in view of the above discussion, 50% of the April 2014 turnover, Rs.5,04,15,881/- amounting to Rs.2,52,07,905/- worth of goods should be the stock in hand as on 31.03.2014. Hence, I hereby make an addition of Rs.2,27,77,043/-

(Rs.2,52,07,905/- minus Rs.24,30,862/- being the closing stock) as unexplained investment in stock u/s. 69 of the Income tax Act, the assessment is completed accordingly.

<i>Returned income</i>	<i>: Rs.1,80,91,080/-</i>
<i>Additions as discussed above</i>	<i>: Rs.2,27,77,043/-</i>
<i>Assessed income</i>	<i>: <u>Rs.4,08,68,123/-</u></i>

4. The Commissioner of Income Tax (Appeals) vide order u/s.250 dated 22.09.2023 upheld the addition made by the Assessing Officer by holding as under:

4.2 Ground No. 2 to 6 pertaining to the addition of Rs.2,27,77,043/- made by the A.O. u/s 69 of the Act, 1961 on account of suppression/unexplained investment of/in closing stock. During the course of assessment proceeding the Id.AO noticed that certain purchases were made in the fag end of the year and his findings on the facts are given at page no.2 of his order, the same is reproduced as under:

"During the course of scrutiny proceedings, it was brought to the assessee that purchases in the month of march 2014 comes to Rs.2,95,27,393/- However the closing stock as on 31.03.2014 is only Rs.24,30,862/-. Thus, there was a suppression of closing stock, as it is not possible reasonably to convert all the purchases in march to sales as the process of manufacturing is time consuming, where it has to pass through various stages."

4.2.1 This issue was confronted by the A.O. to the appellant and the A.O. made elaboration discussion after considering the reply of the appellant. The Ld. A.O. noticed unusual details of manufacturing, sales and purchases. The A.O. finally made addition on account of suppression on closing stock and unexplained investment u/s 69 of the Act, 1961. During the appellant proceedings, the appellant tried to explain the manufacturing process and relied upon the contention that invoices are prepared in advance before the dispatch of books. By this the appellant tries to justify those goods were manufactured after the raising of sales invoices. I find the contention given by the appellant as unrealistic and unusual. The bills/invoices are always prepared at the time of dispatch of goods. From this, it very much appear that the appellant as used unaccounted money to purchase the raw material in cash and this raw material was

used for manufacturing the goods which were exported. Whereas, such cash was not reflected in the books of accounts. Similarly, the cash investment in the raw material was also not recorded in the books of accounts. Hence, the addition made by the A.O. u/s 69 is confirmed. The appellant also gave argument that the A.O. has not considered his gross profit ratio by rejecting the books. It is pertinent to mention that the additions made u/s 69 of the Act is confirmed and the arguments of the appellant are not sustainable.

5. In the result, the appeal filed by the appellant is dismissed.”

The assessee has now filed an appeal before us, against the addition made on account of purported suppression of closing stock.

5. The Ld.AR of the assessee assailing the action of the lower authorities stated that the Assessing Officer while passing the assessment order had rejected the books of accounts of the assessee and went on to make an addition of Rs.2,27,77,043/- as unexplained investment u/s.69 on account of purported suppression of closing stock by adopting 50% of the turnover of the month April, 2014 as the closing stock that should have been reported by the assessee as on 31.03.2014 as against the closing stock of Rs.24,30,862/- reported by the assessee in its books of accounts. The Ld.AR further argued that the reasons stated by the Assessing Officer for making the

above stated addition are all based on the assumptions and surmises which are as under:

a) It is the view of the Assessing Officer that it is not possible to convert all the purchases made in March, 2014 to sales as the process of manufacturing is time consuming and that the entire process consists of various stages.

b) The Assessing Officer takes into consideration the purchase and sales data for the months of March, 2014 and April, 2014 and arrives at a conclusion that the purchases of yarn relating to March, 2014 cannot possibly result in a very marginal value of closing stock for the same month as compared to the figures of purchases and sales of April, 2014.

c) Based on the above comparison, the Assessing Officer is of the view that unless there is 50% of the raw material that is converted to finished goods, available as stock in hand, it is not possible for the assessee to make such a huge sale in the subsequent month. It is also stated that unless the closing stock of March, 2014 is carried over to April, 2014, the turnover of April, 2014 cannot be achieved by the assessee.

d) The Assessing Officer after making the above observations adopts the percentage of raw material consumes to the value of finished goods for the assessment years 2014-15 and 2015-16 and adopts the average of the two, resulting in 50%, which is thereon applied on the April, 2014 turnover to make the addition of Rs.2,27,77,043/- as unexplained investment u/s.69 on account of purported suppression of closing stock.

6. In this connection, the Ld.AR submitted that the addition of Rs.2,27,77,043/- as unexplained investment u/s.69 on account of purported suppression of closing stock is not warranted in the facts and circumstances of the case for the following reason:

- The Assessing Officer had no cogent reasons or material in hand to make the addition on account of purported suppression

of closing stock other than merely alleging that the assessee could not have converted the raw material purchase into finished goods in view of the fact that the garment manufacturing process is a complex and cumbersome process. By stating so, the Assessing Officer has only tried to substitute his views on how the assessee could have actually carried on and run his business and has not relied on any material information to arrive at a conclusion that the assessee has indeed suppressed its closing stock for the year under consideration.

7. In this connection, attention is drawn to the decision of the Hon'ble Delhi High Court in **CIT v Dalmia Cement (Bharat) Ltd. [2002] 252 ITR 377 (Del)** wherein it has observed that

"Once it was established that there was a nexus between the expenditure and the purpose of the business, the Revenue cannot justifiably claim to put itself in the armchair of a businessman or in the position of board of directors and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of the case.... It needs no reiteration that the settled position in law is that no businessman can be compelled to maximize his profits".

It may be noted that the above decision was affirmed by the Hon'ble Supreme Court in the case of **S.A.Builders Ltd. v CIT(A) [2007] 288 ITR 1 (SC)** wherein it was held as under:

"34. We agree with the view taken by the Delhi High Court in CIT v. Dalmia Cement (Bharat) Ltd. [2002] 254 /TR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

8. In the light of the above decisions, the Ld.AR submitted that the contention of the Assessing Officer solely on the allegation that the assessee could not have converted the raw material purchase into finished goods in view of the fact that the garment manufacturing process is a complex and cumbersome process would have no legs to stand since such an allegation is only based on mere assumption and not backed by any cogent material indicating the correctness of such view taken by the Assessing Officer.

9. The Ld.AR further argued that the Assessing Officer has blown hot and cold, as on the one hand he rejects the books of accounts of the assessee and on the other, while computing the

assessed income goes on to adopt the income returned by the assessee which emanates from the books of accounts of the assessee as the starting point of computation and also considers the turnover of April, 2014 as the basis to determine the understatement of closing stock made by the assessee as on 31.03.2014. In this regard, it may be noted that if the Assessing Officer decided to reject the books of account of the assessee, then the assessment of income thereon ought to be done on an estimate basis backed with sufficient material as basis and not by taking the very same books of accounts that was rejected as the basis for computing the assessed income of the assessee.

10. On considering the above, the Id.AR stated that the contention of the Assessing Officer that the garment manufacturing process takes 30-45 days is purely on account of assumptions and not considering the specific nature of business of the assessee. Thus, the addition made on such presumption that the closing stock of the assessee is purportedly understated is grossly incorrect as such addition is not made on any cogent material in hand.

11. Further, the Id.AR vehemently argued that the Assessing Officer failed to appreciate that the assessee had invoiced and accounted for the sales during the year end, i.e., March, 2014 and that the finished goods are actually dispatched in the first week of April, 2014. This is a common practice where the invoices are prepared in advance before the actual date of movement in order to facilitate the clearing agent to prepare the shipping bills for shipping of goods. It may also be noted that the assessee would have specified sales targets that needs to be met and thus the booking of sales is done earlier than the actual dispatch of finished goods.

12. Therefore, primarily on account of the above stated reasons, the Id.AR stated that there is no understatement of closing stock that is resorted to by the assessee during the year under consideration. Further, the Id.AR reiterated that since the Assessing Officer did not have any basis or cogent material to arrive at such conclusion, the addition made in the instant case based on mere allegation is not warranted and has no legs to stand.

13. Per contra, the Ld.DR for the revenue relied on the orders of the lower authorities and argued that the assessee's closing stock as on 31.03.2014 was only Rs.24,30,862/- and has made sale of Rs.5,04,15,811/- during the month of April 2014, which is not in correlation with the consumption percentage of materials i.e. 51.28% shown by the assessee in the A.Y. 2014-15 and hence prayed for dismissing the appeal of the assessee.

14. We have heard rival contentions, perused the material available on record and gone through the orders of lower authorities. It is admitted fact that the assessee is in the business of manufacturing and sale of Hosiery Garments, filed the return of income along with audited financials and tax audit report. In the scrutiny assessment U/s.143(3) of the Act, the AO has made an addition of Rs.2,27,77,043/- as unexplained investment u/s.69 on account of suppression of closing stock, which was confirmed by the Ld.CIT(A). We note that the as per the assessment order, the Assessing Officer did not have any cogent reasons or material in hand to make the addition on account of purported suppression of closing stock other than merely alleging that the assessee could not have converted the

raw material purchase into finished goods in view of the fact that the garment manufacturing process is a complex and cumbersome process. In light of the above, we are in agreement with the assessee's reliance to the decision of the Hon'ble Delhi High Court in ***CIT v Dalmia Cement (Bharat) Ltd. [2002] 252 ITR 377 (Del)*** (*supra*) and the same was affirmed by the Hon'ble Supreme Court in the case of ***S.A.Builders Ltd. v CIT(A) [2007] 288 ITR 1 (SC)*** (*supra*).

Therefore, the assumption of the AO, that the assessee could not have converted the raw material purchase into finished goods in view of the fact that the garment manufacturing process is a complex and cumbersome process, which is merely based on assumption and not backed by any cogent material would devoid of merits.

15. Further, as argued by the Ld.AR, the Assessing Officer has indeed blown hot and cold, as on the one hand he rejects the books of accounts of the assessee and on the other, while computing the assessed income goes on to adopt the income returned by the assessee which emanates from the books of accounts of the assessee as the starting point of computation and also considers the turnover of April, 2014 as the basis to

determine the understatement of closing stock made by the assessee as on 31.03.2014.

16. The action of the Assessing Officer to reject the books of account of the assessee and then making an addition based on an estimate without any sufficient material and by taking the very same books of accounts that was rejected as the basis for computing the assessed income, to the returned income of the assessee in the computation is erroneous and cannot be countenanced. The assessee's submission of monthwise purchase details for March 2014 and April 2014 has not been considered by the AO and rejected the books of accounts only on his own opinion of 30-45 days of processing period without analysing the entire year's consumption details and stock held on month to month basis. We also note that the Assessing Officer has failed to appreciate that the assessee had invoiced and accounted for the sales during the year end, i.e., March, 2014 and that the finished goods are actually dispatched in the first week of April, 2014, which is a common practice where the invoices are prepared in advance before the actual date of movement in order to facilitate the clearing agent to prepare the shipping bills for shipping of goods. Therefore, we do not

countenance the action of AO and that of the Ld.CIT(A) in confirming the same in the impugned order. Therefore, in the present facts and circumstances of the case and relying on the decisions of the Hon'ble courts (supra) we are inclined to delete the impugned addition and direct the AO to recompute the income accordingly. Thus, we allow the grounds of appeal of the assessee.

17. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 16th October, 2024 at Chennai.

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस.आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 16th October, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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