

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 1734/Del/2022
(Assessment Year: 2016-17)**

Punihani International, W-143, Greater Kailash-2, New Delhi (Appellant)	Vs. DCIT, Special Range-10, New Delhi (Respondent)
PAN: AAAFP6858K	

Assessee by :	Shri R. S. Singhavi, CA Shri Rajat Garg, CA Shri Satyajeet Goel, CA
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Revenue by:	Ms. Banita Devi Naorem, CIT DR
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Date of Hearing	03/10/2024
Date of pronouncement	10/10/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1734/Del/2022 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10/10146/2018-19 dated 31.05.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.12.2018 by the Assessing Officer, DCIT, Special-10, Delhi (hereinafter referred to as 'Id. AO').
2. Though the assessee had raised several grounds, the effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made by the Id. AO in the sum of Rs

2,50,00,000/- u/s 69B of the Act towards unexplained stock in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is into the business of manufacture of leather items apart from being owner of Hotel 'Park Premier' which is being run by a third party. During the year under consideration, the assessee had shown only business income. The return of income for the Asst Year 2016-17 was filed by the assessee firm on 12.10.2016 declaring total income of Rs 7,99,31,590/-. A survey u/s 133A of the Act was conducted in the assessee's business premises on 17.12.2015 wherein assessee had declared additional income of Rs 2.50 crores over and above the regular income on account of excess stock found during the survey. During the course of survey, physical stock was taken by the survey team which was valued at Rs 6,08,33,269/- and this was compared with the book stock of Rs 3,58,33,269/- thereby leading to a difference of Rs 2,50,00,000/- towards excess physical stock. Statement of Shri Tarlok Punihani, Partner of the firm was recorded during the survey wherein the excess stock of Rs 2,50,00,000/- was agreed to be offered as additional income. But while filing the return of income, this was not offered by the assessee. The Id AO accordingly made an addition of Rs 2,50,00,000/- towards excess stock u/s 69B of the Act while completing the assessment.

4. It was pleaded before the Id. CIT(A) that assessee vide letter dated 19.09.2019 had requested the Id AO to provide the survey report along with the stock statement prepared during the course of survey but the same was not provided to the assessee. The assessee had only asked for workings for arriving at the physical stock by the survey team on the date of survey. It was also pointed out that it is humanly

impossible to measure 4685249.16 Sq. Dcm . 225067.35 mtrs and 15079.24 mtrs in one day besides counting and weighing various other items. Accordingly, the assessee disputed the physical stock figure arrived by the survey team per se. For this purpose only, the assessee sought for the workings of the stock report prepared by the survey team, which was never given to the assessee. The Id CIT(A) also did not heed to these contentions of the assessee and proceeded to uphold the action of the Id AO.

5. We find that the request of the assessee several times before the lower authorities seeking for the workings of the stock valuation report had not been considered by the lower authorities. Merely because the partner of the assessee firm had affixed his signature in the final computation prepared by the survey team does not make the addition foolproof. It is the bounden duty of the lower authorities to provide the basis of arriving at the physical stock figure of Rs 6,08,33,269.46 as against the book stock of Rs 3,58,33,269.46. In the instant case, strangely the difference of Rs 2,50,00,000/- tallies even to the nearest paisa which is absolutely impossible. Hence the case of the Id AR that survey team could have extracted the statement of the assessee cannot be ruled out. Hence all the more it would be required for the revenue to furnish the complete workings of the physical stock arrived in the sum of Rs 6,08,33,269.46 by the survey team to the assessee for its rebuttal. In case the said workings are not available with the revenue and hence could not be given to the assessee, then it could be safely concluded that the addition of Rs 2.50 crores had been merely made based on survey statement, which does not carry any evidentiary value. Reliance in this regard is placed on the decision of Hon'ble Madras High Court in the case of S.Khader Khan reported in 300 ITR 157 (Mad), wherein it was held that :-

“An admission is an extremely important piece of evidence , but it cannot be said that it is conclusive and it is open to the person , who made it, to show it has incorrectly been made and the person, making the statement should be given proper opportunity to show that it does not show the correct state of facts.”

6. The materials found in the course of survey could not be the basis for making any addition in the assessment. The word “may” used in section 133A(3)(iii) makes it clear that the material collected and statement recorded during the survey u/s 133A of the Act are not conclusive piece of evidences by itself. The aforesaid decision was affirmed by the Hon’ble Supreme Court in the case of CIT vs S.Khader Khan reported in 210 taxman 248 (SC) in Civil Appeal No. 13224 of 2008 & 6747 of 2012 dated 20.9.2012, wherein their Lordships of Supreme Court held as under:-

“Heard Counsel on both the sides.

Leave granted.

The civil appeal filed by the department pertains to Assessment Year 2001-02.

In view of the concurrent findings of fact, this civil appeal is dismissed. ”

7. In view of the aforesaid observations, we deem it fit and appropriate to restore the entire appeal to the file of Id. AO with a direction to give the workings for arriving at the physical stock of Rs 6,08,33,269.46 on the date of survey. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is at liberty to furnish the reconciliation statement, if any, on receipt of the workings from the Id AO and the Id AO has to consider the same on merits while deciding the issue. If the said workings are not available and not produced to the assessee, then no addition towards excess stock could be made in the hands of the assessee. With these directions, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10/10/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/10/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi