

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No. 308/Ind/2024
Assessment Year:2017-18

ACIT-4(1) Indore	<u>बनाम/</u> Vs.	Khandwa Industries Private Ltd., G-2 Amans Corner, 301 Goyal Vihar, Indore
(Revenue/Appellant)		(Assessee/Respondent)
PAN: AADCK4103G		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Soumya Bumb, AR	
Date of Hearing	18.06.2025	
Date of Pronouncement	20.06.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 09.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-12, Mumbai ["CIT(A)"] which in turn arises out of assessment-order dated 20.12.2019 passed by learned DCIT/ACIT, Khandwa ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the revenue has filed this appeal on following grounds:

"1. Whether on the facts and in the circumstances of the case Ld. CIT(A) was justified to ignore the merits of the case and the fact that the suppression of sale from books of accounts in this case.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by A.O, The AO treated addition amounting to Rs. 1,98,39,118/- [correct amount is Rs. 1,96,59,655/-] towards suppression of sale from books of accounts."

2. The background facts leading to present appeal are such that the assessee is a private limited company engaged in the business of cotton ginning & pressing and trading cotton bales and allied products. For AY 2017-18 under consideration, the assessee filed return declaring loss of Rs. 3,85,39,235/-. The case of assessee was selected for scrutiny and the statutory notices u/s 143(2)/142(1) were issued which were duly complied. Ultimately, the AO passed assessment-order after making two additions/disallowances, namely (i) addition of Rs. 1,96,59,655/- on account of suppressed sales and (ii) disallowance of Rs. 41,39,084/- u/s 40A(2). Accordingly, the AO assessed loss of assessee at a reduced figure of Rs. 1,47,40,496/-. Aggrieved, the assessee carried matter in first-appeal before CIT(A).

2.1 During first-appeal, the CIT(A) granted part relief by deleting the addition of Rs. 1,96,59,655/- on account of suppressed sales but upholding the disallowance of Rs. 41,39,084/- u/s 40A(2).

2.2 Now, the revenue is aggrieved by the action of CIT(A) deleting the addition of Rs. 1,96,59,655/- on account of suppressed sales and has come in this appeal before tribunal.

3. Initially, Ld. AR for assessee/respondent raised a preliminary objection that the present appeal filed by revenue/appellant involves a dispute of Rs. 1,96,59,655/- on which tax liability @ 30% comes to Rs. 58,97,897/- only which is below the monetary limit of Rs. 60,00,000/- prescribed by CBDT Circular No. 9/2024 dated 17.09.2024 for appeals by revenue. Hence, this appeal by revenue is not maintainable and must be dismissed. Replying to this, Ld. DR for revenue/appellant filed AO's report dated 22.05.2025. Ld. DR referred Para No. 4 of report in which the AO has computed tax effect at Rs. 65,00,073/- [consisting of basic tax @ 30% at Rs. 58,97,897 + Surcharge @ 7% at Rs. 4,12,853 + Education Cess @ 4% at Rs. 1,89,323]. Ld. DR further submitted that as per Para No. 5.1 of CBDT Circular No. 5/2024 dated 15.03.2024 read with Circular No. 9/2024 dated 17.09.2024, the 'tax effect' shall include applicable surcharge and cess also. Therefore, the 'tax effect' in present case is Rs. 65,00,073/- as reported by AO and hence the present appeal is maintainable. After deliberations, Ld. AR agreed and dropped his objection. Accordingly, this appeal is treated as maintainable and hearing on merit is proceeded.

4. At first, we re-produce the relevant portion of assessment-order passed by AO making the impugned addition:

"(1) Suppressions of sales:- Perusal of the P&L a/c appended in the ITR-6 shows that opening stock of finish goods was shown at Rs. 8,28,23,898/- and opening work in progress was shown at Rs. 28,74,135/- totaling Rs. 8,56,98,033/- whereas sell of products/goods has been shown only at Rs. 1,79,463/- but closing stock of finish goods has been shown at Rs. 6,36,42,615/- and closing work in progress has been shown at Rs. 22,16,300/- totaling Rs. 6,58,58,915/-, purchases have been shown at NIL

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Therefore sales during the year should have been at Rs. 1,98,39,118/- (8,56,98,033/- (-) 6,58,58,915/-) where as sales have been shown only at Rs. 1,79,463/-; therefore assessee was specifically asked to explain why this difference of Rs. 1,96,59,655/- (1,98,39,118/- (-) 1,79,463/-) should not be treated as out of books & sale and why the same should not be added to your total income and assessee was asked to submit his explanation on or before 06.12.2019 the assessee explained as under-

"In point no 1, your goodself sought clarification regarding the stock valuation, please find the same as follows:-

Name	Opening Stock			Closing Stock		
	Quantity	Rate	Value	Quantity	Rate	Value
Cotton Bales	4912.91	12232	60095598	4912.91	9842	48352860
Cotton seed	10193.17	2200	22424974	10193.17	1500	15289755
Cotton seed cake	155.70	1650	256905	155.70	1500	233550
Cotton seed oil	396.55	6600	2617230	396.55	5000	1982750
			85394807			65858915

With reference to the above said table, it is clear that the company had not sold any quantity in the open market, further as the company had taken the cash credit limit of the said stock, the bank limit converted into NPA and the bank and the assessee company had revalued the valuation of the stock and the valuation of the stock had been made on the **"Cost or Market price whichever is less"**.

The valuation had been made on the market rate of the cotton bales and other by-products stock. The confirmation of market rate is also attaching herewith for your kind perusal."

The contentions of the assessee are not acceptable at all because/in the audit report auditors have not mentioned about revaluation stock and the assessee has made reduction in value of opening stock and the difference in the value is very much high for which assessee has not produced any concrete evidences regarding reduction in market value of opening stock. Therefore, the amount of Rs. 1,96,59,655/- is treated as sales out of books and the same is added to the total income of the assessee. Penalty proceedings u/s 270A are hereby initiated for under reporting of income in consequence of misreporting thereof.

(Addition Rs. 1,96,59,655/-)"

5. Now, we also extract the order passed by CIT(A) deleting the addition made by AO:

"During the appellate proceedings the submissions made by the appellant dated 07.02.2024 were perused carefully.

*In his submission the appellant has mentioned that the **Statutory Auditors had reported about the valuation of inventory** in the auditor's report point no. 2 of Annexure A to the Independent Auditors report. In order to verify the authenticity of the claim of the appellant the Annexure A to independent auditors report was examined.*

Point no. 2 reads as under:

*According to the information and explanations given to us and the record produce to us for our verification, inventories have been physically verified during the year by the management and in our opinion the frequency of verification is reasonable. **No material discrepancies were noticed on physical verification of the inventories between the physical stock and book records. However, on the basis of representation and explanation given by the management that the Stock held by the company had degrade by its quality and standards therefore valuation had been made on the realizable market rate.***

As the auditor's report was before the AO along with reply dated 14.12.2019 the same could have missed the attention of the AO. The appellant has further submitted that the appellant company had not sold a single quantity in the open market. Further the appellant company had taken the working capital facility by way of cash credit from Central Bank of India and warehouse limit facility from Punjab National Bank, on the entire stock of the appellant company and after turning the account into Non Performing Assets (NPA), lender bank had taken the possession of stock.

Further, the notice of recovery from Central Bank of India 31.01.2017 has been kept on record.

Moreover, the Statutory Auditors had mentioned about the financial position of the appellant in point no. 8 of Annexure A

Point no. 8 of Annexure A reads as under.

*Based on our audit procedures and on the information and explanations given by the management, **we are of the opinion that, the financial position of the company is not healthy and good and the facility taken from the bank/financial institution has been converted into stress assets (NPA) and the bank /financial institution has initiated recovery action.***

The above has been perused carefully and in light of the revaluation stock being reported in the Auditor's report the contention of the AO does not hold good any longer. The two pillars on which the AO rested the issue of suppression of stock has been found to be already pointed out to the AO at the time of assessment proceedings.

Therefore, in view of this ground no. 1.1 to 1.4 are allowed."

6. We have heard learned Representatives of both sides and case record perused. While Ld. DR for revenue supported the assessment-order passed by AO, the Ld. AR for assessee supported the order of first-appeal passed by CIT(A). The dispute in this case relates to the addition of Rs. 1,96,59,655/- made by AO. While making this addition, the AO has compared the values of opening stock and closing stock shown by assessee which were Rs. 8,56,98,033/- and Rs. 6,58,58,915/- respectively. Accordingly, the AO has computed difference of these two figures at Rs. 1,98,39,118/- and finding that the assessee has declared sales of Rs. 1,79,463/-, made addition of differential of Rs. 1,96,59,655/-. The AO show-caused assessee to explain the lower level of closing stock as compared to opening stock and in reply, the assessee made a submission giving quantitative details of various items of opening stock and closing stock as well as valuations thereof. The data supplied by assessee is re-produced in AO's order according to which the same stock was substantially held by assessee from opening to closing. It was a submission of assessee that it had taken a cash credit limit from bank and the bank has converted it's a/c into NPA. It was further submitted that the bank and assessee-company have revalued closing stock at cost or market price whichever is less. The confirmation of market rate was also submitted. These submissions of assessee are clearly mentioned by AO in

assessment-order and the AO has not rebutted the veracity of these submissions in assessment-order. The AO has, however, made an observation that the auditors have not mentioned about revaluation of stock and the difference in value of opening stock vis-à-vis closing stock was much higher and on this basis, the AO has made impugned addition. However, on perusal of impugned order of first-appeal, we find that the CIT(A) has extracted the relevant paras of auditors' report wherein the auditors have made a clear-cut reporting that the stocks held by company had degraded by quality and standard and therefore valuation had been done on the realizable value. The auditors have further reported that the financial position of assessee-company was not healthy and the facility taken from bank had been converted into NPA and the bank had started recovery action. The assessee has also informed to the CIT(A) that its stock had been taken by bank into possession and the bank has given notice of recovery. Ld. AR submitted during hearing that the since the stock was old and quality had been deteriorating, the realizable value had come down. Thus, the objection raised by AO that the auditors have not reported about revaluation of stock, is overruled/reversed by CIT(A) who found that the auditors have made vehement reportings in their report. Apart from that, for the sake of discussion, we may also mention that the value of closing stock of current year becomes value of opening stock of next (subsequent) year and even if the valuation of closing stock can be said to have been lowered down in current year, the assessee would be able to claim such lower value

as deduction of opening stock in next year. Further, the assessee company has only accumulated loss of Rs. 3,85,39,235/- for carry forward and it is not a case of revenue that by lowering down the value of closing stock, the assessee was able to reduce its positive income of current year and reduce tax liability as a consequence. Therefore, from that angle also, there is no loss to revenue or gain to assessee. Thus, considering the entire conspectus of matter, we find that the order passed by CIT(A) deleting the addition made by AO does not require any interference from us, the same is upheld and the present appeal of revenue is dismissed being devoid of any merit.

7. Resultantly, this appeal of revenue is dismissed.

Order pronounced in open court on 20/06/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 20/06/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore