

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1329/KOL/ 2011
Assessment Year : 2006-2007**

M/s. Fantasy Creations,.....Appellant
86, Deshbandhu Road,
Kolkata-700 032
[PAN : AAAFF 6588 Q]

-Vs.-

Income Tax Officer,.....Respondent
Ward-52(1), Kolkata,
Aayakar Bhawan (Dakshin),
Gariahat Road (South),
Kolkata

&

**I.T.A. No. 1463/KOL/ 2011
Assessment Year : 2006-2007**

Income Tax Officer,.....Appellant
Ward-52(1), Kolkata,
Aayakar Bhawan (Dakshin),
Gariahat Road (South),
Kolkata

-Vs.-

M/s. Fantasy Creations,.....Respondent
86, Deshbandhu Road,
Kolkata-700 032
[PAN : AAAFF 6588 Q]

Appearances by:

Shri Subash Agarwal, Advocate, for the assessee
Shri Tanuj Niogi, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : November 18, 2015

Date of pronouncing the order : November 27, 2015

O R D E R

Per Shri P.M. Jagtap:-

These two appeals, one filed by the assessee being ITA No. 1329/KOL/2011 and the other filed by the Revenue being ITA No. 1463/KOL/2011, are cross appeals, which are directed against the order

of Id. Commissioner of Income Tax (Appeals)-XXXIII, Kolkata dated 12.08.2011 for the assessment year 2006-07.

2. First we take up the appeal of the assessee, which involves a solitary issue relating to the addition of Rs.19,88,702/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of excess stock allegedly found during the course of survey.

3. The assessee in the present case is a partnership firm, which is engaged in the business of manufacturing and trading of toys. A survey under section 133A was carried out at the business premises of the assessee on 20.12.2005. Subsequent to the survey, the return of income for the year under consideration was filed by the assessee on 27.10.2006 declaring total income of Rs.9,73,110/-. During the course of survey, inventory of stock was prepared on physical verification and the value of the same as worked out by the survey team was found to be Rs.72,48,587/-. During the course of assessment proceedings, the assessee was required by the Assessing Officer to prepare and furnish the manufacturing and trading account for the pre-survey period and post-survey period separately. As per such separate account furnished by the assessee, the closing stock as per the books of account of the assessee as on the date of survey, i.e. 20.12.2005 was shown at Rs.41,08,389/- as against the stock as valued on the date of survey at Rs.72,48,587/-. As regards this difference, it was explained by the assessee that the valuation of stock during the course of survey was done by the survey team on the basis of dealers price and, therefore, the dealers margin as well as assessee's gross profit was required to be deducted from the value of stock arrived at by the survey team to work out the cost of stock found during the course of survey. It was claimed that the closing stock of Rs.41,08,389/- as shown in the books of account of the assessee on the date of survey was at such cost and there was no difference in the value of stock as found during the course of survey. This explanation of the assessee was not found acceptable by the Assessing Officer. According to

him, the stock as found during the course of survey was mainly represented the goods dealt in by the assessee and it was possible to work out the exact cost of such stock by taking the purchase value as per bills and allocating relevant direct expenses thereto. He held that the method adopted by the assessee by reducing the dealers' margin as well as its own gross profit from the dealers' price to work out the cost was not correct. He, therefore, rejected the book results shown by the assessee and proceeded to determine the value of stock found during the course of survey on the basis of other material found during the course of survey. In this regard, he noted that the actual stock as on 31.03.2006 was Rs.79,60,532/-, out of which the stock to the extent of Rs.35,25,597/- was related to the immediately preceding year, i.e. financial year 2004-05. He held that since the closing stock of Rs.24,46,233/- shown by the assessee in the return was exclusive of difference in the opening stock of Rs.35,25,597/-, there was understatement of closing stock of Rs.19,88,702/- prepared by the assessee and accordingly, the said amount was added by him to the total income of the assessee.

4. The addition made by the Assessing Officer on account of the alleged understatement of closing stock was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made on behalf of the assessee as well as the relevant material available on record, the Id. CIT(Appeals) confirmed the said addition for the following reasons given in paragraph no. 4 of his impugned order:-

"4. Ground No.4 relates to specific addition made on account of understatement of stock. The facts as well as appellant's submission in this behalf have already been discussed above. The appellant has harped upon factors like dealer's margin, merchant margin, appellant's profit rate etc. to dispute the addition made by the assessing officer. However the fact remains that assessing officer has re-casted the Manufacturing and Trading Account for the period of 18-12-2005 to 31-03-2005 on the basis of data contained in appellant's own computer from which print out were taken at the time of survey. All the annexures including FC-8 relied upon by the assessing officer are nothing but reflection of appellant's own data. This fact has not

been disputed by the appellant. Therefore figure adopted by the assessing officer are for value of stock based on appellant own data. It is a reasonable presumption that when during the course of survey action any data in, books of account, (including computerized books of account.) documents etc are found the same are presumed to be correct. An analogy could be drawn from section 132(4A) which clearly specifies such presumption in respect of search action. It is true that such a presumption is rebuttable. However, in the appellant case it has not been able to successfully rebut the presumption regarding correctness of data found at the time of survey, either during the assessment or the appellate proceedings. Since the working done by the assessing officer is based on appellant's own valuation data, various disputes regarding method of valuation raised by the appellant are irrelevant. So far as the recasted trading account prepared by the assessing officer is concerned, the AIR could not point out any specific defect in the same. In fact the assessing officer has already made all reasonable allowances such as adjustment for discrepancy in opening stock which arriving at the net addition. Considering these facts, I am in agreement with the assessing officer and addition of Rs.19,78,702/- is confirmed".

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the Id. Counsel for the assessee, the addition on account of understatement or excess of stock, as allegedly found during the course of survey, is required to be done by comparing the stock as found during the course of survey on physical verification and the stock as declared by the assessee in its books of account as on the date of survey. It appears that the Assessing Officer, however, proceeded on all together different basis, which cannot be accepted not being well founded. The method adopted by him to work out the alleged understatement of stock by the assessee by comparing the opening stock as well as the closing stock differences, in our opinion, is neither cogent nor convincing and the Id. CIT(Appeals) is not justified to confirm the addition made by the Assessing Officer on this issue by following the said method. In our opinion, the excess stock, if any, found during the course of survey has to be determined by comparing the stock as found during the course of survey on physical verification and as shown by the assessee in the books of account. In the present case, the stock as on the date of survey was valued by the survey

team at Rs.72,48,587/- on the basis of inventory prepared on physical verification, while the same as shown by the assessee in the books of account as on the date of survey was Rs.41,08,389/- showing the difference of Rs.31,40,198/-. In this regard, the explanation offered on behalf of the assessee before the authorities below as well as before us is that the stock at the time of survey was valued by the survey team at dealers' price and the difference in the value of stock is on account of dealers' margin as well as assessee's own gross profit, which was included in the value of stock determined by the survey team, whereas the same was excluded by the assessee to arrive at cost. It appears that this explanation offered by the assessee, however, has not been verified either by the Assessing Officer or by the Id. CIT(Appeals). It is also observed that the Assessing Officer has not even made any attempt to work out the actual cost of stock found during the course of survey on physical verification by referring to the relevant purchase bills as well as the direct expenses allocable thereto. We, therefore, consider it fair and proper to set aside the impugned order of the Id. CIT(Appeals) and restore the matter to the file of the Assessing Officer for deciding the same afresh after doing such exercises.

6. In its cross appeal filed in this case, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition of Rs.16,39,135/- made by the Assessing Officer by accepting the altered cash book prepared by the assessee subsequent to search under section 133A.

7. During the course of survey, cash amounting to Rs.25,000/- was found from the business premises of the assessee. As per the computerized cash book written upto 17.12.2005 and found during the course of survey, the cash balance was Rs.12,46,447/-. During the course of assessment proceedings, a cash book written upto 31.03.2006 was produced by the assessee, which was found to be different by the Assessing Officer from the cash book found during the course of survey. On verification of the new cash book vis-a-vis the cash book impounded

during the course of survey, it was noticed by the Assessing Officer that not only extra entries were made in the new cash book, but even the number of entries made in the impounded cash book were either deleted or modified. He also observed that the assessee has debited in the new cash book on the dates when the impounded cash book was showing debit balances and credited new cash entries on the dates, when the impounded cash book was showing huge debit balance. The explanation offered by the assessee in this regard that small transactions had remained un-entered in the cash book for the period from 01.04.2005 to 17.12.2005, was not found acceptable by the Assessing Officer on the ground that no businessman, according to him, would leave the new cash book in a defective state for a period of 9 months. He, therefore, held that the new cash book produced by the assessee was not reliable one and treating the excess cash balance of Rs.11,57,740/- as appearing in the cash book found during the course of survey as undisclosed income of the assessee, the said amount was added by him to the total income of the assessee. The Assessing Officer also noted that during certain specific period, the assessee as per the cash book found during the course of survey had disbursed excess cash of Rs.4,81,421/- resulting into credit balance. Accordingly, the said amount was treated by the Assessing Officer as unexplained expenditure incurred by the assessee and addition on this count was made by him to the total income of the assessee under section 69C. Thus the total addition of Rs.16,39,135/- was made by the Assessing Officer to the total income of the assessee on the basis of cash book found during the course of survey.

8. The addition of Rs.16,39,135/- made by the Assessing Officer on the basis of cash book found during the course of survey was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the said addition for the following reasons given in paragraph no. 7 of his impugned order:-

"7. I have carefully considered the submission and the comments of the assessing officer. It is common knowledge that in a large number of cases, cash books as well as other books of accounts are not written on a contemporary basis. The books of account found at the time of survey are often incomplete. Therefore the appellant's submission that the impounded cash book was not complete and many entries were not recorded or wrongly recorded cannot be summarily dismissed. In such cases that the entries recorded after date of survey should be carefully scrutinized after calling for the supporting evidences. If on such scrutiny, certain entries are found to be not satisfactorily explained, then the assessing officer would be perfectly justified to treat the same as manipulation of accounts. However merely because certain entries have been made or corrected after date of survey does not mean that all such entries are malafides on manipulations. Since during the scrutiny proceedings as well as remand proceedings the assessing officer has not been able to find any specific case of manipulation in the final cash book, the final cash book cannot be rejected altogether, more so when they are duly audited. Considering these facts the addition of Rs.16,39,135/- made on the basis of impounded cash book cannot be sustained. The same is accordingly deleted".

9. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the new cash book prepared after the survey and produced during the course of assessment proceedings for verification of the Assessing Officer was not found to be a reliable one by the Assessing Officer. The Id. CIT(Appeals), however, accepted the same and deleted the addition of Rs.16,39,135/- made by the Assessing Officer by relying on the same observing that the Assessing Officer had not been able to be point out any specific case of manipulation in the said cash book. As pointed out by the Id. D.R. at the time of hearing before us from the relevant portion of the assessment order, specific defects were pointed out by the Assessing Officer in the new cash book prepared and furnished by the assessee for verification and on the basis of such defects, the said cash book was not accepted by the Assessing Officer holding the same to be unreliable. It is thus clear that the relief given by the Id. CIT(Appeals) to the assessee on this issue is not well founded, inasmuch as the Assessing Officer on scrutiny having found various alterations, modifications and addition made in the new cash book, which remained to be satisfactorily explained, had rejected the

new cash book and this vital aspect appears to have been overlooked by the Id. CIT(Appeals) while giving relief to the assessee on this issue.

10. After having held that the new cash book prepared and furnished by the assessee was not reliable as found by the Assessing Officer on the basis of material and specific defects pointed out therein, we, however, find that the addition of Rs.11,57,714/- made by the Assessing Officer on account of excess cash balance shown in the cash book as compared to the balance appearing in the cash book found during the course of survey, is not sustainable because we are unable to comprehend how such excess balance in the cash book could be treated as undisclosed income of the assessee as held by the Assessing Officer, and even the Assessing Officer has not given any basis whatsoever for giving such treatment. As regards the negative balance appearing in the cash book of the assessee as found during the course of survey amounting to Rs.4,81,421/-, the same, in our opinion, represents shortage of cash on particular dates and, therefore, the corresponding expenditure claimed to be incurred by the assessee and recorded in the cash book has to be treated as unexplained as rightly held by the Assessing Officer. As such, considering all the facts of the case, we modify the impugned order of the Id. CIT(Appeals) and sustain the addition of Rs.16,39,135/- made by the Assessing Officer on this issue to the extent of Rs.4,81,421/-. The appeal of the Revenue thus is partly allowed.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes, while the appeal of the Revenue is partly allowed.

Order pronounced in the open Court on November 27, 2015.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 27th day of November, 2015

- Copies to :
- (1) **M/s. Fantasy Creations,
86, Deshbandhu Road,
Kolkata-700 032**
 - (2) **Income Tax Officer,
Ward-52(1), Kolkata,
Aayakar Bhawan (Dakshin),
Gariahat Road (South),
Kolkata**
 - (3) *Commissioner of Income-tax (Appeals)-XXXIII, Kolkata*
 - (4) *Commissioner of Income Tax, Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.