

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER
I.T.A. No. 4026/Del/2011

A.Y. : 2008-09

Income Tax Officer,
Ward 28(1), New Delhi
Room No. 213, Drum Shaped
Building, IP Estate,
New Delhi – 110 002

(Appellant)

vs. Shri Anand Prakash Gupta, Prop.
Of M/s Anand Prakash Ankit
Kumar,
521, Lahori Gate, Naya Bazar,
Delhi – 110 006
(PAN/GIR NO. : AANPG3688B)
(Respondent)

Assessee by : Sh. Anoop Sharma, M. Giri,
Advocates
Department by : Sh. Bhim Singh, Sr. D.R.

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XXV, New Delhi dated 20.6.2011 pertaining to assessment year 2008-09.

2. The grounds raised read as under:-

- “1. On the facts and in the circumstances and in law the Ld. Commissioner of Income Tax (A) has erred in deleting the addition of Rs. 49,68,844/- made by Assessing Officer on account of negative stock.
2. On the facts and in the circumstances of the case Ld. Commissioner of Income Tax (A) has erred in deleting the addition of Rs. 63,628/-.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego and ground(s) of appeal at any time before or during the hearing of this appeal.”

3. Apropos deletion of addition of Rs. 49,68,844/- on account of negative stock.

In this case the assessee is a proprietor of M/s Anand Prakash Ankit Kumar and is engaged in the business of wholesale food grains. The assessee has the domestic turnover of Rs. 51,36,65,913/- and export turnover of Rs. 29,79,81,966/- and had declared the net profit of Rs. 30,98,004/-. During the course of assessment, Assessing Officer referred to the details furnished by the assessee with respect to the month-wise sale and purchase. The Assessing Officer prepared a chart for determining the closing stock with respect to the domestic trading of foodgrains. The proportionate direct expenses and gross profit was allocated to the monthly purchase. From this chart it was noted by the Assessing Officer that the assessee had negative stock of Rs. 49,68,844/- in the month of February, 2008. On enquiry in this regard assessee responded that assessee was not having any negative stock in the month of February, 2008 and it was submitted that the same may be verified from the books produced by the assessee. Assessing Officer noted that assessee has produced the books of accounts, but no stock register was produced. He held that on these facts it is presumed that the assessee made out of the books purchase and thereby resulting into the negative stock, closing stock in the month of February, 2008. On these facts the amount of Rs. 49,68,844/- was added to the total income of the assessee u/s. 69B of the Act, being unexplained investment in stocks, which exceeded the

amount recorded in this behalf in the books of accounts maintained by the assessee.

4. Before the Ld. Commissioner of Income Tax (A) it was submitted that the Assessing Officer is not justified to make the addition without giving proper finding. It was submitted that the books of accounts of the assessee are audited and all the quantitative details of the food grains are given in Col. No. 28(a) of the Audit Report and all the books of accounts are properly maintained vide column no. 9(b) of the Audit Report. It was further submitted that the Assessing Officer has taken the wrong way of computing the profit because the Assessing Officer has taken the GP rate @ 4.83% and the Assessing Officer has tried to compute stock for each month and has given to the peculiar conclusion that there has been negative stock in the month of February, 2008. It was further submitted that there has been no finding by the Assessing Officer regarding any inflated purchases or unaccounted sales and purchase and sale and gross profit, net profits amount remained the same even as per the working of the Assessing Officer. Considering the Assessing Officer, Ld. Commissioner of Income Tax (A) held that it is apparent from the books of accounts of the assessee are audited, there has been no proper finding regarding any unaccounted sales or any negative stock as mentioned in the order of the Assessing Officer. Hence, the Ld. Commissioner of Income Tax (A) deleted the addition made by the Assessing Officer.

5. Against the above order the Revenue is in appeal before us.

6. Ld. Departmental Representative relied upon the order of the Assessing Officer. He further referred to Paper Book Page no. 22 submitted by the assessee giving the quantitative details of stock.

He claimed that this was not submitted before the Assessing Officer and submitted for the first time before the Ld. Commissioner of Income Tax (A). Hence, he submitted that the issue may be remitted to the file of the Assessing Officer to consider the same, in light of these additional submissions made by the assessee.

7. On the other hand, Id. Counsel of the assessee submitted that the Assessing Officer has totally erred in computing a negative stock figure of Rs. 49,68,844/- for the month of February, 2008. He referred to the Paper Book Annexure –A-4 in this regard where the Assessing Officer has tried to compute the monthly closing stock in amounts. He submitted that assessee had a gross profit rate of 4.83%. The Assessing Officer has tried to apply this rate of 4.83% in every month and tried to arrive at the closing balance of stock every month. He submitted that the above is totally erroneous approach. He submitted that the proper quantitative stock has been duly culled out from the submissions made before the authorities below and the same was submitted before the Ld. Commissioner of Income Tax (A) in Paper Book Page no. 22. From this Chart, the Id. Counsel of the assessee argued that there is no case of negative closing stock. He further submitted that the accounts of the assessee have been properly maintained; books of accounts have been audited; quantitative details have been duly given and certified by the Auditors. The Assessing Officer has not been able to find any mistake in the books of the assessee. The sales and purchase figures and the gross profit has not been disturbed. There is no finding by the Assessing Officer regarding inflated purchase or unaccounted sales and the purchase and sale, gross and net profit amount remained the same, even as per the working of the Assessing Officer. Hence, the Id. Counsel of the

assessee pleaded that the order of the Ld. Commissioner of Income Tax (A) be affirmed.

8. We have carefully considered the submissions and perused the records. We find that the assessee has maintained proper books of accounts, no defect has been pointed out in the books of accounts, the quantitative details of stock were duly certified by the Auditors. Assessing Officer has not been able to make the case of inflated purchases or unaccounted sales, purchase, sale gross profit & net profits amount remained the same. The quantitative details as submitted in Paper Book Page No. 22 duly explained that there was no negative stock in any of the month. We agree with the submission of the Id. Counsel of the assessee and finding of the Ld. Commissioner of Income Tax (A) that Assessing Officer has erred in his approach and the figure of negative stock arrived at by the Assessing Officer is totally erroneous. Under the circumstances, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (A), accordingly, we affirm the same.

9. Apropos issue of deletion of addition of RS. 63,638/-

In this case Assessing Officer noted that from the perusal of the balance sheet and Annexures it was noted that the assessee has taken loans from banks, amounting to RS. 8,32,93,610/- in the form of secured loan and also from other parties, amounting to Rs. 56,20,479/- in the form of unsecured loans. The Assessee has also taken loans of RS. 4,63,90,000/- in his personal capacity and has used it in his business of share trading. The assessee is paying interest thereon, amounting to RS. 1,66,86,977/- to banks and Rs. 2,02,45,961/- to others. Further, the assessee has advanced interest free friendly loans to various parties. This amounts to Rs. 42,52,300/-. The assessee was asked to explain why

7,32,93,609/- and another amount of Rs. 1,00,00,000/-.
The assessee has also taken the personal loan of Rs. 4,63,90,000/-. The interest payment of the assessee is of Rs. 1,66,86,977/- and another interest payments of Rs. 20,82,521/-. The assessee has declared the FDR interest of Rs. 6,51,925/-.”

9.3 Further, it was submitted before the Ld. Commissioner of Income Tax (A) that Assessing Officer is not justified in disallowing the interest paid on the loans and advances which are taken for the purpose of business and the same are allowable u/s. 36(1)(iii). It was submitted that in such a business, it is necessary to borrow money for the purpose of business. It may be seen that there are huge debtors of Rs. 9,15,13,712/-. It was further submitted that the assessee has own huge opening capital of Rs. 2,68,58,924/- and the closing capital of Rs. 2,41,71,248/- out of which the assessee has given the interest free loans and advances and at the same time assessee is entitled to utilize his money as per the requirement of the business. Ld. Commissioner of Income Tax (A) further observed that it is also not disputed that interest payment is allowable as business expenditure u/s. 36(1)(iii). Ld. Commissioner of Income Tax (A) held that Assessing Officer was not justified to disallow the interest free payments and accordingly, he disallowed the same.

10. Against the above order the Revenue is in appeal before us.

11. We have heard the rival contentions in light of the material produced and precedent relied upon. Ld. Departmental Representative relied upon the orders of the Assessing Officer. Ld. Counsel of the assessee on the other hand submitted that Assessing Officer has wrongly arrived the figure of disallowance out of interest. He submitted that the assessee has sufficient own funds out of which the interest free advances has been given. He further submitted that similar disallowances was made by the Assessing Officer in A.Y. 2007-08 and on the similar facts Ld. Commissioner of Income Tax (A) allowed the assessee's appeal. The Revenue has not agitated against the above order of the Ld. Commissioner of Income Tax (A). Hence, the Id. Counsel of the assessee pleaded that the order of the Ld. Commissioner of Income Tax (A) be affirmed.

12. We have carefully considered the submissions and perused the records. We find that from the figures of the opening and closing capital of the assessee it is evident that assessee has sufficient own funds to cover the interest free loans / advances of Rs. 42,52,300/-. We also find that the Assessing Officer has not been able to dispute the assessee's submission that assessee had adequate own funds out of which interest free loans and advances were given. Under this situation when the interest free loans / advances have been give out of the assessee's own funds, no disallowance is called for. Similarly, again on similar facts in A.Y. 2007-08, Ld. Commissioner of

Income Tax (A) deleted the similar additions by the Assessing Officer and the decision of the Ld. Commissioner of Income Tax (A) was not challenged by the Department in higher forums. Under the circumstances, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (A). Accordingly, we uphold the same.

13. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 20/5/2013.

Sd/-

**[C.M. GARG]
JUDICIAL MEMBER**

Date 20/5/2013

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

Sd/-

**[SHAMIM YAHYA]
ACCOUNTANT MEMBER**

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches

