

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD

BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER,
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1597/AHD/2017
निर्धारण वर्ष/Asstt. Year: 2012-2013

D.C.I.T., Circle-3(2), Ahmedabad.	Vs.	Shri Vinodchandra Shanabhai Patel, 28, Nirant Park, Opp. Sun & Step Club Road, Ghatlodiya, Ahmedabad-380061. PAN: AFEP6977J
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(Applicant)		(Respondent)
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Revenue by	:	Shri Satish Solanki Sr. D.R
Assessee by	:	Shri Sanjay R. Shah, A.R

सुनवाई की तारीख/**Date of Hearing** : **21/11/2022**
घोषणा की तारीख /**Date of Pronouncement**: **30/11/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeal)-3, Ahmedabad, dated 19/04/2017 arising in the matter of Assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. The only issue raised by the Revenue is that the learned CIT-A erred in deleting the addition made by the AO for ₹ 1,92,78,814.00 crores on account of undisclosed/ unaccounted inventory found as on the date of survey.

3. The facts in brief are that the assessee in the present case is an individual and engaged in the business of manufacturing of Guvar gum under the proprietary concern namely M/s Bhavani Chemical. The premises of the assessee was subject to survey operation under section 133A of the Act carried out on 06.03.2012 wherein the unaccounted/ undisclosed inventory of ₹ 1,92,78,814.00 was found. The assessee during the survey operation agreed to make a disclosure of the impugned amount of undisclosed inventory in the income tax return.

4. However, the AO during the assessment proceedings found that the assessee on one hand has increased closing stock by the amount of ₹1,92,78,814 representing the unaccounted inventory found as on the date of survey and on the other hand it has also debited the purchase account in the trading and profit and loss account by the same amount. Thus, as per the AO, the effect of unaccounted inventory found as on the date of survey has become NIL in so far as the taxable income of the assessee is concerned. Thus, the AO made the addition of ₹ 1,92,78,814.00 representing the unaccounted inventory to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A.

6. The assessee before the learned CIT-A submitted that he has already offered unaccounted inventory of ₹ 1,92,78,814 as other income in the profit and loss account. Besides the impugned income, the assessee to bring unaccounted inventory in the books of accounts has shown purchases and closing stock in the books of accounts.

6.1 The assessee before the learned CIT-A further submitted that at the time of survey there were two kinds of inventories i.e. disclosed inventory and unaccounted inventory. However, the assessee post survey has unaccounted all the undisclosed inventory in the books of accounts. Furthermore, the assessee post survey has returned unaccounted inventory for the amount of ₹ 34,06,150.00 and disclosed inventory worth of ₹ 9,24,350.00 and at the same time there was the consumption of the inventory in the year under consideration post survey. To this effect, the assessee has prepared the summary showing the inventory of ₹ 1,26,70,501.00 as closing stock in the books of accounts. This summary of the stock is reproduced in the order of the learned CIT-A. The assessee in support of the return of inventory has also furnished the details of the invoices, transport details, debit notes, transporters receipt etc. Thus the assessee contended that he has disclosed the income as the unaccounted inventory in the books of accounts. The learned CIT-A, after considering the submission of the assessee and remand report of the AO has deleted the addition made by the AO by observing as under:

I have carefully examined the submissions made by the Appellant as well as the evidences produced by the Appellant and find sufficient force therein, It will be travesty of justice to ignore the basic facts submitted by the appellant as reproduced below: The reason for return of the goods was on account of inferior quality of Guvar Daal. When the said goods were purchased, the market rate of Guvar Gum Daal was Rs.95 per kg. However, when the inventory was prepared during the course of survey by I.T. officials, they have taken the rate of such stock at Rs.605/- per kg i.e. prevailing rate on the date of survey. Though the actual purchase rate of Guvar Gum Daal was of Rs.95/- only. The appellant has further submitted the reconciliation as reproduced in this order above and I can't find any fault in that reconciliation so placed on record. After all, it is the cost or market price whichever lower, is the accepted principle in maintaining books of accounts and the same is as per provisions of the Act. The appellant has honored his commitment but the recasting of stock valuation has been rejected by the AO without any valid reasons and without placing on record any positive corroborative evidence in favour of department. The Assessing Officer has made addition simply on the reason that returned income is less than the income disclosed at the time of survey, which cannot be the reason for making huge addition without corroborating evidences. Hon'ble Karnataka High Court in the case of Shankar Khandasari Sugar Mills Vs. CIT 193 ITR 669 (Kar.) has observed that "In the absence of any prejudice to the revenue, and the basis of the tax under the Act being to levy tax, as far as possible, on the real income, the approach should be liberal in applying the procedural provisions of the Act. An appeal is but a 'novation of the original proceeding and what the Income-tax Officer, could have done, the appellate authority a/so could do." Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah 231 ITR 1, (Born.) has observed that "CIT(A) is empowered u/s.250(4) to make such further inquiry as he thinks fit and such power being quasi judicial power, it was incumbent on him to exercise the same if the facts and circumstances justify. It further held that if the first appellate authority failed to exercise his discretion judicially and arbitrarily refused to make inquiry in a case where the facts and

circumstances so demand, his action would be open for correction by a higher authority. In other words, the message from the Bombay High Court is that if prima facie an information evidence is necessary to examine the claim of the assessee, the CIT(A) should consider the necessary evidence in exercise of power u/s.250(4) even if the case of the assessee does not fall within the four corners of the circumstances enumerated in rule 46A(1)". The real income is to be taxed. The apex Court in the case of CIT vs. British Paints India Ltd. has held, "it is duty of A.O. to correctly deduce the income, no principle of estoppels, A.O. is not bound by the method followed in earlier years." It is held in the case of Kedarnath Jute manufacturing co.ltd. that "what is necessary is the true nature of income"- 82 ITR 363(SC). In view of facts and ratio laid down in the case laws (Supra), I am inclined to accept the contention of the Appellant. Accordingly, I direct the Assessing Officer to delete the addition of Rs.1,92,78,814/-.

7. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

8. The Id. DR before us besides vehemently supporting the order of the AO, contended that the assessee while calculating the closing inventory has reduced therefrom the goods return but without giving effect to the purchases account. In other words, the assessee has claimed the deduction of the purchases at the gross value without reducing the purchase return whereas the assessee has shown less inventory by the amount of purchase return which has resulted under assessment of income. The learned DR vehemently supported the order of the AO.

9. On the contrary, the learned AR before us filed a paper book running from pages 1 to 86 and drew our attention on the profit and loss account placed on page 29 of the paper book wherein other income qua the unaccounted inventory of ₹ 1,92,78,814 was shown. As per the learned AR, after the disclosure of other income in the books of accounts, the assessee to bring the unaccounted stock in the books of accounts has passed journal entry by showing purchases and the closing stock which has nothing to do with the income disclosed by the assessee. The learned AR further contended that there were certain inventories of inferior quality which was returned post survey and the effect of the same was duly shown in the audited books of accounts. The learned AR vehemently supported the order of the learned CIT-A.

10. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the profit and loss account of the assessee placed on page 29 of the paper book, we find that the assessee has shown other income of ₹1,92,78,814.00 which is representing the unaccounted stock found during the course of survey operation under section 133A of the Act . To this effect, the assessee in the notes to account has also made the disclosure as detailed below:

NOTES ON ACCOUNTS

During the year, Survey was carried out at the factory premises. During the course of proceedings, disclosure of Income of Rs.1,92,78,814/- was made in form of unaccounted inventory. Consequently, the said amount is included in the other income by debit to inventory account.

10.1 From the above disclosure, there remains no ambiguity to the fact that the assessee has duly offered other income for the amount of ₹ 1,92,78,814.00 on account of unaccounted inventory found at the time of survey. Admittedly, the assessee has disclosed net profit before tax in the profit and loss account amounting to ₹ 1,85,40,742 which transpires that if other income as discussed above is excluded, then there will be a loss in the profit and loss account of the assessee. However that loss may be on account of various reasons such as suppression of sales, higher amount of expenditure etc. but nobody has looked into this aspect. In other words the AO has not pointed out anything wrong in the books of accounts of the assessee except the unaccounted inventory found during the course of survey operation which to our understanding has been duly accounted for and therefore the same cannot be made subject to addition again.

10.2 Before parting, it is equally important to note that the assessee while valuing the closing stock has reduced the goods return therefrom which has not been disputed before us. However, the question arises whether the assessee has also given effect in the value of purchases shown in the profit and loss account on account of such return of the goods. If it has not been done so, then it means that the assessee has shown less amount of inventory without adjusting the purchases which will certainly have the impact on the less income disclosed by the assessee

to the tune of ₹43,30,500.00 only. However, at the time of hearing neither the learned AR nor the DR has brought anything to our notice about the fact that the purchase shown by the assessee in the books of accounts was adjusted on account of purchase return. In the absence of such information, we are setting aside the issue to the file of the AO to the extent of verifying whether the purchases shown by the assessee has been adjusted on account of purchase return. If it has been adjusted, then no addition is warranted. In the event it has not been adjusted, then an addition of 43,30,500.00 on account of purchase return is liable to be added to the total income of the assessee. With this observation, we direct the AO to pass the suitable order as per the provisions of law. Hence the ground of appeal of the Revenue is partly allowed subject to the direction as discussed above.

11. In the result, the appeal of the Revenue is partly allowed subject to the direction.

Order pronounced in the Court on 30/11/2022 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
30/11/2022
Manish