

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 1772/Ahd/2018
With C.O. No. 30/Ahd/2022
(Assessment Year: 2008-09)

Income Tax Officer, Ward-2, Anand	Vs.	M/s. J. K. Patel & Brothers, P.O. Vehrakhadi, Tal-Anand-388365
[PAN No.AADFJ3030G]		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

I.T.A. No. 1773/Ahd/2018
With C.O. No. 31/Ahd/2022
(Assessment Year: 2009-10)

Income Tax Officer, Ward-2, Anand	Vs.	M/s. J. K. Patel & Brothers, P.O. Vehrakhadi, Tal- Anand-388365
[PAN No.AADFJ3030G]		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

Appellant by :	Shri Kinjal Shah, C.A.
Respondent by:	Ms. Saumya Pandey Jain, Sr. D.R.

Date of Hearing	09.11.2023
Date of Pronouncement	13.12.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These appeals have been filed by the Department and Cross Objections filed by the assessee against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-4 (in short “Ld. CIT(A)”), Vadodara vide orders dated 29.05.2018 passed for the Assessment Years 2008-09 & 2009-10. Since common facts and issues for consideration are before us for the above assessment years, the appeals filed by the Department and the Cross

Objections filed by the assessee are being disposed of by way of a common order.

2. The Department has taken the following grounds of appeal:-

A.Y. 2008-09:-

“1. That in the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee and in not confirming the addition made by the AO on these issues.

2. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition towards inventory of Packing Material without appreciating the facts, and without appreciating that the assessee had failed to explain why this was not duly accounted for in the P&L account.

3. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition towards bardan written off without appreciating that the assessee had failed to substantiate its claim.

4. The appellant craves leave to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal”

A.Y. 2009-10:-

“1. That in the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee and in not confirming the addition made by the AO on these issues.

2. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition towards inventory of Packing Material without appreciating the facts, and without appreciating that the assessee had failed to explain why this was not duly accounted for in the P&L account.

3. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition towards bardan written off without appreciating that the assessee had failed to substantiate its claim.

4. The appellant craves leave to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal”

3. The assessee has raised the following grounds of appeal in its Cross Objections:-

A.Y. 2008-09:-

I. On Legality of Appeal:

1. The CIT(A)-4, Baroda has erred both in Law and in fact in holding that Sec.148 applies to the case and thereby confirming the Reopening of Assessee.
2. Your Respondent submits that on facts of the case in provisions of Law and considering the Reasons Recorded for Reopening the assessment your Appellant very strongly submits that no income has escaped assessment or under assessed not having any link or direct connection and that the Assessing Officer has not satisfied of any escapement of Income and he has acted on borrowed satisfaction and therefore the Assessment is Bad-in-Law & Void.

II. On Quantum:

1. (a) Your Respondent submit that CIT(A) has rightly held that your Appellant has been following regular and continuous same method of accounting from year to year for finished goods and packing material and that packing material of Rs.8,79,165/- has not been under assessed or escaped Assessment and therefore not liable to be added.

(b) Your Appellant submit that in view of accounting method of and be practice and since the Packing Material stock of Rs.8,79,165/- though not reflected in P & L Account is duly accounted in books of accounts and shown in the Audited Balance Sheet therefore is cannot be said that said income has escaped assessment and is liable to be added.
2. Your Respondent further submitted that CIT(A) has rightly held that Rs.50,840/- being amount of barden written off is as per old practice followed and keeping in mind the nature of article which is diminishing in value and gets turn off & spoiled by usage and handling being packing material of Jute Bags the said amount has been rightly been allowed as expense incurred during course of business.

It is therefore submitted that relief claimed above allowed and the order of the Assessing Officer be modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

A.Y. 2009-10:-

I. On Legality of Appeal:

1. The CIT(A)-4, Baroda has erred both in Law and in fact in holding that Sec.148 applies to the case and thereby confirming the Reopening of Assessee.

2. Your Respondent submits that on facts of the case in provisions of Law and considering the Reasons Recorded for Reopening the assessment your Appellant very strongly submits that no income has escaped assessment or under assessed not having any link or direct connection and that the Assessing Officer has not satisfied of any escapement of Income and he has acted on borrowed satisfaction and therefore the Assessment is Bad-in-Law & Void.

II. On Quantum:

1. (a) Your Respondent submit that CIT(A) has rightly held that your Appellant has been following regular and continuous same method of accounting from year to year for finished goods and packing material and that packing material of Rs.10,20,064.20 has not been under assessed or escaped Assessment and therefore not liable to be added.

(b) Your Appellant submit that in view of accounting method of and be practice and since the Packing Material stock of Rs.10,20,064/- though not reflected in P & L Account is duly accounted in books of accounts and shown in the Audited Balance Sheet therefore is cannot be said that said income has escaped assessment and is liable to be added.

2. Your Respondent further submitted that CIT(A) has rightly held that Rs.1,31,875/- being amount of barden written off is as per old practice followed and keeping in mind the nature of article which is diminishing in value and gets turn off & spoiled by usage and handling being packing material of Jute Bags the said amount has been rightly been allowed as expense incurred during course of business.

It is therefore submitted that relief claimed above allowed and the order of the Assessing Officer be modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

4. We shall first take up the Department’s appeal for A.Y. 2008-09 and 2009-10, which have been disposed of by Ld. CIT(A) vide common order for both the years under consideration vide order dated 29.05.2018.

5. **Ground No.1:-** Ground No.1 of the Department’s appeal is general in nature and does not require any specific adjudication.

Ground No.2:- CIT(A) erred in deleting the addition towards inventory of Packing Material.

6. The brief facts in relation to this ground of appeal are that the assessee filed return of income for A.Y. 2009-10 (we are taking the figures for A.Y. 2009-10, but since the issues for both assessment year are common the ratio for A.Y. 2009-10 would apply to A.Y. 2008-09 as well) on 29.09.2009 declaring total income at Rs. 6,93,140/-.

7. During the course of assessment, the Assessing Officer observed from the Balance Sheet that Schedule-D of inventories including finished / traded goods and packing materials. Accordingly, the Assessing Officer held that since the packing material to the tune of Rs. 10,20,064/- was not included in the Profit & Loss Account, this resulted into understatement of income. Accordingly, the Assessing Officer made an addition of Rs. 10,20,064/- being packing material inventories not included in the Profit & Loss Account and added the same to the income of the assessee.

8. In appeal before Ld. CIT(A) the assessee submitted that the nature of business of the assessee is of trading and processing of tobacco and the packing materials and consumables stock are accounted separately and are directly reflected as inventories of packing stock in the Balance Sheet. The assessee further submitted that the assessee has been maintaining proper books of accounts which have been duly audited and the same method of accounting has been accepted by the Department in the past assessment years as well, during the course of scrutiny assessment proceedings. It was further submitted that non-inclusion of packing material and its inventory

through Profit & Loss Account does not result in understatement of income and hence no addition is called for, looking into the instant facts. The Ld. CIT(A) allowed the appeal of the assessee with the following observations:-

“During the course of appellate proceedings, the A.R. of the appellant has filed written submission along with copy of audited books of accounts and argued that packing materials are duly recorded in the books of accounts as well as the usage of the same was in course of the business of the assessee and duly reflected as inventory of closing stock. The trading stock and packing materials are shown in balance sheet of the appellant which was duly audited u/s.44AB of the Act. Further, the A.R. of the appellant has filed copy of comparative details in the same line of business of M/s. Mahalaxmi Tobacco Co for A.Y.2006-07 and the appellant own case for AY 2005-06 wherein the A.O. has accepted the income as well as same method of showing inventory of packaging material. From the copy of audited account, it transpires that the appellant has shown in the P & L Account as closing stock and in Balance Sheet under inventories the same are appearing. The A.O. has not pointed out any discrepancy and in fact he has accepted that the assessee maintains separate packing account and the opening stock and purchases, sale bills and closing stock are duly reflected in the said account. The only issue raised by the A.O. that the assessee has not Included the same in the P & L Account. Since, the appellant accounts were duly audited by Auditor under statutory provision of section 44AB of the Act and followed principals of accountancy consistently, hence, it is my considered view that the addition on this count is unwarranted. The A.O. is directed to delete the addition on this count.”

9. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A).
10. Ld. D.R. primarily relied on the observations made by the Assessing Officer in the assessment order.
11. In response, the assessee relied on the observation made by the Ld. CIT(A) in the appellate order. Further, the assessee has also filed Cross Objections, which are primarily supporting the observations made by Ld. CIT(A) in the appellate order.

12. Before us, the Counsel for the assessee submitted that the only reason on the basis of additions were made by the Assessing Officer are that the assessee did not account for packing material in the Profit & Loss Account as closing stock. However, it was submitted that the Assessing Officer failed to appreciate that the assessee is maintaining a separate account for packing materials and the same are duly reflected as inventory of closing stock. It was submitted that the trading stock and packing materials are shown in the Balance Sheet of the assessee, which has been duly audited under Section 44AB of the Act. Further, the Counsel for the assessee submitted that the Assessing Officer has not pointed out any discrepancy in the books of accounts maintained by the assessee and he has further accepted that the assessee maintained separate packing account and the opening stock and purchases, sale bills and closing stock are duly reflected in the said account. Accordingly, in the instant facts there is no understatement of income and hence no addition is called for.

13. We have heard the rival contentions and perused the material on record. On going through facts of the instant case and the observations made by Ld. CIT(A) we are of the considered view that Ld. CIT(A) has correctly observed that there is no understatement of income in the present set of facts. Further, the Assessing Officer has not pointed out to any discrepancy in the books of the assessee and he has also accepted that the assessee maintains separate packing account and the opening stock and purchases, sales bills and closing stock are duly reflected in the said account. Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

14. In the result, Ground No. 2 of the Department's appeal is dismissed and Cross Objection No. II (a) and II (b) of the assessee's Cross Objections are allowed.

Ground No.3:- Ld. CIT(A) erred in deleting the additions towards bardan written off.

15. The brief facts in relation to this ground of appeal are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has claimed sales and administrative expenditure of Rs. 10,87,725/-, as per Schedule-3 of the Audit Report which includes "bardan written off" to the tune of Rs. 1,31,875/-.

16. The Assessing Officer was of the view that the packing material bardan being inventory, depreciation thereon would not be allowed. Accordingly, the Assessing Officer held that the total amount of Rs. 1,31,875/- being bardan written off is not allowable and added the same to the total income of the assessee.

17. In appeal before the Ld. CIT(A), the assessee submitted that the entire amount of Rs. 1,31,875/- debited to Profit & Loss Account is wholly and exclusively for the purpose of diminishing value of jute bags which have been written off as expenditure of business and have been claimed and allowed from year to year, on a consistent basis. Ld. CIT(A) allowed the appeal of the assessee with the following observation:-

"4.3 I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. The other issue regarding expenses claimed

on sales and administrative of Rs 10,87,725/-, but as per Sch. 3 of Audit report, which includes bardan written off to the tune of Rs 1,31,875/ Further observed that the assessee has incorrectly claimed depreciation (bardan written off). The A.R. of the appellant has clarified that the entire amount debited to P & L Account which is wholly and fully for the business purposes and duly supported by evidences and that the diminishing value has been written off as expenditure of the business. Looking to the nature of business and plausible explanation put forth by the A.R. of the appellant that packing material in jute bags does diminish its value once it get damaged or torn while loading and unloading. I agree with the A.R. and the A.O. is directed to delete the addition made on this count.”

18. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A), allowing the appeal of the assessee.

19. Before us, Ld. D.R. primarily relied on the observations made by the Assessing Officer on the aforesaid order. In response, the Counsel for the assessee has primarily relied upon the observations made by Ld. CIT(A) in the appellate order. The Cross Objection filed by the assessee is also primarily supporting the observations made by Ld. CIT(A) in the appellate order.

20. Before us, the Counsel for the assessee submitted that the aforesaid amount of Rs. 1,31,875/- are essentially jute bags, uses as packing material which are no longer usable. Accordingly, the same are have been written off and claimed as an expenditure in the Profit & Loss Account. It was submitted that the genuineness of the aforesaid expenditure has not been doubted by the Assessing Officer. Accordingly, looking into the instant facts, the Ld. CIT(A) has correctly allowed the aforesaid expenses.

21. We have heard the rival contentions and perused the material on record. In our considered view the Ld. CIT(A) has correctly observed that

the entire expenditure of Rs. 1,31,875/- is wholly and exclusively for the purpose of business and is also supported by evidences. Further, we are of the view that the aforesaid expenditure represents packing material in jute bags which have gotten damaged / torn by loading and unloading and no longer usable and the same are written off as an expenditure in the Profit & Loss Account. Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

22. In the result, Ground No. 3 of the Department's appeal is dismissed and Cross Objection No. 2 of the assessee's cross objection is allowed.

23. In the combined result, the appeals of the Department for A.Ys. 2008-09 and 2009-10 are dismissed and the assessee's Cross Objection for A.Ys. 2008-09 and 2009-10 are allowed.

This Order pronounced in Open Court on

13/12/2023

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 13/12/2023

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad